

**CONTRACT**

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

Begin Date May 26, 2023	End Date May 25, 2028	Agency Tracking # 33101-2303FAC5	Edison Record ID 78276		
Contractor Legal Entity Name SID3CAR CO d/b/a Student First Technologies			Edison Vendor ID 263191		
Goods or Services Caption (one line only) E-APPLICATION AND WALLET PLATFORM					
Contractor <input checked="" type="checkbox"/> Contractor		Assistance Listing Number# NA			
Funding —					
FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2023	\$36,750.00	\$0.00	\$0.00	\$0.00	\$36,750.00
2024	\$858,249.98	\$0.00	\$0.00	\$0.00	\$858,249.98
2025	\$695,000.00	\$0.00	\$0.00	\$0.00	\$695,000.00
2026	\$695,000.00	\$0.00	\$0.00	\$0.00	\$695,000.00
2027	\$695,000.00	\$0.00	\$0.00	\$0.00	\$695,000.00
2028	\$695,000.00	\$0.00	\$0.00	\$0.00	\$695,000.00
TOTAL:	\$3,674,999.98	\$0.00	\$0.00	\$0.00	\$3,674,999.98
Contractor Ownership Characteristics:					
<input type="checkbox"/> Minority Business Enterprise (MBE): <input type="checkbox"/> African American <input type="checkbox"/> Asian American <input type="checkbox"/> Hispanic American <input type="checkbox"/> Native American <input type="checkbox"/> Woman Business Enterprise (WBE) <input type="checkbox"/> Tennessee Service Disabled Veteran Enterprise (SDVBE) <input type="checkbox"/> Disabled Owned Business (DSBE) <input type="checkbox"/> Tennessee Small Business Enterprise (SBE): \$10,000,000.00 averaged over a three (3) year period or employs no more than ninety-nine (99) employees. <input type="checkbox"/> Government <input checked="" type="checkbox"/> Non-Minority/Disadvantaged <input type="checkbox"/> Other:					
Selection Method & Process Summary (mark the correct response to confirm the associated summary)					
<input checked="" type="checkbox"/> Competitive Selection		RFP			
<input type="checkbox"/> Other					
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.					
Maryanne Durski, CFO Digitally signed by Maryanne Durski, CFO Date: 2023.05.16 17:02:47 -05'00'					
Speed Chart (optional) Various		Account Code (optional) 70803000			

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

RFS Number		33101-23035FAC5						
Edison ID		78276						
Fiscal Year	Department	Speedchart	Program	Account	Fund	Project	CFDA #	Amount
2023	3315700000	ED00001558	1000000	70803000	25000	NA	NA	\$29,400.00
2023	3313600520	ED00000987	644600	70803000	25000	NA	NA	\$7,350.00
2024	3315700000	ED00001558	1000000	70803000	25000	NA	NA	\$686,599.98
2024	3313600520	ED00000987	644600	70803000	25000	NA	NA	\$171,650.00
2025	3315700000	ED00001558	1000000	70803000	25000	NA	NA	\$556,000.00
2025	3313600520	ED00000987	644600	70803000	25000	NA	NA	\$139,000.00
2026	3315700000	ED00001558	1000000	70803000	25000	NA	NA	\$556,000.00
2026	3313600520	ED00000987	644600	70803000	25000	NA	NA	\$139,000.00
2027	3315700000	ED00001558	1000000	70803000	25000	NA	NA	\$556,000.00
2027	3313600520	ED00000987	644600	70803000	25000	NA	NA	\$139,000.00
2028	3315700000	ED00001558	1000000	70803000	25000	NA	NA	\$556,000.00
2028	3313600520	ED00000987	644600	70803000	25000	NA	NA	\$139,000.00
TOTAL -								\$3,674,999.98

**CONTRACT
BETWEEN THE STATE OF TENNESSEE,
DEPARTMENT OF EDUCATION
AND
SID3CAR CO, DBA STUDENT FIRST TECHNOLOGIES**

This Contract, by and between the State of Tennessee, Department of Education ("State") and SID3CAR d/b/a Student First Technologies ("Contractor"), is for the provision of E-Application and Wallet Platform, 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 For-Profit Corporation.
Contractor Place of Incorporation or Organization: Indiana
Contractor Edison Registration ID #: 263191

A. SCOPE:

- A.1. The Contractor shall provide all goods or services and deliverables as required, described, and detailed below and shall meet all service and delivery timelines as specified by this Contract.
- A.2. Definitions. For purposes of this Contract, definitions shall be as follows and as set forth in the Contract:
- a. **Account Holder:** Parent or legal guardian approved for participation in the ESA or IEA Program on behalf of their minor student (seventeen (17) years of age or younger) or student approved for participation in the ESA or IEA Program who has reached the age of eighteen (18).
 - b. **Account Holder Management System:** An online portal in which Account Holders complete required actions and provide information required for participation in the ESA and IEA Programs.
 - c. **Applicant:** Parent or legal guardian applying for ESA or IEA Program eligibility on behalf of their minor student (seventeen (17) years of age or younger) or student applying for ESA or IEA Program eligibility on their own behalf who has reached the age of eighteen (18).
 - d. **Application System:** An online portal which allows Account Holders, Applicants, and Participating Schools to submit applications for the ESA and IEA Programs.
 - e. **Education Information System ("EIS"):** State reporting system that contains all local education agencies information student information system data.
 - f. **Fiscal Management and Payment System:** An online portal that allows the management of planning, directing and controlling financial resources including income, expenses, invoices, payments, etc.
 - g. **Participating School:** A private school that has been approved to participate in the ESA Program.
 - h. **Platform:** Umbrella term referring to all components of the Contractor's solution, including the Application System, Account Holder and Provider Management System, Fiscal Management and Payment System, Support and Training System, and Reporting System.
 - i. **Priority School:** A performance designation defined by the State's accountability system (i.e., bottom five (5) percent of schools across the state due to multiple years of low academic performance and have less than 67% graduation rate during the most recent school year).
 - j. **Project Management Plan:** A project and communication plan developed to serve as the guiding project development and support document or project management tool composed of all activities, the links between them, priorities, expected outputs, time frames, and those responsible for carrying out each activity.
 - k. **Reporting System:** An online portal which allows for the generation of reports for the ESA and IEA Programs.
 - l. **School:** School applying to be a Participating School but not yet approved.
 - m. **Service Provider:** Any individual or entity receiving payment through the Fiscal Management and Payment System (e.g., tutors, therapists, etc.).
 - n. **SharePoint:** A web-based collaborative platform primarily used as a document management and storage system.

- o. **Stakeholders:** Collective term used to refer to Applicants, Account Holders, Service Providers, Schools, and other members of the public with an interest in the ESA or IEA Programs.
 - p. **Support and Training System:** An online portal that provides access to resources for support and training for Stakeholders on the ESA and IEA Programs.
 - q. **Tennessee Education Savings Account (ESA) Program:** Tennessee Code Annotated (T.C.A.) § 49-6-2601, *et. seq.* establishes the ESA Program, which allows eligible students in Shelby and Davidson counties to use state and local funds toward qualifying expenses, such as tutoring services, fees for early postsecondary opportunity courses and examinations, and tuition, fees, and textbooks at Participating Schools.
 - r. **The Individualized Education Act (IEA) Program:** T.C.A. § 49-10-1401 *et seq.*, establishes the IEA Program, which provides parents, guardians, and qualified students options for choosing the educational opportunities that best meet the individual student's unique needs through access to public education funds.
 - s. **Tennessee Investment in Student Achievement ("TISA"):** Chapter 966 of the Public Acts of 2022, now codified at Tenn. Code Annotated Title 49, Chapter 3, Part 1, established TISA as a student-based formula for funding education for kindergarten through grade twelve (K-12) public schools.
- A.3. The Contractor shall create and supply a user-friendly online Platform for use by ESA and IEA Stakeholders. The Platform shall include an Application System, Account Holder Management System, Fiscal Management and Payment System, Support and Training System, and a Reporting System. Users will include Applicants, Account Holders, Service Providers, Participating Schools, and any other Stakeholders.
- a. The Contractor shall hold four (4) to six (6) work group meetings with the State to review the Contract Scope of Services, updates/issues related to implementation, and account set-up (including role designations in the Platform, such as system administrator), within thirty (30) days following Contract Effective Date.
 - b. All services provided under this Contract shall meet state and federal accessibility requirements, including compliance with Sections 504 and 508 of the Rehabilitation Act of 1973 and its implementing regulation at 34 C.F.R. Part 104, and Title II of the Americans with Disabilities Act of 1990 and its implementing regulation at 28 C.F.R. Part 35.
 - c. The Training System must be complete and live by July 1, 2023.
 - d. The Account Holder Management System and Fiscal Management and Payment System must be complete and live by August 1, 2023.
 - e. The Reporting System must be complete and live by November 1, 2023.
 - f. The Application System must complete and live by January 1, 2024.
 - g. The Platform must have the ability to translate and format all text and system generated attachments and letters in English, Spanish, Arabic and other languages as needed and requested by the State.
- A.4. Application System: The Contractor shall create and provide an Application System for Applicants and Schools for both the ESA and IEA Programs.
- a. **General Requirements:** The Contractor's Application System shall meet the following requirements for both Programs:
 - 1) Provide an open enrollment window and application management as specified by the State.
 - 2) Allow the input and upload of information and documents for verification such as Internal Revenue Service tax forms, Temporary Assistance for Needy Families ("TANF"), Supplemental Nutrition Assistance Program ("SNAP"), birth certificates, pay stubs, etc. Applicants shall be able to review uploaded documents. Once approved, the Applicant information is transferred from the Application System to the Account Holder Management System.
 - 3) Allow input of personal information for multiple members of a household on the same application but maintain separate records for each student.
 - 4) Provide the ability to mark any documentation uploaded as approved or denied and allow resubmission of denied documentation.
 - 5) Allow electronic verification and acknowledgment by the Applicant of required assurances and rules of the Program.

- 6) Verify student named on the application form with other student databases (matching social security or student ID numbers and other data housed by the State) utilizing a manual or application programming interface ("API")-based process.
 - 7) Allow the Applicant to start and stop an application mid-stream and save information to be able to resume later.
 - 8) Send and receive messages to and from the Applicant and designated user types for customer support (e.g., email or text messages).
 - 9) Allow designated user types to view application status, including what applications are in process, denied, incomplete, or approved.
 - 10) Allow designated user types to upload or input documents on behalf of Applicants.
 - 11) Generate an acceptance or denial letter to Applicants.
 - 12) Bundle siblings into the same Applicant account and allow for the addition of siblings at a later date.
 - 13) Allow for electronic signatures on specified documents.
 - 14) Prohibit duplicate applications to be submitted.
 - 15) Calculate the student's age based on the date of birth entered.
- b. ESA Application Requirements: The Contractor's Application System shall meet the following requirements for the ESA Program:
- 1) Provide initial verification of income based on data input by the Applicant via upload.
 - 2) Compare Applicant reported income to income thresholds defined by the ESA Program and addresses to ESA Program and reject or process applications based on this initial criterion.
 - 3) Provide space for upload proof of residency from a dropdown box and prior school year transcript.
 - 4) Allow Applicant to choose a Participating School and upload an acceptance letter or generate a tickler verification to a designated individual to verify the Applicant has been accepted.
 - 5) Provide stages of approval which shall include: received, in review, pending additional information, approved, denied. The State will determine which approval phases are visible to Applicants.
 - 6) Provide drop-down menus for designated data fields.
 - 7) Provide alerts to Applicants when specific documentation is needed based upon data entered.
 - 8) When application is received, send specific notification to Applicant that application has been received and what to expect next.
 - 9) Provide ability to send direct messages to those with missing documents or incomplete documentation.
 - 10) When application is approved or denied, send specific notification to Applicant of next steps and appeal rights to denials.
 - 11) Provide the ability for Applicants to appeal denials.
 - 12) Report the names of ESA Applicants that are approved and denied. If denied, an explanation shall be provided in the report.
 - 13) Mark Applicant's status, such as homeless or foster, as "complete" after verification.
 - 14) Establish and conduct a lottery process should applications exceed the allowable number of students that may participate in the Program, in the application period for a school year, pursuant to T.C.A. § 49-6-2604(c).
 - i. Weight each Applicant in the lottery by whether or not the student is zoned for a Priority School, household income, and sibling participation.
 - ii. Generate a waitlist based on the results of the lottery, manage each Applicant's respective place on the waitlist, and update that placement if the waitlist changes.
 - iii. Send out specific notification to indicate they are on the waitlist.
 - iv. Provide the ability to move ESA Applicants to either "approved" or "denied" status.
 - v. Send out a second notification to notify of decline or award status, and provide workflow for ESA Applicants to confirm.
 - vi. Identify whether the student is enrolled in a designated Priority School.
- c. IEA Application Requirements: The Contractor's Application System shall meet the following requirements for the IEA Program:

- 1) Provide stages of approval which shall include: received, in review, pending additional information, approved, denied. The State will determine which approval phases are visible to Applicants.
 - 2) Provide drop-down menus for designated data fields.
 - 3) Provide alerts to Applicants when specific documentation is needed based upon data entered.
 - 4) When application is received, send specific notification to Applicant that application has been received and what to expect next.
 - 5) Provide ability to send direct messages to those with missing documents or incomplete documentation.
 - 6) When application is approved or denied, send specific notification to Applicant of next steps and appeal rights to denials.
 - 7) Provide the ability for Applicants to appeal denials.
 - 8) If the student is over 18 at the time of application, provide an alert that a power of attorney or conservatorship is needed, or the student must complete the application.
- d. Participating School Application Requirements: The Contractor's Application System shall meet the following requirements for the Participating School application:
- 1) Provide the number of seats available for ESAs on a yearly basis.
 - 2) Provide a way for Schools to upload documents, provide URL links or fill out electronic forms for information including application dates, daily school calendar, surety bond, certified public accountant ("CPA") letter, tax forms cost of tuition, and student code of conduct.
 - 3) Allow Schools to electronically verify required assurances and rules of the program via check boxes.
 - 4) Allow for a specific user types to view the status of an application.
 - 5) When application is approved or denied, send specific notification to Applicant of next steps and appeal rights to denials.
 - 6) Provide the ability for Applicants to appeal denials.
- A.5. Account Holder Management System: The Contractor shall create and provide an Account Holder Management System for on-going management of accounts which shall include the following requirements:
- a. Provide the ability for the Account Holder to update the student information throughout the year and alert the specific user types when that occurs.
 - b. Provide the ability to send email messages to the specific user types for customer support or to alert when a student has withdrawn from the Program.
 - c. Provide a renewal section for ESA and IEA Program Account Holders to apply for a renewal without going back through the new application process.
 - d. Provide notification to the Account Holder that a Participating School or Service Provider needs to be selected.
 - e. Contain a repository to house all documents related to the Account Holder's application and acceptance.
 - f. Provide the ability for Account Holders to appeal a removal from the ESA and IEA Programs.
 - g. Provide notification to the Account Holder when a student turns 18 during the Contract year that power of attorney or conservatorship is needed before the student's 18th birthday or the student will need to become the Account Holder before turning 18.
 - h. Include required forms that Account Holders must complete such as those required for changes, requests, etc. and maintain those in the Account Holder record.
- A.6. Fiscal Management and Payment System: The Contractor shall create, maintain, and operate a Fiscal Management and Payment System which shall provide the following:
- a. General Requirements:
 - 1) Ability to create notional virtual wallet accounts for Account Holders to easily receive funds and pay for expenses. A notional virtual wallet account shall be a placeholder that will then be filled with actual users as approved. This shall include successful set-up and implementation of funding of all student accounts as they are established.
 - 2) Ability to pay multiple Participating Schools and Service Providers up to six (6) times per year from up to 15,000 ESA accounts and 500 IEA accounts.

- 3) Ability to establish an account for each Account Holder and bundle families while keeping each student account separate.
 - 4) Provide a successful set-up and implementation of funding of all accounts as accounts are established.
 - 5) The Contractor may allow for inclusion of a processing fee for payments to Participating Schools and Service Providers, to be paid by Account Holder; however, the Contractor's processing fee may not exceed 2.0% of transaction total.
 - 6) Ability for Account Holders to check balances, authorize payment, request payment and upload receipts.
- b. ESA and IEA Fiscal and Payment. The Contractor shall include the following requirements:
- 1) Ability to utilize subaccounts within the ESA account (notional virtual wallet) to earmark funds specifically for tuition.
 - 2) Ability to provide e-commerce storefronts with approved vendors that ESA Account Holders can use for purchases with ESA funds.
 - 3) Ability to require pre-approval for e-commerce transactions, configurable with a price threshold.
 - 4) Ability for supporting documentation for expense reporting to be submitted and resubmitted.
 - 5) Ability to email messages with Account Holders throughout the payment process.
 - 6) Ability for Account Holders to edit an expense report (save and continue).
 - 7) Ability to reject an expense report and require corrections.
 - 8) Ability to automatically hold next disbursement until previous quarter's accounting is reconciled.
 - 9) Ability to make four payments per school year and reconcile account on a timeline provided by the State.
 - 10) Ability for Account Holders to submit preapproval requests on required expenditures for approval, and the ability to store those requests, approvals, and denials.
 - 11) Ability for Account Holders to expend funds with any vendor for an approved purchase.
 - 12) Ability for Account Holders to expend IEA funds with any vendor for a purchase not requiring pre-approval.
 - 13) Ability to process ABLE TN and Coverdell savings account request forms.
 - 14) Ability for Account Holders to have funds taken from their IEA account on a recurring or non-recurring basis to be sent from Tennessee Department of Finance and Administration by check for deposit into ABLE TN account.
 - 15) Ability to calculate quarterly disbursements minus set IEA administrative costs, along with state and local funding amounts.
 - 16) Ability to:
 - i. deduct any misspent funds in a given quarter and revert to original amount in next quarter,
 - ii. if determination is made that funds need to be recouped and funds remain in wallet, ability to "pull" those funds from wallet, and
 - iii. add extra funds to a regular quarterly disbursement if a determination is overturned on appeal, and then to revert to original amount in next quarter
 - 17) Ability to fund a smaller subset of Account Holders' wallets on a different date from the majority of the IEA Account Holders, if needed.
 - 18) Ability to change Tennessee Investment in Student Achievement ("TISA") funding amounts and adjust calculations mid-year when a student transfers to a new local education agency ("LEA").
 - 19) Ability to process ABLE TN and Coverdell request forms for IEA.
 - 20) Provide Account Holders, Participating Schools, and Service Providers with a two-step appeal process as outlined in in State Board Rule 0520-01-16-.11(2) for denied applications.
 - 21) Provide a document portal for submission of the appeal and supporting documentation, track the progress, see the final determination for both levels of the appeal process.

A.7. Support and Training System: The Contractor shall create and deliver separate training for all identified Stakeholders for the ESA and IEA Programs and provide a portal which houses all resources related to both Programs. The Support and Training System shall meet the following requirements:

- a. Provide one virtual training for each of the following users: State employees, Account Holders, Participating Schools, and Service Providers on how to use the Platform and to answer questions from training participants. The trainings shall be recorded and housed in the Platform. The trainings shall be provided during summer 2023 with the specific times/dates agreed upon by both parties.
- b. Provide semi-weekly virtual training for all users at launch, and weekly virtual training on an on-going basis for the duration of the Contract Term, which may be performed through making interactive training materials available.
- c. The Contractor shall develop a minimum of ten (10) on-demand training options (i.e., video modules) that can be accessed through the Platform, on topics determined by the State.
- d. Provide a repository to house user manuals, forms, guidance documents, training modules, videos, etc., related to the programs.


A.8. Reporting System: The Contractor shall provide a Reporting System which meets the following requirements:

- a. Generate the following reports at a frequency determined by the State. and transmit those to the State, including but not limited to:
 - 1) Customer service activity, including, but not limited to, call volumes, average speed of answer, average talk time, average wrap time, abandon rates, service levels (percentage of calls answered within 60, 90, 120 seconds), etc.
 - 2) Daily summaries for customer service inquiries and response times. Daily reports to be auto generated and e-mailed to designated contact.
 - 3) Call center and application activity daily reports, to include volume of calls, wait times, applications submitted, applications in process and applications approved.
 - 4) Other reports requested by the State at no additional cost to the State.
- b. Provide a variety of standardized, interactive reports which are accessible and downloadable at the State level. The following reports shall be included:
 - 1) Listing of current user accounts
 - 2) Summaries of purchases and amounts
 - 3) Aggregate account balance
 - 4) Summaries of closed or active accounts
 - 5) Summaries of closed or open accounts
 - 6) Report names of ESA Applicants accepted and rejected. If rejected, accompanied by an explanation
 - 7) Year-end close-out of accounts and balances forwarded to the State by July 31 of each fiscal year to be divided by program
 - 8) Batch payment report for IEA quarterly
 - 9) IEA student list spreadsheet each contract year
 - 10) IEA participating non-public school list
 - 11) IEA state, local, admin funding report showing each IEA student
 - 12) Final IEA LEA payment report for amounts to be pulled from LEAs
 - 13) IEA per pupil amount report from the TISA calculations performed in Fiscal Management and Payment System requirements
 - 14) IEA report per expense category (categories to be provided by the State IEA team), listing total amount and percentage spent per quarter and Contract year.
 - 15) IEA report showing accounts spending less than 50% of Contract year's disbursement
 - 16) IEA report showing students who are in grades 3-8 according to the state's EIS and have not submitted an assessment verification form
 - 17) IEA Account Holders who have not submitted an expense report each quarter
- c. Contain a query tool that will capture and report data using parameters that are not included in other reports. This tool shall pull both historical and current data and contain all fields from all data tables within the database, including, but not limited to the following:
 - 1) Account Holder detail queries by zip code, grade level, gender, race, income brackets, chosen schools
 - 2) Queries from accepted or denied ESA and IEA Applicants by all of the above categories
 - 3) Queries to show status of Participating School applications
 - 4) Queries to show status of ESA and IEA applications

- A.9. **Project Implementation Phases and Deliverables:** The Contractor shall perform implementation work according to key project phases. The key project phases shall include: a requirements gathering phase, a development phase, a testing phase, a pilot/training phase, and go-live phase. The deliverables associated with each phase shall be identified by the Contractor and approved by the State, in the Project Management Plan.
- a. The Contractor shall work with the State to review and define each phase of and all required deliverables, which shall be detailed in the Project Management Plan.
 - b. The Contractor shall complete implementation of the Platform, including completion of all key project phases and associated deliverables, within six (6) months of the Contract Effective Date, unless otherwise agreed to by the State.
 - c. Payment milestones shall be contingent upon the State's approval of all phase deliverables. The State shall review all deliverables to determine satisfactory acceptance according to the following process:
 - 1) As requested by the State, the Contractor shall conduct a walkthrough of the deliverable prior to submission with appropriate State staff.
 - 2) Following submission of a deliverable, the Contractor shall adhere to the following process:
 - i. *State Review.* The State shall review and either approve or reject each deliverable. A rejection shall be accompanied by a list of deficiencies.
 - ii. *Contractor Update(s).* The Contractor shall make any changes identified by the State and resubmit the deliverable.
 - iii. *State Acceptance.* Following submission (or resubmission), acceptance of the Contractor's deliverable shall be communicated via the approved correspondence process. No deliverable shall be considered final or eligible for payment until it has been formally accepted by the State.
 - 3) The standard timeframe for review shall be as follows:
 - i. The State will complete its review within ten (10) calendar days. The Contractor shall have seven (7) calendar days from receiving State review to perform required updates.
 - 4) In the event the State finds deficiencies in a deliverable, the review timeframe shall be re-started upon the resubmission of a corrected deliverable to the State.
 - 5) The required minimum deliverables for each phase shall include the following:

Phase	Descriptions of Deliverables
Requirements Gathering	Prioritized list of features and functions required for the Platform.
	Process flows for operational use of the Platform.
Development	Documentation of any configurations required for the application to function as requested (if applicable).
	User stories/acceptance criteria for development items (if applicable).
Testing	Testing plans (quality assurance, load testing, user acceptance testing).
Pilot/Training	Training plan and training documents
Go-live	Rollout schedule
	Go-live Support model

- A.10. **Project Management Plan and Schedule:** The Contractor shall prepare, for State review and approval, a detailed Project Management Plan which incorporates the schedules for the deliverables of this Contract. The Project Management Plan shall include all activities related to the creation and/or customization of the Platform and shall be submitted within fifteen (15) business days after the Contract Effective Date and by or before January 1 of each subsequent year of the Term of Contract.
- a. The Project Management Plan shall indicate the essential steps leading to a functional Platform and include the steps for all project work tasks and deliverables including initiation and completion dates, task responsibilities, and activities with the State.

- b. The Project Management Plan shall describe all activities related to Platform development, Contractor support processes, reports, and logistics, including each stage of production.
 - c. The Project Management Plan shall provide due dates for each activity and indicate areas of responsibility for the Contractor and the State.
 - d. The Project Management Plan shall detail the communication and reporting needs for this Contract which addresses: information to be communicated including format, content, and level of detail; person responsible for communicating the information; person or groups who will receive the information; methods or technologies used to convey the information such as memoranda, e-mail, and on-site communication; frequency of the communication; escalation process - identifying time frames and the management change (names) or escalation of issues that cannot be resolved at a non-leadership staff level; and guidelines for project status meetings, project team meetings, e-meetings, etc.
 - e. The Project Management Plan shall serve as a managing document to be used by the State to assure timely completion of tasks as scheduled and outlined in a key dates section. The Project Management Plan shall be maintained and updated as a fluid, ongoing project document for the Term of the Contract.
 - f. Changes to the approved Project Management Plan shall be made in collaboration with the State and approved by the State. The Contractor shall submit a revised Project Management Plan for State approval within forty-eight (48) hours after the requested change.
 - g. 
 - h. All deliverables shall not be considered delivered and final until written approval is given to the Contractor via email or other electronic methods by the State. Such consideration as delivered, and final shall not abrogate or diminish the rights and duties as detailed in A.23. Inspection and Acceptance.
 - i. The Contractor shall review the Project Management Plan at minimum annually, or more frequently if requested by the State, to determine any adjustments, identify risks to project execution, and communicate potential options to mitigate identified risk.
 - j. The Contractor shall not disseminate any written information, materials, or deliverables associated with this Contract to the public or any other third party without the State's written approval.
- A.11. User Access: The Platform shall accommodate a minimum of 20,000 users with concurrent use and provide a user-type access control feature to restrict users to specific functions. All users shall be associated with a designated user type. The Contractor shall include the following user types: The State, Schools, Account Holders, and Service Providers. The Contractor shall ensure:
- a. The user types shall be assigned through the submission of a user access form, to be approved by the State.
 - b. The user information section shall contain, at a minimum, fields for username, email address first name, last name, phone number, and title.
 - c. The Platform shall provide user-level audit trail information to track a creation date, revocation date, and last log-in time.
 - d. The Platform shall contain a history log and change log that records: each change made, the user who saved the change, comparison between a previous version and current version of text, and a timestamp of when the changes occurred.
 - e. The Platform shall log users out after a State-specified amount of time of inactivity (i.e., inactivity timeout).
- A.12. Emails and Automated Messages: The Platform shall have the capability to send emails individually or in batch groups and to automatically email or alert specific sets of users.
- a. The Platform shall have the capability to send secure emails.
 - b. The Platform shall include the capability to email users regarding deadlines and movement through the Application System.

- c. The Contractor shall ensure the State has the ability to edit verbiage, turn on or turn off the automated sending of emails or alerts, and set the user roles that will receive each type of notification.
- d. The Contractor shall set up email alert options to notify users for items specified by the State.

A.13.

[REDACTED]

[Redacted text block]

A.14. [Redacted text block]

A.15. [Redacted text block]

A.16. [Redacted text block]

A.17. [Redacted text block]

A.18. Platform Availability: Outside of any State-approved Platform maintenance windows, the Platform shall maintain a 99.95% uptime, calculated on a monthly basis.

A.19. Customer Service: The Contractor shall provide high quality customer service for all Stakeholders. Customer service shall include:
a. Customer service center and representatives shall be located in the United States.
b. Ability to reach a customer service representative who is English-Spanish bilingual from 8 a.m. - 5 p.m. (Central Time), Monday - Friday, via email, chat, and phone.
c. Measurable parent support service level agreement ("SLA") to be: 90% of inbound calls answered within a target of sixty (60) seconds or less. The Contractor's live chat response shall be real-time during business hours, and the Contractor's email response shall be within 24 hours.

- d. A target of ten (10) business day approval process not to exceed fourteen (14) business days for all completed applications.
 - e. A target of twenty-four (24) hour response time within normal business hours for all customer service questions, including email submissions.
 - f. With respect to customer service inquiries arising out of or related to the Application System, dedicated application process and call center staff that includes clearly designated supervisors and staff assigned to this Contract, to include no fewer than the full time equivalent of twenty-five (25) individuals.
 - g. A sampling of recorded calls throughout the enrollment window to ensure quality of customer service and accurate knowledge of the ESA and IEA Programs and requirements under this Contract.
- A.20. Maintenance: The Contractor shall provide maintenance, including updates and enhancements, for the Platform.
- a. All updates to the Platform shall be discussed with the State and confirmed with written State approval at least thirty (30) State business days before any changes are made, excluding those determined critical. Critical updates shall be made immediately or at a timeframe agreed upon by the State.
 - b. Any maintenance to the Platform that would make it unavailable to users between 8 a.m. CT and 5 p.m. CT shall be approved by the State.
 - c. The Contractor shall develop a process that is approved by the State for requesting updates and reporting technical support issues.
 - d. The Contractor shall correct all Platform deficiencies or discrepancies identified as required by the State, in accordance with the problem resolution procedures.
 - e. The Contractor shall provide a mechanism, as approved by the State, that is available 24/7 for Stakeholders and the State to report Platform outages and other issues, particularly at night and on the weekend.
 - f. The Contractor shall provide timely technical support during high-volume times to include, but not limited to, the designated open enrollment periods. The State will determine what constitutes a high-volume time and may request availability for those times.
 - g. The Contractor shall meet with the State at least monthly to discuss updates and for technical support of each application provided.
- A.21. The State may, at its sole discretion and with written notice to the Contractor, request changes in the Scope that are necessary but were inadvertently unspecified in this Contract.
- a. Change Order Creation - After receipt of a written request for additional services from the State, the Contractor shall respond to the State, within a maximum of ten (10) business days, with a written proposal for completing the service. Contractor's proposal must specify:
 - 1) the effect, if any, of implementing the requested change(s) on all other services required under this Contract;
 - 2) the specific effort involved in completing the change(s);
 - 3) the expected schedule for completing the change(s);
 - 4) the maximum number of person hours required for the change(s); and
 - 5) the maximum cost for the change(s)— this maximum cost shall in no instance exceed the product of the person hours required multiplied by the appropriate payment rate proposed for such work.

The Contractor shall not perform any additional service until the State has approved the proposal. If approved, the State will sign the proposal, and it shall constitute a Change Order between the Contract Parties pertaining to the specified change(s) and shall be incorporated, hereby, as a part of this Contract.
 - b. Change Order Performance - Subsequent to creation of a Change Order, the Contractor shall complete the required services. The State will be the sole judge of the acceptable completion of work and, upon such determination, shall provide the Contractor written approval.
 - c. Change Order Remuneration - The State will remunerate the Contractor only for acceptable work. All acceptable work performed pursuant to an approved Change Order, without a formal amendment of this Contract, shall be remunerated in accordance with and further

limited by Contract Section C.3.c., PROVIDED THAT, the State shall be liable to the Contractor only for the cost of the actual goods or services provided to complete the necessary work, not to exceed the maximum cost for the change detailed in the Change Order. In no instance shall the State be liable to the Contractor for any amount exceeding the maximum cost specified by the Change Order authorizing the goods or services. Upon State approval of the work, the Contractor shall invoice the State in accordance with the relevant provisions of this Contract.

- A.22. Warranty. Contractor represents and warrants that the term of the warranty (“Warranty Period”) shall be the greater of the Term of this Contract or any other warranty generally offered by Contractor, its suppliers, or manufacturers to customers of its goods or services. The goods or services provided under this Contract shall conform to the terms and conditions of this Contract throughout the Warranty Period. Any nonconformance of the goods or services to the terms and conditions of this Contract shall constitute a “Defect” and shall be considered “Defective.” If Contractor receives notice of a Defect during the Warranty Period, then Contractor shall correct the Defect, at no additional charge.

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

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

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

- A.23. Inspection and Acceptance. The State shall have the right to inspect all goods or services provided by Contractor under this Contract. If, upon inspection, the State determines that the goods or services are Defective, the State shall notify Contractor, and Contractor shall re-deliver the goods or provide the services at no additional cost to the State. If after a period of thirty (30) days following delivery of goods or performance of services the State does not provide a notice of any Defects, the goods or services shall be deemed to have been accepted by the State.

B. TERM OF CONTRACT:

This Contract shall be effective for the period beginning on May 26, 2023 (“Effective Date”) and ending on May 25, 2028, (“Term”). The State shall have no obligation for goods delivered or services provided by the Contractor prior to the Effective Date.

C. PAYMENT TERMS AND CONDITIONS:

- C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed three million six hundred seventy-four thousand nine hundred ninety-nine dollars and ninety-eight cents (\$3,674,999.98) (“Maximum Liability”). This Contract does not grant the Contractor any exclusive rights. The State does not guarantee that it will buy any minimum quantity of goods or services under this Contract. Subject to the terms and conditions of this Contract, the Contractor will only be paid for goods or services provided under this Contract after a purchase order is issued to Contractor by the State or as otherwise specified by this Contract.
- C.2. Compensation Firm. The payment methodology in Section C.3. of this Contract shall constitute the entire compensation due the Contractor for all goods or services provided under this Contract regardless of the difficulty, materials or equipment required. The payment methodology includes all applicable taxes, fees, overhead, and all other direct and indirect costs incurred or to be incurred by the Contractor.

C.3. **Payment Methodology.** The Contractor shall be compensated based on the payment methodology for goods or services authorized by the State in a total amount as set forth in Section C.1.

- a. The Contractor's compensation shall be contingent upon the satisfactory provision of goods or services as set forth in Section A.
- b. The Contractor shall be compensated based upon the following payment methodology:

Goods or Services Description	Amount (per compensable increment)
Platform Implementation (includes any customization required for Platform to meet the requirements listed in RFP Attachment 6.5, Pro Forma Contract Scope of Services); A.3.-A.15.	
• Completion of requirements gathering phase	\$33,333.33 / upon completion
• Completion of development phase	\$33,333.33 / upon completion
• Completion of testing phase	\$33,333.33 / upon completion
• Completion of pilot/training phase	\$33,333.33 / upon completion
• Completion of go-live phase	\$33,333.33 / upon completion
Tennessee Education Data System Integration; A.16.	\$33,333.33 / upon completion
Annual Subscription/License; A.17.-A.20.	\$695,000.00 / per year
Maintenance (if not included in Annual Subscription License); A.20.	\$0.00 / per year

- c. The Contractor shall be compensated for changes requested and performed pursuant to Contract Section Reference, without a formal amendment of this Contract based upon the payment rates detailed in the schedule below and as agreed pursuant to Section Reference, PROVIDED THAT compensation to the Contractor for such "change order" work shall not exceed seven percent (7%) of the sum of milestone payment rates detailed in Section C.3.b., above (which is the total cost for the milestones and associated deliverables set forth in Contract Sections A.3., through A.20.). If, at any point during the Term, the State determines that the cost of necessary "change order" work would exceed the maximum amount, the State may amend this Contract to address the need.

Service Description	Amount (per compensable increment)
Scope changes via Change Orders; A.21.	\$0.00 / per hour
NOTE: The Contractor shall not be compensated for travel time to the primary location of service provision.	

- 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:

Cindy Smith, Director of ESA Finance and Operations

Tennessee Department of Education- Division of Choice
 Andrew Johnson Tower
 710 James Robertson Parkway
 Nashville, TN 37243
Cindy.Smith@tn.gov
 (731) 571-4548

- a. Each invoice, on Contractor's letterhead, shall clearly and accurately detail all of the following information (calculations must be extended and totaled correctly):
 - (1) Invoice number (assigned by the Contractor);
 - (2) Invoice date;
 - (3) Contract number (assigned by the State);
 - (4) Customer account name: Tennessee Department of Education / Districts & Schools;
 - (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:

Cindy Smith, Director of ESA Finance and Operations
 Tennessee Department of Education- Division of Choice
 Andrew Johnson Tower
 710 James Robertson Parkway
 Nashville, TN 37243
Cindy.Smith@tn.gov
 (731) 571-4548

The Contractor:

Mark Duran
 SID3CAR CO, dba Student First Technologies
 304 West Kirkwood Avenue
 Suite 101
 Bloomington, IN 47404
mark@studentfirsttech.com
 (231) 881-8922

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

- D.3. Modification and Amendment. This Contract may be modified only by a written amendment signed by all Parties and approved by all applicable State officials.

- D.4. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State or federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate this Contract upon written notice to the Contractor. The State's exercise of its right to terminate this Contract shall not constitute a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. If the State terminates this Contract due to lack of funds availability, the Contractor shall be entitled to compensation for all conforming goods requested and accepted by the State and for all satisfactory and authorized services completed as of the termination date. Should the State exercise its right to terminate this Contract due to unavailability of funds, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages of any description or amount.
- D.5. Termination for Convenience. The State may terminate this Contract for convenience without cause and for any reason. The State shall give the Contractor at least thirty (30) days written notice before the termination date. The Contractor shall be entitled to compensation for all conforming goods delivered and accepted by the State or for satisfactory, authorized services completed as of the termination date. In no event shall the State be liable to the Contractor for compensation for any goods neither requested nor accepted by the State or for any services neither requested by the State nor satisfactorily performed by the Contractor. In no event shall the State's exercise of its right to terminate this Contract for convenience relieve the Contractor of any liability to the State for any damages or claims arising under this Contract.
- D.6. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor materially violates any terms of this Contract ("Breach Condition"), the State shall have the right to immediately terminate the Contract and withhold payments in excess of compensation for completed services or provided goods. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any Breach Condition and the State may seek other remedies allowed at law or in equity for breach of this Contract.
- D.7. Assignment and Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the goods or services provided under this Contract without the prior written approval of the State. Notwithstanding any use of the approved subcontractors, the Contractor shall be the prime contractor and responsible for compliance with all terms and conditions of this Contract. The State reserves the right to request additional information or impose additional terms and conditions before approving an assignment of this Contract in whole or in part or the use of subcontractors in fulfilling the Contractor's obligations under this Contract.
- D.8. Conflicts of Interest. The Contractor warrants that no part of the Contractor's compensation shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed under this Contract.
- The Contractor acknowledges, understands, and agrees that this Contract shall be null and void if the Contractor is, or within the past six (6) months has been, an employee of the State of Tennessee or if the Contractor is an entity in which a controlling interest is held by an individual who is, or within the past six (6) months has been, an employee of the State of Tennessee.
- D.9. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of handicap or disability, age, race, creed, color, religion, sex, national origin, or any other classification protected by federal or state law. The Contractor shall, upon request, show proof of nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- D.10. Prohibition of Illegal Immigrants. The requirements of Tenn. Code Ann. § 12-3-309 addressing the use of illegal immigrants in the performance of any contract to supply goods or services to the

state of Tennessee, shall be a material provision of this Contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Contract.

- a. The Contractor agrees that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the document at **Attachment A**, semi-annually during the Term. If the Contractor is a party to more than one contract with the State, the Contractor may submit one attestation that applies to all contracts with the State. All Contractor attestations shall be maintained by the Contractor and made available to State officials upon request.
 - b. Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the Term, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work under this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work under this Contract. Attestations obtained from subcontractors shall be maintained by the Contractor and made available to State officials upon request.
 - c. The Contractor shall maintain records for all personnel used in the performance of this Contract. Contractor's records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.
 - d. The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of Tenn. Code Ann. § 12-3-309 for acts or omissions occurring after its effective date.
 - e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not: (i) a United States citizen; (ii) a Lawful Permanent Resident; (iii) a person whose physical presence in the United States is authorized; (iv) allowed by the federal Department of Homeland Security and who, under federal immigration laws or regulations, is authorized to be employed in the U.S.; or (v) is otherwise authorized to provide services under the Contract.
- D.11. Records. The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, for work performed or money received under this Contract, shall be maintained for a period of five (5) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.12. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- D.13. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.14. Strict Performance. Failure by any Party to this Contract to require, in any one or more cases, the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the Parties.
- D.15. Independent Contractor. The Parties shall not act as employees, partners, joint venturers, or associates of one another. The Parties are independent contracting entities. Nothing in this Contract shall be construed to create an employer/employee relationship or to allow either Party

to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one Party are not employees or agents of the other Party.

- D.16 Patient Protection and Affordable Care Act. The Contractor agrees that it will be responsible for compliance with the Patient Protection and Affordable Care Act ("PPACA") with respect to itself and its employees, including any obligation to report health insurance coverage, provide health insurance coverage, or pay any financial assessment, tax, or penalty for not providing health insurance. The Contractor shall indemnify the State and hold it harmless from any costs to the State arising from Contractor's failure to fulfill its PPACA responsibilities for itself or its employees.
- D.17. Limitation of State's Liability. The State shall have no liability except as specifically provided in this Contract. In no event will the State be liable to the Contractor or any other party for any lost revenues, lost profits, loss of business, decrease in the value of any securities or cash position, time, goodwill, or any indirect, special, incidental, punitive, exemplary or consequential damages of any nature, whether based on warranty, contract, statute, regulation, tort (including but not limited to negligence), or any other legal theory that may arise under this Contract or otherwise. The State's total liability under this Contract (including any exhibits, schedules, amendments or other attachments to the Contract) or otherwise shall under no circumstances exceed the Maximum Liability. This limitation of liability is cumulative and not per incident.
- D.18. Limitation of Contractor's Liability. In accordance with Tenn. Code Ann. § 12-3-701, the Contractor's liability for all claims arising under this Contract shall be limited to an amount equal to two (2) times the Maximum Liability amount detailed in Section C.1. and as may be amended, PROVIDED THAT in no event shall this Section limit the liability of the Contractor for: (i) intellectual property or any Contractor indemnity obligations for infringement for third-party intellectual property rights; (ii) any claims covered by any specific provision in the Contract providing for liquidated damages; or (iii) any claims for intentional torts, criminal acts, fraudulent conduct, or acts or omissions that result in personal injuries or death. For clarity, except as otherwise expressly set forth in this Section, Contractor's indemnification obligations and other remedies available under this Contract are subject to the limitations on liability set forth in this Section.
- D.19. Hold Harmless. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of the Contractor, its employees, or any person acting for or on its or their behalf relating to this Contract. The Contractor further agrees it shall be liable for the reasonable cost of attorneys' fees, court costs, expert witness fees, and other litigation expenses for the State to enforce the terms of this Contract.

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

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

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

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

principals or the principals of its subcontractors are excluded, disqualified, or presently fall under any of the prohibitions of sections a-d.

- D.24. Force Majeure. "Force Majeure Event" means fire, flood, earthquake, elements of nature or acts of God, wars, riots, civil disorders, rebellions or revolutions, acts of terrorism or any other similar cause beyond the reasonable control of the Party except to the extent that the non-performing Party is at fault in failing to prevent or causing the default or delay, and provided that the default or delay cannot reasonably be circumvented by the non-performing Party through the use of alternate sources, workaround plans or other means. A strike, lockout or labor dispute shall not excuse either Party from its obligations under this Contract. Except as set forth in this Section, any failure or delay by a Party in the performance of its obligations under this Contract arising from a Force Majeure Event is not a default under this Contract or grounds for termination. The non-performing Party will be excused from performing those obligations directly affected by the Force Majeure Event, and only for as long as the Force Majeure Event continues, provided that the Party continues to use diligent, good faith efforts to resume performance without delay. The occurrence of a Force Majeure Event affecting Contractor's representatives, suppliers, subcontractors, customers or business apart from this Contract is not a Force Majeure Event under this Contract. Contractor will promptly notify the State of any delay caused by a Force Majeure Event (to be confirmed in a written notice to the State within one (1) day of the inception of the delay) that a Force Majeure Event has occurred, and will describe in reasonable detail the nature of the Force Majeure Event. If any Force Majeure Event results in a delay in Contractor's performance longer than forty-eight (48) hours, the State may, upon notice to Contractor: (a) cease payment of the fees for the affected obligations until Contractor resumes performance of the affected obligations; or (b) immediately terminate this Contract or any purchase order, in whole or in part, without further payment except for fees then due and payable. Contractor will not increase its charges under this Contract or charge the State any fees other than those provided for in this Contract as the result of a Force Majeure Event.
- D.25. State and Federal Compliance. The Contractor shall comply with all State and federal laws and regulations applicable to Contractor in the Contractor's performance of this Contract.
- D.26. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee, without regard to its conflict or choice of law rules. The Tennessee Claims Commission or the state or federal courts in Tennessee shall be the venue for all claims, disputes, or disagreements arising under this Contract. The Contractor acknowledges and agrees that any rights, claims, or remedies against the State of Tennessee or its employees arising under this Contract shall be subject to and limited to those rights and remedies available under Tenn. Code Ann. §§ 9-8-101 - 408.
- D.27. Entire Agreement. This Contract is complete and contains the entire understanding between the Parties relating to its subject matter, including all the terms and conditions of the Parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the Parties, whether written or oral.
- D.28. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions of this Contract shall not be affected and shall remain in full force and effect. The terms and conditions of this Contract are severable.
- D.29. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.
- D.30. Incorporation of Additional Documents. Each of the following documents is included as a part of this Contract by reference. In the event of a discrepancy or ambiguity regarding the Contractor's duties, responsibilities, and performance under this Contract, these items shall govern in order of precedence below:
- a. any amendment to this Contract, with the latter in time controlling over any earlier amendments;

- b. this Contract with any attachments or exhibits (excluding the items listed at subsections c. through f., below), which includes Attachment A-C;
 - c. any clarifications of or addenda to the Contractor's proposal seeking this Contract;
 - d. the State solicitation, as may be amended, requesting responses in competition for this Contract;
 - e. any technical specifications provided to proposers during the procurement process to award this Contract; and
 - f. the Contractor's response seeking this Contract.
- D.31. Iran Divestment Act. The requirements of Tenn. Code Ann. § 12-12-101, *et seq.*, addressing contracting with persons as defined at Tenn. Code Ann. §12-12-103(5) that engage in investment activities in Iran, shall be a material provision of this Contract. The Contractor certifies, under penalty of perjury, that to the best of its knowledge and belief that it is not on the list created pursuant to Tenn. Code Ann. § 12-12-106.
- D.32. Insurance. Contractor shall maintain insurance coverage as specified in this Section. The State reserves the right to amend or require additional insurance coverage, coverage amounts, and endorsements required under this Contract. Contractor's failure to maintain or submit evidence of insurance coverage, as required, is a material breach of this Contract. If Contractor loses insurance coverage, fails to renew coverage, or for any reason becomes uninsured during the Term, Contractor shall immediately notify the State. All insurance companies providing coverage must be: (a) acceptable to the State; (b) authorized by the Tennessee Department of Commerce and Insurance ("TDCI"); and (c) rated A- / VII or better by A.M. Best. All coverage must be on a primary basis and noncontributory with any other insurance or self-insurance carried by the State. Contractor agrees to name the State as an additional insured on any insurance policy with the exception of workers' compensation (employer liability) and professional liability (errors and omissions) insurance. All policies must contain an endorsement for a waiver of subrogation in favor of the State. Any deductible or self insured retention ("SIR") over fifty thousand dollars (\$50,000) must be approved by the State. The deductible or SIR and any premiums are the Contractor's sole responsibility. The Contractor agrees that the insurance requirements specified in this Section do not reduce any liability the Contractor has assumed under this Contract including any indemnification or hold harmless requirements.

To achieve the required coverage amounts, a combination of an otherwise deficient specific policy and an umbrella policy with an aggregate meeting or exceeding the required coverage amounts is acceptable. For example: If the required policy limit under this Contract is for two million dollars (\$2,000,000) in coverage, acceptable coverage would include a specific policy covering one million dollars (\$1,000,000) combined with an umbrella policy for an additional one million dollars (\$1,000,000). If the deficient underlying policy is for a coverage area without aggregate limits (generally Automobile Liability and Employers' Liability Accident), Contractor shall provide a copy of the umbrella insurance policy documents to ensure that no aggregate limit applies to the umbrella policy for that coverage area. In the event that an umbrella policy is being provided to achieve any required coverage amounts, the umbrella policy shall be accompanied by an endorsement at least as broad as the Insurance Services Office, Inc. (also known as "ISO") "Noncontributory—Other Insurance Condition" endorsement or shall be written on a policy form that addresses both the primary and noncontributory basis of the umbrella policy if the State is otherwise named as an additional insured.

Contractor shall provide the State a certificate of insurance ("COI") evidencing the coverages and amounts specified in this Section. The COI must be on a form approved by the TDCI (standard ACORD form preferred). The COI must list each insurer's National Association of Insurance Commissioners (NAIC) number and be signed by an authorized representative of the insurer. The COI must list the State of Tennessee – CPO Risk Manager, 312 Rosa L. Parks Ave., 3rd floor Central Procurement Office, Nashville, TN 37243 as the certificate holder. Contractor shall provide the COI ten (10) business days prior to the Effective Date and again thirty (30) calendar days before renewal or replacement of coverage. Contractor shall provide the State evidence that all subcontractors maintain the required insurance or that subcontractors are included under the Contractor's policy. At any time, the State may require Contractor to provide a valid COI. The Parties agree that failure to provide evidence of insurance coverage as required is a material

breach of this Contract. If Contractor self-insures, then a COI will not be required to prove coverage. Instead Contractor shall provide a certificate of self-insurance or a letter, on Contractor's letterhead, detailing its coverage, policy amounts, and proof of funds to reasonably cover such expenses. The State reserves the right to require complete copies of all required insurance policies, including endorsements required by these specifications, at any time.

The State agrees that it shall give written notice to the Contractor as soon as practicable after the State becomes aware of any claim asserted or made against the State, but in no event later than thirty (30) calendar days after the State becomes aware of such claim. The failure of the State to give notice shall only relieve the Contractor of its obligations under this Section to the extent that the Contractor can demonstrate actual prejudice arising from the failure to give notice. This Section shall not grant the Contractor or its insurer, through its attorneys, the right to represent the State in any legal matter, as the right to represent the State is governed by Tenn. Code Ann. § 8-6-106.

The insurance obligations under this Contract shall be: (1)—all the insurance coverage and policy limits carried by the Contractor; or (2)—the minimum insurance coverage requirements and policy limits shown in this Contract; whichever is greater. Any insurance proceeds in excess of or broader than the minimum required coverage and minimum required policy limits, which are applicable to a given loss, shall be available to the State. No representation is made that the minimum insurance requirements of the Contract are sufficient to cover the obligations of the Contractor arising under this Contract. The Contractor shall obtain and maintain, at a minimum, the following insurance coverages and policy limits.

a. Commercial General Liability (“CGL”) Insurance

- 1) The Contractor shall maintain CGL, which shall be written on an ISO Form CG 00 01 occurrence form (or a substitute form providing equivalent coverage) and shall cover liability arising from property damage, premises and operations products and completed operations, bodily injury, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).

The Contractor shall maintain single limits not less than one million dollars (\$1,000,000) per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this policy or location of occurrence or the general aggregate limit shall be twice the required occurrence limit.

b. Workers’ Compensation and Employer Liability Insurance

- 1) For Contractors statutorily required to carry workers’ compensation and employer liability insurance, the Contractor shall maintain:
 - i. Workers’ compensation in an amount not less than one million dollars (\$1,000,000) including employer liability of one million dollars (\$1,000,000) per accident for bodily injury by accident, one million dollars (\$1,000,000) policy limit by disease, and one million dollars (\$1,000,000) per employee for bodily injury by disease.
- 2) If the Contractor certifies that it is exempt from the requirements of Tenn. Code Ann. §§ 50-6-101 – 103, then the Contractor shall furnish written proof of such exemption for one or more of the following reasons:
 - i. The Contractor employs fewer than five (5) employees;
 - ii. The Contractor is a sole proprietor;

- iii. The Contractor is in the construction business or trades with no employees;
- iv. The Contractor is in the coal mining industry with no employees;
- v. The Contractor is a state or local government; or
- vi. The Contractor self-insures its workers' compensation and is in compliance with the TDCI rules and Tenn. Code Ann. § 50-6-405.

c. Automobile Liability Insurance

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

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

d. Technology Professional Liability (Errors & Omissions)/Cyber Liability Insurance

- 1) The Contractor shall maintain technology professional liability (errors & omissions)/cyber liability insurance appropriate to the Contractor's profession in an amount not less than ten million dollars (\$10,000,000) per occurrence or claim and ten million dollars (\$10,000,000) annual aggregate, covering all acts, claims, errors, omissions, negligence, infringement of intellectual property (including copyright, patent and trade secret); network security and privacy risks, including but not limited to unauthorized access, failure of security, information theft, damage to destruction of or alteration of electronic information, breach of privacy perils, wrongful disclosure and release of private information, collection, or other negligence in the handling of confidential information, and including coverage for related regulatory fines, defenses, and penalties.
- 2) Such coverage shall include data breach response expenses, in an amount not less than ten million dollars (\$10,000,000) and payable whether incurred by the State or Contractor, including but not limited to consumer notification, whether or not required by law, computer forensic investigations, public relations and crisis management firm fees, credit file or identity monitoring or remediation services and expenses in the performance of services for the State or on behalf of the State hereunder.

e. Crime Insurance

- 1) The Contractor shall maintain crime insurance, which shall be written on a "loss sustained form" or "loss discovered form" providing coverage for third party fidelity, including cyber theft and extortion. The policy must allow for reporting of circumstances or incidents that may give rise to future claims, include an extended reporting period of no less than two (2) years with respect to events which occurred but were not reported during the term of the policy, and not contain a condition requiring an arrest or conviction.
- 2) Any crime insurance policy shall have a limit not less than one million dollars (\$1,000,000) per claim and one million dollars (\$1,000,000) in the aggregate. Any crime insurance policy shall contain a Social Engineering Fraud Endorsement with a limit of not less than two hundred and fifty thousand dollars (\$250,000). This insurance may be written on a claims-made basis, but in the event that coverage is cancelled or non-renewed, the Contractor shall purchase an extended reporting or "tail coverage" of at least two (2) years after the Term.

D.33. Major Procurement Contract Sales and Use Tax. Pursuant to Tenn. Code Ann. § 4-39-102 and to the extent applicable, the Contractor and the Contractor's subcontractors shall remit sales and

use taxes on the sales of goods or services that are made by the Contractor or the Contractor's subcontractors and that are subject to tax.

- D.34. Confidentiality of Records. Strict standards of confidentiality of records and information shall be maintained in accordance with applicable state and federal law. All material and information, regardless of form, medium or method of communication, provided to the Contractor by the State or acquired by the Contractor on behalf of the State that is regarded as confidential under state or federal law shall be regarded as "Confidential Information." Nothing in this Section shall permit Contractor to disclose any Confidential Information, regardless of whether it has been disclosed or made available to the Contractor due to intentional or negligent actions or inactions of agents of the State or third parties. Confidential Information shall not be disclosed except as required or permitted under state or federal law. Contractor shall take all necessary steps to safeguard the confidentiality of such material or information in conformance with applicable state and federal law.

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

- D.35. Boycott of Israel. The Contractor certifies that it is not currently engaged in, and covenants that it will not, for the duration of the Contract, engage in a Boycott of Israel, as that term is defined in Tenn. Code Ann. § 12-4-119.

- D.36. Equal Opportunity. The Contractor agrees as follows:

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

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

- b. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- c. If the State approves any subcontract, the subcontract shall include paragraphs (a) and (b) above.
- d. In addition, to the extent applicable the Contractor agrees to comply with 41 C.F. R. § 60-1.4, as that section is amended from time to time during the term.

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. Contractor Commitment to Diversity. The Contractor shall comply with and make reasonable business efforts to exceed the commitment to diversity represented by the Contractor's Response to RFP #33101-23035FAC5 (RFP Attachment 6.2. – Section B – B.15.) and resulting in this

Contract.

The Contractor shall assist the State in monitoring the Contractor's performance of this commitment by providing, as requested, a monthly report of participation in the performance of this Contract by small business enterprises and businesses owned by minorities, women, service-disabled veterans, and persons with disabilities. Such reports shall be provided to the State of Tennessee Governor's Office of Diversity Business Enterprise in the TN Diversity Software available online at:

<https://tn.diversitysoftware.com/FrontEnd/StartCertification.asp?TN=tn&XID=9810>.

- E.3. Software License Warranty. Contractor grants a license to the State to use all software provided under this Contract in the course of the State's business and purposes.
- E.4. Software Support and Maintenance Warranty. Contractor shall provide to the State all software upgrades, modifications, bug fixes, or other improvements in its software that it makes generally available to its customers.
- E.5. Extraneous Terms and Conditions. Contractor shall fill all orders submitted by the State under this Contract. No purchase order, invoice, or other documents associated with any sales, orders, or supply of any good or service under this Contract shall contain any terms or conditions other than as set forth in the Contract. Any such extraneous terms and conditions shall be void, invalid and unenforceable against the State. Any refusal by Contractor to supply any goods or services under this Contract conditioned upon the State submitting to any extraneous terms and conditions shall be a material breach of the Contract and constitute an act of bad faith by Contractor.
- E.6. Contractor Hosted Services Confidential Data, Audit, and Other Requirements
- a. "Confidential State Data" is defined as data deemed confidential by State or Federal statute or regulation. The Contractor shall protect Confidential State Data as follows:
- (1) The Contractor shall ensure that all Confidential State Data is housed in the continental United States, inclusive of backup data.
 - (2) The Contractor shall encrypt Confidential State Data at rest and in transit using the current version of Federal Information Processing Standard ("FIPS") 140-2 validated encryption technologies.
 - (3) The Contractor shall maintain a Security Management Certification from the Federal Risk and Authorization Management Program ("FedRAMP"). A "Security Management Certification" shall mean written confirmation from FedRAMP that FedRAMP has assessed the Contractor's information technology Infrastructure, using a standardized approach to security assessment, authorization, and continuous monitoring for cloud products and services, and has certified that the Contractor meets FedRAMP standards. Information technology "Infrastructure" shall mean the Contractor's entire collection of hardware, software, networks, data centers, facilities and related equipment used to develop, test, operate, monitor, manage and/or support information technology services. The Contractor shall provide proof of current certification annually and upon State request. No additional funding shall be allocated for these certifications, authorizations, or audits as these are included in the Maximum Liability of this Contract.

Contractor shall meet all applicable requirements of the most current version of Internal Revenue Service Publication 1075.

- (4) The Contractor must annually perform Penetration Tests and Vulnerability Assessments against its Processing Environment. "Processing Environment"

shall mean the combination of software and hardware on which the Application runs. "Application" shall mean the computer code that supports and accomplishes the State's requirements as set forth in this Contract. "Penetration Tests" shall be in the form of attacks on the Contractor's computer system, with the purpose of discovering security weaknesses which have the potential to gain access to the Processing Environment's features and data. The "Vulnerability Assessment" shall be designed and executed to define, identify, and classify the security holes (vulnerabilities) in the Processing Environment. The Contractor shall allow the State, at its option, to perform Penetration Tests and Vulnerability Assessments on the Processing Environment.

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

b. Minimum Requirements

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

c. Comptroller Audit Requirements

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

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

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

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

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

- d. **Business Continuity Requirements.** The Contractor shall maintain set(s) of documents, instructions, and procedures which enable the Contractor to respond to accidents, disasters, emergencies, or threats without any stoppage or hindrance in its key operations ("Business Continuity Requirements"). Business Continuity Requirements shall include:
- (1) "Disaster Recovery Capabilities" refer to the actions the Contractor takes to meet the Recovery Point and Recovery Time Objectives defined below. Disaster Recovery Capabilities shall meet the following objectives:
 - i. **Recovery Point Objective ("RPO").** The RPO is defined as the maximum targeted period in which data might be lost from an IT service due to a major incident: two hours (120 minutes)
 - ii. **Recovery Time Objective ("RTO").** The RTO is defined as the targeted duration of time and a service level within which a business process must be restored after a disaster (or disruption) in order to avoid unacceptable consequences associated with a break in business continuity: six hours (360 minutes)
 - (2) The Contractor and the Subcontractor(s) shall perform at least one Disaster Recovery Test every three hundred sixty-five (365) days. A "Disaster Recovery Test" shall mean the process of verifying the success of the restoration procedures that are executed after a critical IT failure or disruption occurs. The Disaster Recovery Test shall use actual State Data Sets that mirror production data, and success shall be defined as the Contractor verifying that the Contractor can meet the State's RPO and RTO requirements. A "Data Set" is defined as a collection of related sets of information that is composed of separate elements but can be manipulated as a unit by a computer. The Contractor shall provide written confirmation to the State after each Disaster Recovery Test that its Disaster Recovery Capabilities meet the RPO and RTO requirements.
- e. The Contractor and any Subcontractor used by the Contractor to host State data, including data center vendors, shall be subject to an annual engagement by a CPA firm in accordance with the standards of the American Institute of Certified Public Accountants ("AICPA") for a System and Organization Controls for service

organizations (“SOC”) Type II audit. The State shall approve the SOC audit control objectives. The Contractor shall provide the State with the Contractor’s and Subcontractor’s annual audit report within 30 days from when the CPA firm provides the audit report to the Contractor or Subcontractor. The Contractor shall submit corrective action plans to the State for any issues included in the audit report within 30 days after the CPA firm provides the audit report to the Contractor and Subcontractor.

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

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

- E.7. Family Educational Rights and Privacy Act & Tennessee Data Accessibility, Transparency and Accountability Act. The Contractor shall comply with the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. 1232(g)) and its accompanying regulations (34 C.F.R. § 99) (“FERPA”). The Contractor warrants that the Contractor is familiar with FERPA requirements and that it will comply with these requirements in the performance of its duties under this Contract. The Contractor agrees to cooperate with the State, as required by FERPA, in the performance of its duties under this Contract. The Contractor agrees to maintain the confidentiality of all education records and student information. The Contractor shall only use such records and information for the exclusive purpose of performing its duties under this Contract. The obligations set forth in this Section shall survive the termination of this Contract.

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

Any instances of unauthorized disclosure of data containing personally identifiable information in violation of FERPA or DATAA that come to the attention of the Contractor shall be reported to the State within twenty-four (24) hours. Contractor shall indemnify and hold harmless State, its employees, agents and representatives, from and against any and all claims, liabilities, losses, or causes of action that may arise, accrue, or result to any person or entity that is injured or damaged as a result of Contractor’s failure to comply with this section.

- E.8. Lobbying. The Contractor certifies, to the best of its knowledge and belief, that:
- a. No federally appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of an agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
 - b. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with any contract, grant, loan, or cooperative agreement, the

Contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

- c. The Contractor shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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

- E.9. Liquidated Damages. If events giving rise to liquidated damages occur, ("Liquidated Damages Event"), the State may assess damages on Contractor ("Liquidated Damages"). The State shall notify the Contractor of amounts to be assessed as Liquidated Damages. The Parties agree that due to the complicated nature of the Contractor's obligations under this Contract it would be difficult to specifically designate a monetary amount for Contractor's failure to fulfill its obligations regarding the Liquidated Damages Event as these amounts are likely to be uncertain and not easily proven. Contractor has carefully reviewed the Liquidated Damages contained in Attachment B and agrees that these amounts represent a reasonable relationship between the amount and what might reasonably be expected in the event of a Liquidated Damages Event, and are a reasonable estimate of the damages that would occur from a Liquidated Damages Event. The Parties agree that the Liquidated Damages represent solely the damages and injuries sustained by the State in losing the benefit of the bargain with Contractor and do not include any injury or damage sustained by a third party. The Contractor agrees that the Liquidated Damages are in addition to any amounts Contractor may owe the State pursuant to the indemnity provision or any other sections of this Contract.

The State is not obligated to assess Liquidated Damages before availing itself of any other remedy. The State may choose to discontinue Liquidated Damages and avail itself of any other remedy available under this Contract or at law or equity.

- E.10. Personally Identifiable Information. While performing its obligations under this Contract, Contractor may have access to Personally Identifiable Information held by the State ("PII"). For the purposes of this Contract, "PII" includes "Nonpublic Personal Information" as that term is defined in Title V of the Gramm-Leach-Bliley Act of 1999 or any successor federal statute, and the rules and regulations thereunder, all as may be amended or supplemented from time to time ("GLBA") and personally identifiable information and other data protected under any other applicable laws, rule or regulation of any jurisdiction relating to disclosure or use of personal information ("Privacy Laws"). Contractor agrees it shall not do or omit to do anything which would cause the State to be in breach of any Privacy Laws. Contractor shall, and shall cause its employees, agents and representatives to: (i) keep PII confidential and may use and disclose PII only as necessary to carry out those specific aspects of the purpose for which the PII was disclosed to Contractor and in accordance with this Contract, GLBA and Privacy Laws; and (ii) implement and maintain appropriate technical and organizational measures regarding information security to: (A) ensure the security and confidentiality of PII; (B) protect against any threats or hazards to the security or integrity of PII; and (C) prevent unauthorized access to or use of PII. Contractor shall immediately notify State: (1) of any disclosure or use of any PII by Contractor or any of its employees, agents and representatives in breach of this Contract; and (2) of any disclosure of any PII to Contractor or its employees, agents and representatives where the purpose of such disclosure is not known to Contractor or its employees, agents and representatives. The State reserves the right to review Contractor's policies and procedures used to maintain the security and confidentiality of PII and Contractor shall, and cause its employees, agents and representatives to, comply with all reasonable requests or directions from the State to enable the State to verify or ensure that Contractor is in full compliance with its obligations under this Contract in relation to PII. Upon termination or expiration of the Contract or at the State's direction at any time in its sole discretion, whichever is earlier, Contractor shall immediately return to the State any and all PII which it has received under this Contract and shall destroy all records of such PII.

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

- E.11. Federal Funding Accountability and Transparency Act (FFATA). This Contract requires the Contractor to provide supplies or services that are funded in whole or in part by federal funds that are subject to FFATA. The Contractor is responsible for ensuring that all applicable requirements, including but not limited to those set forth herein, of FFATA are met and that the Contractor provides information to the State as required.

The Contractor shall comply with the following:

a. Reporting of Total Compensation of the Contractor’s Executives.

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

As defined in 2 C.F.R. § 170.315, “Executive” means officers, managing partners, or any other employees in management positions.
- (2) Total compensation means the cash and noncash dollar value earned by the executive during the Contractor’s preceding fiscal year and includes the following (for more information see 17 C.F.R. § 229.402(c)(2)):
 - i. Salary and bonus.
 - ii. Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
 - iii. Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans

- that do not discriminate in favor of executives, and are available generally to all salaried employees.
- iv. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
 - v. Above-market earnings on deferred compensation which is not tax qualified.
 - vi. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.
- b. The Contractor must report executive total compensation described above to the State by the end of the month during which this Contract is awarded.
 - c. If this Contract is amended to extend the Term, the Contractor must submit an executive total compensation report to the State by the end of the month in which the term extension becomes effective.
 - d. The Contractor will obtain a Data Universal Numbering System (DUNS) number and maintain its DUNS number for the term of this Contract. More information about obtaining a DUNS Number can be found at: <http://fedgov.dnb.com/webform/>

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

- E.12. Americans with Disabilities Act. The Contractor must comply with the Americans with Disabilities Act (ADA) of 1990, as amended, including implementing regulations codified at 28 CFR Part 35 "Nondiscrimination on the Basis of Disability in State and Local Government Services" and at 28 CFR Part 36 "Nondiscrimination on the Basis of Disability in Public Accommodations and Commercial Facilities," and any other laws or regulations governing the provision of services to persons with a disability, as applicable. For more information, please visit the ADA website: <http://www.ada.gov>.
- E.13. Intellectual Property Indemnity. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims or suits which may be brought against the State concerning or arising out of any claim of an alleged patent, copyright, trade secret or other intellectual property infringement. In any such claim or action brought against the State, the Contractor shall satisfy and indemnify the State for the amount of any settlement or final judgment, and the Contractor shall be responsible for all legal or other fees or expenses incurred by the State arising from any such claim. The State shall give the Contractor notice of any such claim or suit, however, the failure of the State to give such notice shall only relieve Contractor of its obligations under this Section to the extent Contractor can demonstrate actual prejudice arising from the State's failure to give notice. This Section shall not grant the Contractor, through its attorneys, the right to represent the State of Tennessee in any legal matter, as provided in Tenn. Code Ann. § 8-6-106.
- E.14. 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.15. Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment. If applicable and as required by 2 CFR 200.216, Contractor is prohibited from obligating or expending loan or grant funds to procure or obtain; extend or renew a contract to procure or obtain; or enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as a critical technology as part of any

system. As described in Public Law 115-232, Section 889, "covered telecommunications equipment" is as follows:

- a. Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
- b. For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
- c. Telecommunications or video surveillance services provided by such entities or using such equipment.
- d. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

IN WITNESS WHEREOF,

SID3CAR CO, DBA STUDENT FIRST TECHNOLOGIES:



05/18/2023

CONTRACTOR SIGNATURE

DATE

Mark Duran Co-Founder & CEO

PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)

TENNESSEE DEPARTMENT OF EDUCATION

Penny

DR. PENNY SCHWINN, COMMISSIONER

Schwinn_jc

Digitally signed by Penny Schwinn_jc
DN: cn=Penny Schwinn_jc, o, ou,
email=joannarodriguez@tn.gov, c=US
Date: 2023.05.18 14:15:19 -05'00'

ATTACHMENT A

ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE

SUBJECT CONTRACT NUMBER:	78276
CONTRACTOR LEGAL ENTITY NAME:	SID3CAR CO, dba Student First Technologies
EDISON VENDOR IDENTIFICATION NUMBER:	263191

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



CONTRACTOR SIGNATURE

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

Mark Duran Co-Founder & CEO

PRINTED NAME AND TITLE OF SIGNATORY

05/18/2023

DATE OF ATTESTATION

ATTACHMENT B
LIQUIDATED DAMAGES

Liquidated Damages Event <i>Enter event giving rise to the liquidated damages (attach contract and include contract section references to describe Contractor's required activity or deliverable as applicable)</i>	Liquidated Damages Amount <i>Enter assessed monetary amount if the Liquidated Damages Event occurs (e.g., one thousand dollars (\$1,000.00) for each day beyond the deadline that any service deliverable is not completed).</i>	Method used to estimate the Liquidated Damages Amount <i>Explain how the liquidated damages amount was selected. Reminder: assessment amounts should be a reasonable estimate of the damages that would occur from the Liquidated Damages Event.</i>
1. A.9. Project Implementation Phases and Deliverables -The Contractor fails to deliver the Platform by the agreed upon deadline with the State that is documented in the approved Project Management Plan (A.10.).	\$65,000 for each business day beyond the go-live date that the Platform is not operational; not to exceed five (5) days (\$325,000)	A functioning Platform is essential to the scope of this Contract. A delay in the implementation of the Platform would cause a significant disruption to LEAs. The inability to collect data, create records, and generate reports could produce a lack of compliance with state and federal requirements and potentially result in loss of funding.
2. A.10. Project Management Plan and Schedule- The Contractor fails to deliver the Project Management Plan within 15 business days of Contract execution or annually thereafter.	\$13,000 for each business day beyond the established data for submission that the initial Project Management Plan or annual Project Management Plan is not submitted to the State; not to exceed five (5) business days (\$65,000)	The Project Management Plan is imperative to the initial implementation of the Platform and must be developed before any work can begin. A delay in the submission would result in a delay in the implementation schedule. A delay in the development of the annual Project Management Plan would result in a delay in changes or updates that may be necessary for the functioning of the Platform, which could result in failing to meet required reporting timelines.
3. A.11. User Access- The Contractor fails to provide a functioning user access Platform.	\$13,000 for each business day that users are unable to access the Platform; not to exceed five (5) business days (\$65,000)	Lack of access to the Platform would result in the inability to utilize the various applications, resulting in the need to duplicate the work in in other ways including manually.
4. A.13.h. Technical Specifications - The Contractor fails to provide application environments for the use of development, testing, and production delivery of application at least one (1) month prior to implementation or	\$3,000 for each business day beyond the established delivery date that the application environments are not available; not to exceed five (5) business days (\$15,000)	The implementation involves a specific timeline, and it is imperative that the Platform be tested thoroughly before implementation to avoid as many potential problems as possible. Any unforeseen delay not communicated by the Contractor and accepted by the

Liquidated Damages Event <i>Enter event giving rise to the liquidated damages (attach contract and include contract section references to describe Contractor's required activity or deliverable as applicable)</i>	Liquidated Damages Amount <i>Enter assessed monetary amount if the Liquidated Damages Event occurs (e.g., one thousand dollars (\$1,000.00) for each day beyond the deadline that any service deliverable is not completed).</i>	Method used to estimate the Liquidated Damages Amount <i>Explain how the liquidated damages amount was selected. Reminder: assessment amounts should be a reasonable estimate of the damages that would occur from the Liquidated Damages Event.</i>
two (2) weeks prior to updates or modifications.		State to provide access to the application environments would delay the implementation and updates that impact meeting state and federal reporting requirements.
5. A.18. Platform Availability- Contractor's failure to ensure that the Platform availability threshold remains at 99.95% or higher, as measured monthly exclusive of agreed upon planned maintenance windows, downtime due to force majeure, or other State approved downtime windows.	The Platform availability will be measured monthly and assessed annually as needed, for each .05% below the availability threshold of 99.95%, liquidated damage amount is \$3,000 x number of months missed in a Contract year.	Platform availability is needed to ensure end users have access to resources within Platform 24 X 7 X 365. Events used to determine availability includes but is not limited to: Platform available and accessible, proper function of the application as defined and agreed between Contractor and State, data accessibility, and proper audit trail of records. Any incident which causes Platform to not function as intended shall count against availability metric until such functions are restored or remediated as agreed.
6. A.17. Storage-The Contractor fails to backup data and/or data is lost.	\$15,000 for each occurrence of data loss, not to exceed five (5) occurrences (\$75,000)	The loss of data would place a significant financial burden on the State due to the resources needed to reenter the lost data. A disruption in the data could cause issues with funding.
7. E.6. Recovery Point Objective - In case of failure, the Contractor fails to restore the Platform to the defined RPO (Recovery Point Objective) within the RTO (Recovery Time Objective) window.	\$550 for each hour Contractor fails to restore the Platform beyond RTO. For each 24 hr period beyond the RPO, the Contractor shall reduce annual hosting invoice costs by an equal corresponding percentage.	Platform availability is needed to ensure end users have access to resources within System 24 X 7 X 365.

ATTACHMENT C**I. PERFORMANCE**

In performance of this Contract, the Contractor agrees to comply with and assume responsibility for compliance by officers or employees with the following requirements:

- (1) All work will be performed under the supervision of the Contractor.
- (2) The Contractor and Contractor's officers or employees to be authorized access to FTI must meet background check requirements defined in IRS Publication 1075. The Contractor will maintain a list of officers or employees authorized access to FTI. Such list will be provided to the agency and, upon request, to the IRS.
- (3) FTI in hardcopy or electronic format shall be used only for the purpose of carrying out the provisions of this Contract. FTI in any format shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of this Contract. Inspection or disclosure of FTI to anyone other than the Contractor or the Contractor's officers or employees authorized is prohibited.
- (4) FTI will be accounted for upon receipt and properly stored before, during, and after processing. In addition, any related output and products require the same level of protection as required for the source material.
- (5) The Contractor will certify that FTI processed during the performance of this Contract will be completely purged from all physical and electronic data storage with no output to be retained by the Contractor at the time the work is completed. If immediate purging of physical and electronic data storage is not possible, the Contractor will certify that any FTI in physical or electronic storage will remain safeguarded to prevent unauthorized disclosures.
- (6) Any spoilage or any intermediate hard copy printout that may result during the processing of FTI will be given to the agency. When this is not possible, the Contractor will be responsible for the destruction of the spoilage or any intermediate hard copy printouts and will provide the agency with a statement containing the date of destruction, description of material destroyed, and the destruction method.
- (7) All computer systems receiving, processing, storing, or transmitting FTI must meet the requirements in IRS Publication 1075. To meet functional and assurance requirements, the security features of the environment must provide for the managerial, operational, and technical controls. All security features must be available and activated to protect against unauthorized use of and access to FTI.
- (8) No work involving FTI furnished under this Contract will be subcontracted without the prior written approval of the IRS.
- (9) Contractor will ensure that the terms of FTI safeguards described herein are included, without modification, in any approved subcontract for work involving FTI.
- (10) To the extent the terms, provisions, duties, requirements, and obligations of this Contract apply to performing services with FTI, the Contractor shall assume toward the subcontractor all obligations, duties and responsibilities that the agency under this Contract assumes toward the Contractor, and the subcontractor shall assume toward the

Contractor all the same obligations, duties and responsibilities which the Contractor assumes toward the agency under this Contract.

- (11) In addition to the subcontractor's obligations and duties under an approved subcontract, the terms and conditions of this Contract apply to the subcontractor, and the subcontractor is bound and obligated to the Contractor hereunder by the same terms and conditions by which the Contractor is bound and obligated to the agency under this Contract.
- (12) For purposes of this Contract, the term "Contractor" includes any officer or employee of the Contractor with access to or who uses FTI, and the term "subcontractor" includes any officer or employee of the subcontractor with access to or who uses FTI.
- (13) The agency will have the right to void the Contract if the Contractor fails to meet the terms of FTI safeguards described herein.

II. CRIMINAL/CIVIL SANCTIONS

- (1) Each officer or employee of a Contractor to whom FTI is or may be disclosed shall be notified in writing that FTI disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, and that further disclosure of any FTI for a purpose not authorized herein constitutes a felony punishable upon conviction by a fine of as much as \$5,000 or imprisonment for as long as 5 years, or both, together with the costs of prosecution.
- (2) Each officer or employee of a Contractor to whom FTI is or may be accessible shall be notified in writing that FTI accessible to such officer or employee may be accessed only for a purpose and to the extent authorized herein, and that access/inspection of FTI without an official need-to-know for a purpose not authorized herein constitutes a criminal misdemeanor punishable upon conviction by a fine of as much as \$1,000 or imprisonment for as long as 1 year, or both, together with the costs of prosecution.
- (3) Each officer or employee of a Contractor to whom FTI is or may be disclosed shall be notified in writing that any such unauthorized access, inspection or disclosure of FTI may also result in an award of civil damages against the officer or employee in an amount equal to the sum of the greater of \$1,000 for each unauthorized access, inspection, or disclosure, or the sum of actual damages sustained as a result of such unauthorized access, inspection, or disclosure, plus in the case of a willful unauthorized access, inspection, or disclosure or an unauthorized access/inspection or disclosure which is the result of gross negligence, punitive damages, plus the cost of the action. These penalties are prescribed by IRC sections 7213, 7213A and 7431 and set forth at 26 CFR 301.6103(n)-1.
- (4) Additionally, it is incumbent upon the Contractor to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a(i)(1), which is made applicable to contractors by 5 U.S.C. 552a(m)(1), provides that any officer or employee of a contractor, who by virtue of his/her employment or official position, has possession of or access to agency records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.

- (5) Granting a contractor access to FTI must be preceded by certifying that each officer or employee understands the agency's security policy and procedures for safeguarding FTI. A contractor and each officer or employee must maintain their authorization to access FTI through annual recertification of their understanding of the agency's security policy and procedures for safeguarding FTI. The initial certification and recertifications must be documented and placed in the agency's files for review. As part of the certification and at least annually afterwards, a contractor and each officer or employee must be advised of the provisions of IRC sections 7213, 7213A, and 7431 (see Exhibit 4, Sanctions for Unauthorized Disclosure, and Exhibit 5, Civil Damages for Unauthorized Disclosure). The training on the agency's security policy and procedures provided before the initial certification and annually thereafter must also cover the incident response policy and procedure for reporting unauthorized disclosures and data breaches. (See Section 10) For the initial certification and the annual recertifications, the contractor and each officer or employee must sign, either with ink or electronic signature, a confidentiality statement certifying their understanding of the security requirements.

III. INSPECTION

The IRS and the Agency, with 24 hour notice, shall have the right to send its inspectors into the offices and plants of the Contractor to inspect facilities and operations performing any work with FTI under this Contract for compliance with requirements defined in IRS Publication 1075. The IRS' right of inspection shall include the use of manual and/or automated scanning tools to perform compliance and vulnerability assessments of information technology (IT) assets that access, store, process or transmit FTI. Based on the inspection, corrective actions may be required in cases where the Contractor is found to be noncompliant with FTI safeguard requirements.