



## NO COST CONTRACT

(no cost contract, involving no monetary obligation between the parties, with an individual, business, non-profit, or government entity of another state or country)

<b>Begin Date</b> October 14, 2024	<b>End Date</b> June 30, 2026	<b>Agency Tracking #</b> 33101-24250NC2	<b>Edison ID</b> 83609
<b>Contractor Legal Entity Name</b> Skyward Inc			<b>Edison Vendor ID (optional)</b> 0000169597
<b>Service Caption</b> SMS Student Information System Solution			
<b>Ownership/Control</b>			
<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"/> Service-Disabled Veteran Enterprise (SDVBE)			
<input type="checkbox"/> Disabled Owned Businesses (DSBE)			
<input type="checkbox"/> 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:			
<b>Selection Method &amp; Process Summary</b> (mark the correct response to confirm the associated summary)			
<input type="checkbox"/> Competitive Award		N/A	
<input checked="" type="checkbox"/> Other		Sole Source	
<i>CPO USE - NC</i>			

**CONTRACT  
BETWEEN THE STATE OF TENNESSEE,  
DEPARTMENT OF EDUCATION  
AND  
SKYWARD INC.**

This Contract, by and between the State of Tennessee, Department of Education ("State") and Skyward Inc. ("Contractor") is for the provision of SMS Student Information System Solution, as further defined in the "SCOPE OF SERVICES." 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: Wisconsin

Contractor Edison Registration ID #: 0000169597

**A. SCOPE OF SERVICES:**

- 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 shall be as follows and as set forth in the Contract:
- a) Average Daily Membership ("ADM"): Average Daily Membership refers to the average number of students enrolled within a school or district each day over a specific time period.
  - b) Application Programming Interface ("API"): An Application Programming Interface is a set of subroutine definitions, communication protocols, and tools for building software.
  - c) Achievement School District ("ASD"): As defined in Tenn. Code Ann. § 49-1-614, the Achievement School District is a school system in Tennessee, managed and operated by the State, providing academic intervention in the lowest performing schools in Tennessee, with the goal of increasing student achievement in those schools.
  - d) Amazon Web Services ("AWS"): Amazon Web Services is a comprehensive, evolving cloud computing platform provided by Amazon. It provides a mix of infrastructure as a service ("IaaS"), platform as a service ("PaaS"), and packaged software as a service ("SaaS") offerings.
  - e) Base Functionality ("Base Functionality"): Base Functionality is the sum or any aspect of what a product, such as a software application or computing device, can do for a user.
  - f) Basic Education Program ("BEP"): The Basic Education Program is the funding formula through which state education dollars are generated and distributed to Tennessee schools. The Board annually reviews and approves school system allocations generated through the ("BEP") formula.
  - g) Change Control Protocol ("Change Control Protocol"): Change Control Protocol is a Systematic approach to managing all changes made to a product or system. The purpose is to ensure that no unnecessary changes are made, that all changes are documented, that services are not unnecessarily disrupted and that resources are used efficiently.
  - h) Contractor Hosting ("Contractor Hosting"): Contractor Hosting is where the Contractor provides a turnkey software as a service (SaaS) solution from a data center or hosting facility.

- i) Customer-Relationship Management (“CRM”): Customer-Relationship Management is an approach to manage a company’s interaction with current and potential customers allowing data analysis about customer’s history to improve business relationship.
- j) Customer Support Response (“Customer Support Response”): Customer Support Response is defined as the Contractor attempting to contact a designated support person or persons at the EA by phone call, email, or through the Contractor’s ticketing system.
- k) Database Management System (“DBMS”): Database Management System is software that handles the storage, retrieval, and updating of data in a computer system.
- l) Domain Name Service (“DNS”): The Internet’s system for converting alphabetic names into numeric IP addresses.
- m) Denial of Service (“DoS”/“DDoS”): A Denial of Service or Distribution Denial of Service is any type of attack where the attackers (hackers) attempt to prevent legitimate users from accessing the service. In a (“DoS”) attack, the attacker usually sends excessive messages asking the network or server to authenticate requests that have invalid return addresses.
- n) Domain Administrator Account (“Domain Administrator Account”): Domain Administrator Account is a member to the group that has full control of the domain. By default, this group is a member of the Administrators group on all domain controllers, all domain workstations, and all domain member servers at the time they are joined to the domain.
- o) Education Agency (“EA”): For the purposes of this Contract, Education Agency is the term used to collectively refer to all Tennessee public local Education Agencies, and charter schools, excluding State Special Schools and the Achievement School District which are covered by a separate Contract.
- p) Ed-Fi Alliance data standard (Ed-Fi, “EDFI 3.x”): The Ed-Fi Data Standard is a set of rules that allow educational data systems to transmit data between each other without the need for translation of that data. The term shall be used to connote the current version of EdFi, which is 3.X and all future versions as may be adopted by the State from time to time.
- q) Education Information System (“EIS”): An Education Information System is an organized group of information and documentation services that collects and stores processes that analyze and disseminates information for educational planning and management.
- r) Exceptional Student Education (“ESE”): The purpose of Exceptional Student Education is to facilitate opportunities to help each child with an exceptionality to progress in public school and prepare for life after school.
- s) Family Educational Rights and Privacy Act of 1974 (“FERPA”): Family Educational Rights and Privacy Act of 1974 is federal legislation in the United States that protects the privacy of students’ personally identifiable information. The act applies to all educational institutions that receive federal funds.
- t) Federal Risk and Authorization Management Program (“FedRAMP”): The Federal Risk and Authorization Management Program is an assessment and authorization process which U.S. federal agencies have been directed by the Office of Management and Budget to ensure security is in place when accessing cloud computing products and services.
- u) Federal Information Processing Standards (“FIPS”): Federal Information Processing Standards are a set of standards that describe document processing, encryption algorithms, and other information technology standards for use within non-military

government agencies and by government contractors and vendors who work with the agencies.

- v) Identity Management System (“Identity Management System”): Identity Management System in computer security, is the security and business discipline that “enables the right individuals to access the right resources at the right times and for the right reasons”.
- w) International Standards Organization (“ISO”): The International Organization for Standardization is an international standard-setting body composed of representatives from various national standards organization. Founded in 1947, the organization promotes worldwide proprietary, industrial, and commercial standards.
- x) Infrastructure as a Service (“IaaS”): Infrastructure as a Service is a highly scalable form of cloud computing that provides virtualized computing resources over the internet.
- y) Microsoft Azure Active Directory (“AAD”): Azure Active Directory is a fully managed multi-tenant service from Microsoft that offers identity and access capabilities for applications running in Microsoft Azure and for applications running in an on-premises environment.
- z) Microsoft Azure Virtual Machine (“Azure VM”): Azure Virtual Machines (“VM”) is one of several types of on-demand, scalable computing resources giving flexibility of virtualization without having to buy and maintain the physical hardware that runs it.
- aa) Open Authorization (“OAuth”): Open Authorization is an open standard for token-based authentication and authorization on the Internet. OAuth allows an end user’s account information to be used by third-party services without exposing the user’s password.
- bb) OpenID Connect (“OpenID Connect”): OpenID Connect is a protocol which allows developers to authenticate their users across website and applications without having to own and manage password files.
- cc) Remote Desktop Protocol (“RDP”): Remote Desktop Protocol is a proprietary protocol developed by Microsoft, which provides a user with a graphical interface to connect to another computer over a network connection.
- dd) Risk Assessment (“Risk Assessment”): Risk Assessment is a systematic process of evaluating the potential risks that may be involved in a projected activity or undertaking.
- ee) Self Hosting (“Self Hosting”): Self Hosting is where the EA provides the data center or server environment for hosting their Student Information System.
- ff) Software as a Service (“SaaS”): Software as a Service is a software licensing and delivery model in which software is licensed on a subscription basis and is centrally hosted.
- gg) State Hosting (“State Hosting”): The vendor deploying the Student Information System to a (“Microsoft Azure”) subscription owned by the State.
- hh) Student Information System (“SIS”): Student Information System is a web-based application software designed to introduce a conducive and structured information exchange environment for integrating students, parents, teachers, and the administration of a school.
- ii) Service and Organization Controls Report (“SOC”): Service and Organization Controls Report is a report on controls at a service organization which are relevant to user entities’ internal control over financial reporting.

- jj) Structured Query Language (“SQL”): Structure Query Language is a domain-specific language used in programming and designed for managing data held in a relational database management system, or for stream processing in a relational data stream management system.
- kk) Single Sign On (“SSO”): Single Sign On is a session and user authentication service that permits a user to use one set of login credentials (e.g., name and password) to access multiple applications.
- ll) System (“System”): System is the Contractor’s software solution in its entirety.
- mm) System Verification (“System Verification”): System Verification testing is the process of checking that a software system meets specifications and that it fulfills its intended purpose.
- nn) Third (3rd) Party Integration (“Third 3rd Party Integration”): A Third 3rd Party Integration is API(s) that are developed by a Third 3rd Party hired by the Contractor meeting requirements and regulations through which partial access to Contractor’s Systems or programs can be gained.
- oo) Transmission Protocol (“Transmission Protocol”): Transmission Protocol is the design and method by which information is sent and received in the EdFi data system.
- pp) Transport Layer Security (“TTL”): Transport Layer Security is a standard security protocol for establishing encrypted links between a web server and a browser in an online communication. The usage of TTL technology ensures that all data transmitted between the web server and the browser remains encrypted.
- qq) Uniform Resource Locator (“URL”): Uniform Resource Locator provides a way to locate a resource on the web, the hypertext that operates over the internet.

### A.3. Functional Requirements.

#### A.3.1. Provision of SIS Functionality.

- a) As requested by the State, the Contractor shall provide the SIS software and related services commonly known to the market as “SMS SIS” to all public EA’s in Tennessee, including those operated by the State, in accordance with the terms and conditions set forth in this Contract and for the Contract Term.
- b) The System shall provide at a minimum, the functional capabilities of version “05.10.10.00.10” of the System currently in service in Tennessee for the 2023/2024 school year and as documented in Attachment A, Base Functionality.
- c) The Contractor may not reduce, rescope or otherwise alter the Base Functionality of the System without the written approval of the State.
- d) The Contractor shall not modify Base Functionality, workflows, or operating processes in a manner that may negate or diminish an EA’s existing investment in human capital skills and training without the written approval of the State.
- e) The Contractor shall make available to all EA’s at the latest released and supported version of the System throughout the life of this Contract at no additional cost to the EA. A reciprocal requirement will be placed on EA’s by the State to accept upgrades as needed for the Contractor to comply with this requirement.
- f) The Contractor shall not customize the System for any EA in any manner that changes the operation of State Reporting.
- g) The Contractor may undertake other forms of customization of the System requested by an EA, whether at additional cost or not, that do not impact State Reporting without

the requirement to obtain approval by the State providing such customization does not prevent that EA from upgrading the System to the next supported version when released.

- h) No customization of the System shall in any way replace, redefine, or invalidate any other clause within this Contract.
- i) The Contractor may offer EA's additional products, services, or feature packages at additional cost providing such offerings are clearly in addition to the Base Functionality. Any such additional products, services, or feature packages shall be provided to EA's under a separate Contract between Contractor and EA.

#### A.3.2. Onboarding New Customers and Offboarding Existing Customers.

- a) The Contractor is permitted to market the System to any EA in Tennessee providing such marketing is conducted in a professional manner and does not include misleading representations or denigration of competitor products.
- b) The Contractor shall provide EA's considering moving to the System a comprehensive proposal that clearly outlines;
  - i. Features and functionality that are included in the base licensing fee that are offered over and above that which is stipulated as "base functionality".
  - ii. Features and functionality that are offered at additional cost
  - iii. Installation and setup considerations
  - iv. Data migration and import considerations
  - v. Training and support considerations

Additional requirements are stipulated in Section A.6. Cost and Other Requirements.

- c) EAs may cease usage of the System by advising the Contractor ninety (90) days prior to the start of the next fiscal year of such intent in writing prior to the end of the school year in which they plan to cease use. Payments to the Contractor shall cease at the last date of access of the System by the EA.
- d) Contractor's obligation to meet student privacy, including FERPA requirements, shall survive Contract termination.
- e) The Contractor shall respond to an EA support request to offboard from the System including the repatriation of data, within thirty (30) days of receipt of that request at no additional cost to the EA.

#### A.3.3. State Reporting.

- a) The Contractor shall support collection by the State of all SIS reported data through policy or legislation that must be collected by the State Reporting. State Reporting guidelines can be found here:

<https://www.tn.gov/education/lea-operations/education-information-system-eis.html>.

- b) The Contractor shall support the transmission of data to the State using the protocols and standards as outlined in the following table and in accordance with the requirements set forth below under "Alignment with State Technology"

Time Frame	("EIS"	Ed-Fi 3.x
2024/2025 School year	PRIMARY	TRANSITIONAL
2025/2026 School year	SECONDARY	PRIMARY

- c) The Contractor shall support the transmission of data in accordance with the minimum frequency objectives set forth by the State at the commencement of each new school year, which in general will be:

Protocol	Frequency
EIS	Batch – Daily, Weekly, As Needed
Ed-Fi	Transactional – Minimum Four times Daily

- d) The Contractor shall support the transmission of data in accordance with the timing and completeness of data objectives set forth by the State at the commencement of each new school year, and which will be linked to the due date for specific business processes within the State, including federal reporting requirements.
- e) The Contractor shall support the transmission of data in accordance with the accuracy and quality of data objectives set forth by the State at the commencement of each new school year.
- f) The Contractor shall align with, and where applicable assist EA's aligning with, the schedule published annually by the State for major events related to State Reporting and the transmission of data, including:
- i. School year rollover
  - ii. New school year data uptake and readiness
  - iii. Data publishing start and end dates for a given School year
  - iv. Specific dates provided for State business processes, such as BEP payment processing and enrollment processing
- g) At no additional charge, the Contractor shall accept and implement change requests to transmitted data elements in base functionality, including the addition, removal, or modification of data elements by the stipulated date to support compliance, policy, or legislative changes that occur from time to time. In general, such changes shall not occur more than once per year and will be advised prior to the commencement of a new school year. The State will endeavor to give Contractors a minimum of one hundred twenty (120) days' notice for required changes to transmitted data but notes that this may not always be possible due to factors outside of the control of the State.
- h) The Contractor shall accept and implement change requests to the transmission protocol, including: version updates, communications protocol updates, and interface definition changes by the stipulated date for implementation of the change. The State will endeavor to give Contractors a minimum of twelve (12) months' notice of required changes to the transmission protocol but notes that this may not always be possible due to factors outside of the control of the State.
- i) The Contractor shall accept and implement change requests to support the importation or conversion of data stored in the System to support specific State initiatives, such as updating course codes or reseeding identity values. The State will endeavor to give Contractors a minimum of six (6) months' notice of these requirements but notes that this may not always be possible due to factors outside of the control of the State.

- j) The Contractor shall remedy any requests to correct any aspect of the State Reporting protocol or data elements deemed non-functional and preventing forward movement of a critical business process, or which is deemed by the State to be insecure or non-compliant with State or federal policy or legislation.

A.3.4. Alignment with State Technology.

- a) The Contractor shall align with the technology direction set forth by the State and as specified below to support the integration of the System with appropriate State information systems, including those associated with State Reporting, Authentication, Security and Error Management. Alignment with State Technology shall include:
  - i. Participating in proofs of technology and quality assurance programs as needed to ensure the smooth introduction of new technologies
  - ii. Participating in workshops and advisory councils aimed at ensuring technology decisions are thoughtfully implemented and minimize EA impact
  - iii. Meeting agreed timelines for enablement of the technology as set forth in advance by the State
  - iv. Attaining compatibility with the technology in accordance with technical specifications provided by the State
- b) The Contractor shall maintain compatibility with the State EIS specification for batch reporting until such time as the State declares the end-of-life of this System. The EIS specification for batch reporting and the specification for data extracts can be found here: <https://www.tn.gov/education/lea-operations/education-information-system-eis.html>.  
  
The Contractor is notified that maintaining EIS batch reporting will be required in conjunction with other protocols during a period of transition from EIS to the Ed-Fi standard.
- c) The Contractor shall attain compatibility with the Ed-Fi 3.x standard in the time frame outlined above in section A.3.3 State Reporting and in accordance with this standard as published by the Ed-Fi Alliance <https://www.ed-fi.org/>.
- d) All Ed-Fi data transmissions shall use the Ed-Fi transactional interface whereby the State provides an API endpoint that can be reached electronically by the System to support transmission of data at agreed frequencies and to provide detailed response codes which must be interpreted by the System (see error protocols as describe in Section A.3.4.(I)).
- e) The Contractor shall attain compatibility with the extensions defined by the State to the Ed-Fi standard to support business processes that require data elements not supported by the Ed-Fi standard within the timeline published by the State.
- f) The Contractor shall provide assistance to EAs for the transition from EIS batch reporting to Ed-Fi reporting at no additional cost to the EA.
- g) The Contractor shall attain compatibility with the IDMS specification provided by the State.
- h) The Contractor shall support the implementation of data-crosswalks and other data conversion activities as required to seed and convert existing staff and student identity values for use within the new IDMS.
- i) The Contractor shall meet all timeframes set forth by the State for the introduction of the new IDMS, which is currently scheduled for 2024.



- j) The Contractor shall support the SSO solution developed by the State to authenticate EA users into the System. The State's SSO solution is based on industry standard OAuth protocols and is implemented using the Microsoft AAD framework. Documentation on AAD can be found here:  
  
<https://docs.microsoft.com/en-us/azure/active-directory-domain-services/>.
- k) SSO support is required in the System by the commencement of the 2024/2025 school year.
- l) The Contractor shall support new machine-to-machine error protocols defined by the State as extensions to the Ed-Fi standard. These error protocols provide explicit diagnostic data to the Contractor's calling system in the event of a problem at the time the API provided by the State information system is called by the Contractor's calling system. The diagnostic data should be used by the Contractor's calling system to support correction of the error in conjunction with EA staff and prior to retransmission of the data transaction.
- m) The Contractor shall support the validation of user entries in the SIS against permissible values for that data element published by the State prior to transmission of the data to the State. Permissible values for specific data elements shall be obtained from the State via a web application programming interface ("Web API") in real time or in advance and may be cached locally within the System once obtained. The State has not yet published a date for the implementation of this feature and will provide the Contractor a minimum of twelve (12) months' notice prior to this requirement.
- n) The Contractor shall support the integration of the System with an online error correction portal specification published by the State. The State shall provide a minimum of twelve (12) months' notice prior to this requirement.
- o) The Contractor shall support the importation of new data elements designed to improve the content, alignment and accuracy of the K-12 student transcript to the extent the architecture of the System reasonably accommodates this. The State has not yet published a date for the implementation of this feature and will provide Contractors a minimum of twelve (12) months' notice prior to its requirement.

#### A.4. Operational Requirements.

- a) The Contractor shall make all three different hosting models available to EA's.

##### A.4.1. State Hosting.

- a) The Contractor shall deploy the System to an infrastructure as a service IaaS platform provided by the State within a Microsoft Azure subscription owned by the State. State Hosting and provided to the Contractor at no cost.
- b) The Contractor shall make available to EA's utilizing the State Hosting version of the System deployed to the Contractor's own hosting environment (see section A.4.2 Contractor Hosting below) and which is offered to EA's under this Contract.
- c) The Contractor shall provide the System from the State Hosting platform to any EA requesting this at the licensing cost defined in Section A.6. Cost and Other Requirements and shall not charge any hosting fee or other fee that is specific to the delivery of the service from the State Hosting platform.
- d) The State's obligations in respect to State Hosting are strictly limited to:
  - i. Provision of the Azure VM or Application Service instances required to support the System and its intended usage which shall be based initially on the level of computer resources in use by the System during the 2023/2024 school year and reviewed annually.

- ii. Provision and deployment of the basic server Operating System requested by the Contractor for each VM instance providing such server Operating System is supported by Microsoft as a standard Azure server image and shall exclude configuration of that Operating System.
  - iii. Provision and maintenance of appropriate anti-malware software to each VM or vulnerable endpoint. *Note that this provision does not negate Contractor obligations to ensure end-point protection is in place and appropriate across all aspects the System, its components, and configurations that the State may not be party to.*
  - iv. Execution and storage for sixty (60) days of daily backups of all VM images and associated drives in the storage account configured by the State. Note that this is a backup of the infrastructure components provisioned by the State only and is intended to recover the platform infrastructure not the SIS application or application data associated with the System. The Contractor must implement a robust backup and disaster recovery strategy for the volatile components of the System deployed to the infrastructure provided by the State.
  - v. Assignment of a unique URL to each EA user of the System with appropriate maintenance of associated DNS records.
  - vi. Provision and maintenance of a Transport Layer Security TTL certificate for each instance of the System provisioned for each EA user within the "TNK12.GOV" domain.
  - vii. Configuration of RDP access for the Contractor to each VM instance. *Note that the Contractor must enact policies for safe connection and usage of RDP access in accordance with the Technical Requirements outlined section A.5 and section E.*
  - viii. Configuration of a single Domain Administrator Account for use by the Contractor. *Note that the Contractor must enact policies for password management, including change frequency and complexity in accordance with the Technical Requirements outlined below for any local account created by the Contractor.*
- e) The Contractor shall be responsible for all aspects of the provision of the System and related services in accordance with this Contract to EA users located in State Hosting other than those defined in A.4.1.(d) as responsibilities of the State.
  - f) The Contractor may request a waiver from the State for the requirement to provide a State Hosting option in situations where the Contractor can demonstrate that no EA's require this service, or the Contractor can demonstrate that they have an equivalent infrastructure, providing the Contractor's hosting facility meets all State requirements. Any such alternative hosting shall be provided free of charge to the State and EA. Granting of a waiver shall be at the sole discretion of the State and if granted will be provided in writing.
  - g) Upon Contractor request, the State shall provision an additional hosted database service for the Contractor to utilize in training activities with its contracted EA's.

#### A.4.2. Contractor Hosting.

- a) The Contractor shall provide the System to EA's as a turnkey software as a service SaaS solution from a data center or hosting facility of the Contractor's choosing, providing such facility meets all State requirements, to any EA requesting Contractor Hosting and in consideration of the licensing and hosting cost defined in Section A.6. Cost and Other Requirements.

- b) The Contractor shall be solely responsible for delivering all aspects of the System and related services in accordance with this Contract to EA's using Contractor Hosting.
- c) The Contractor may request a waiver from the State for the requirement to provide a Contractor Hosting option in situations where the Contractor can demonstrate that no EA's require this service. Granting of a waiver shall be at the sole discretion of the State and if granted will be provided in writing.

#### A.4.3. Self-Hosting.

- a) The Contractor shall provide the System as a deployable package to EA's wishing to deploy to on-premise infrastructure Self-Hosting at the licensing cost defined in Section A.6. Cost and Other Requirements. Self-Hosting is an accommodation intended to grandfather in EA's who currently self-host. The Contractor shall not provide the System for Self-Hosting to any EA who did not self-host in the 2023/2024 school year without State approval.
- b) The Contractor shall provide self-hosted EA's with upgrades as needed to ensure parity of the on- premise system with hosted versions. The Contractor shall conduct testing on upgrade packages prior to release to the EA and shall provide adequate documentation and technical detail to allow patching to occur by EA staff without the need for paid Contractor support.
- c) The Contractor shall negotiate additional costs for support with the installation of the System and other tasks that are applicable to on-premise deployment only, directly with the EA. All other features of the System and related services shall be supplied in accordance with the terms of this Contract.
- d) The Contractor shall not provide the System to any EA who wishes to self-host off-premise or with a third-party data center or hosting facility, including Microsoft Azure and Amazon AWS without State approval.

#### A.4.4. Customer Support.

- a) The Contractor shall provide a named account manager to the State and EA's with contact information who will be available by telephone or email during normal business hours to handle business related issues and as a point of escalation for support and other concerns that may arise from time to time.
- b) The Contractor shall ensure sufficient technical staff is available to the State account to meet contract requirements for timely response and resolution to technical issues that may arise in relation to the System, including:
  - i. Security vulnerabilities, FERPA violations and data breaches
  - ii. Malware detection
  - iii. System outages
  - iv. Data correction or loss
  - v. Transfer protocol incompatibility
  - vi. Authentication and authorization
  - vii. System performance
- c) The Contractor shall provide a suitable representative to join State personnel for a bi-weekly (twice monthly) telephone calls to discuss current work items, schedules, future initiatives and other issues of relevance to the System. The State will provide advance notification of the schedule for these calls.

- d) The Contractor shall maintain an account in the State's Customer Relationship Management system ("CRM") and shall accept and address support tickets assigned via the CRM for any EA issues reported directly to the State.
- e) The Contractor shall provide bi-annually (two (2) times annually) to the State an electronic report of all EA support tickets received during that period. The report should be emailed to the State contact in section D.2. At a minimum, the report shall include for each incident the reporting EA name, the subject/category of the incident, a summary of the incident, and the status of the incident. The State is responsible for PII that it receives as part of these reports.

#### A.5. Technical and Operational Requirements.

##### A.5.1 State Hosting.

- a) The Contractor shall ensure that the System is maintained at the latest supported Tennessee version of the System throughout the Contract Term and in accordance with a maintenance window established through coordination with each EA and the State.
- b) The Contractor shall ensure that all changes to the system arising through State Reporting requirements and Technology alignment are applied to the environment in a timeframe consistent with those set forth by the State in accordance with this Contract.
- c) Sixty (60) days prior to the commencement of each school year and upon first knowledge of acquisition of a new EA customer, the Contractor shall engage in a review of current system capacity and conduct forward-looking capacity planning exercises to determine required levels of compute resources needed to support expected user numbers in the upcoming school year. Where additional resources are deemed necessary the Contractor shall communicate this requirement to the State with supporting technical data.
- d) The Contractor shall implement proactive monitoring of the performance of their System, processes, transactions and data flows, and notify the State promptly of any anomalies detected that may negatively impact EA's. The Contractor is not required to monitor the Azure infrastructure provided by the State.
- e) The Contractor shall implement industry best practice end-point protection, including anti-virus, anti-malware, and intruder detection for all vulnerable System end points not provided by the State as part of the Infrastructure service and for any, which may include end point devices downstream of a Virtual Private Network connection.
- f) The Contractor shall develop a data breach and incident response protocol that can be rapidly enacted if an anomaly is detected in relation to the System or the data that is contained within the System for EA's hosted by the Contractor. The protocol shall include actions for responding to cyber-attacks, exploits, vulnerabilities, reported threats, and system intrusions of any kind whether real or potential, and shall also include actions for responding to System outages, overloads, capacity deficiencies, performance degradation and other events that could impact the EA's ability to use the System. The protocol shall emphasize measures to protect Confidential State Data and include steps for immediate notifications to the State of any such anomaly detected whether actual or potential. The Contractor shall provide the State with a copy of its data breach and incident response protocol within thirty (30) days of Contract Effective Date and thereafter upon any change to this protocol.

- g) The Contractor shall publish a schedule to the State and all relevant EA's for all planned maintenance of the System where that maintenance will result in a system outage or reduced performance of the System to the Customer a minimum of five (5) business days prior to the scheduled event, except in the case of a pre-determined incident response where a more timely solution is believed to be in the best interest of the EA. The Contractor shall ensure that maintenance is planned for execution outside of normal school business hours and for periods of low business impact.
- h) The Contractor shall ensure that upgrades for EA's hosted by the Contractor are planned for execution outside of normal school business hours and for periods of low business impact.
- i) The Contractor shall develop and adhere to a Change Control Protocol designed to minimize risk and ensure professional rigor exists in the process of releasing software, ensuring the quality of that software and deployment of that software to production environments. The Change Control Protocol shall emphasize stage gates and other physical and operational measures that prevent unauthorized changes to any aspect of the System's production environment. The Contractor shall provide the State with a copy of the Change Control Protocol within thirty (30) days of the Contract Effective Date and thereafter upon any change to the Change Control Protocol. Change Control protocols shall include an option for EA's who have customizations to verify the impact of the change on those customizations prior to deployment to production.
- j) The Contractor shall conduct annual Risk Assessment planning designed to anticipate and mitigate potential risks to Confidential State Data, continuity of business operations within EA's, risks to meeting technical alignment requirements with the State, and risks to the quality, completeness, or timeliness of data being transmitted to the State. The Contractor shall provide the State with a copy of the Risk Assessment within ninety (90) days of Contract Effective Date, and thereafter prior to the commencement of each new school year.
- k) The Contractor shall participate in System verification events (collaborative test cases) scheduled in advance from time-to-time by the State. These events are intended to ensure the smooth operation of the System for EA's with emphasis placed on verifying interactions between Contractor and State systems following the introduction of new technologies or changes to protocols for system interactions.

#### A.5.2 Contractor Hosting.

- a) The Contractor shall ensure that the System is maintained at the latest supported Tennessee version of the System throughout the Contract Term and in accordance with a maintenance window established through coordination with each EA.
- b) The Contractor shall ensure that all changes to the system arising through State Reporting requirements and Technology alignment are applied to the environment in a timeframe consistent with those set forth by the State in accordance with this Contract.
- c) The Contractor shall periodically engage in a review of system capacity and conduct capacity planning exercises designed to proactively ensure sufficient compute resources are assigned to Tennessee EA's to deliver optimum performance of the system.
- d) The Contractor shall implement industry best practice approaches to mitigating DoS and DDoS attacks against the System and in all cases shall notify the State immediately of any actual or evidence of an attack against the System whether or not the attack was successful.
- e) The Contractor shall implement real-time System monitoring and threat analytics such that any System outage, System anomaly, potential exploit, or cyber-attack against the System are detected quickly. Upon detection of any such event the Contractor shall immediately notify the State and enact the pre-defined incident response protocol.

- f) The Contractor shall implement industry best practice end-point protection, including anti-virus, anti-malware, and intruder detection for all server resources and vulnerable end points.
- g) The Contractor shall develop a data breach and incident response protocol that can be rapidly enacted if an anomaly is detected in relation to the System or the data that is contained within the System for EA's hosted by the Contractor. The protocol shall include actions for responding to cyber-attacks, exploits, vulnerabilities, reported threats, and system intrusions of any kind whether real or potential, and shall also include actions for responding to System outages, overloads, capacity deficiencies, performance degradation and other events that could impact the EA's ability to use the System. The protocol shall emphasize measures to protect Confidential State Data and include steps for immediate notifications to the State of any such anomaly detected whether actual or potential. The Contractor shall provide the State with a copy of its data breach and incident response protocol within thirty (30) days of Contract Effective Date and thereafter upon any change to this protocol.
- h) The Contractor shall publish a schedule to the State and all relevant EA's for all planned maintenance of the System where that maintenance will result in a system outage or reduced performance of the System to the Customer a minimum of five (5) business days prior to the scheduled event, except in the case of a pre-determined incident response where a more timely solution is believed to be in the best interest of the EA. The Contractor shall ensure that maintenance is planned for execution outside of normal school business hours and for periods of low business impact.
- i) The Contractor shall ensure that upgrades for EA's hosted by the Contractor are planned for execution outside of normal school business hours and for periods of low business impact.
- j) The Contractor shall develop and adhere to a Change Control Protocol designed to minimize risk and ensure professional rigor exists in the process of releasing software, ensuring the quality of that software and deployment of that software to production environments. The Change Control Protocol shall emphasize stage gates and other physical and operational measures that prevent unauthorized changes to any aspect of the System's production environment. The Contractor shall provide the State with a copy of the Change Control Protocol within thirty (30) days of the Contract Effective Date and thereafter upon any change to the Change Control Protocol. Change Control protocols shall include an option for EA's who have customizations to verify the impact of the change on those customizations prior to deployment to production.
- k) The Contractor shall conduct annual Risk Assessment planning designed to anticipate and mitigate potential risks to Confidential State Data, continuity of business operations within EA's, risks to meeting technical alignment requirements with the State, and risks to the quality, completeness, or timeliness of data being transmitted to the State. The Contractor shall provide the State with a copy of the Risk Assessment within ninety (90) days of Contract Effective Date, and thereafter prior to the commencement of each new school year.
- l) The Contractor shall participate in System verification events (collaborative test cases) scheduled in advance from time-to-time by the State. These events are intended to ensure the smooth operation of the System for EA's with emphasis placed on verifying interactions between Contractor and State systems following the introduction of new technologies or changes to protocols for system interactions.

#### A.5.3 Self-Hosting.

- a) The Contractor shall provide installation files that allow the EA to apply all changes to the system arising through State Reporting requirements and Technology alignment in a timeframe consistent with those set forth by the State in accordance with this Contract.

A.6. Cost and Other Requirements.

- a) This Contract renders null and void any previous contracts, agreements or memorandums of understanding in relation to the product between the Contractor and the State and the Contractor and an EA, including previous State contracts and contracts written at the EA level unless this protection is waived in writing by the EA.
- b) This Contract defines the entire agreement between the Contractor and State and the terms and conditions by which the Contractor may offer the product to an EA. The sole mechanism by which an EA may engage the Contractor is through a Task Order ("TO") which will be provided by the State for execution by the Contractor and EA (see A.7. and Attachment B).
- c) The Contractor is advised that the financial liability associated with use of the System by an EA under this Contract rests solely with that EA. The State assumes no liability in this regard and does not act as a financial guarantor on behalf of any EA under this Contract.
- d) The Contractor shall offer the System and all associated services and requirements defined within this Contract, unless specifically defined as "at additional cost", in the Task Order (TO) for an inclusive, per-student licensing cost not to exceed \$6.50 per student per annum for State Hosted, Contractor Hosted, or Self Hosted deployments for the Term of the Contract. This fee is subject to not exceed an increase of 4% per annum.
- e) The Contractor shall offer the option for State Hosting of the System for a hosting fee of zero (0) dollars in addition to the licensing cost defined in Section A.6.(d).
- f) The Contractor shall offer Contractor Hosting of the System, via 3<sup>rd</sup> party, for a minimum annual fee of \$1.00 per student in addition to the licensing cost defined in Section A.6.(d).
- g) The Contractor shall offer the option for EA Self Hosting of the System for a hosting fee of zero (0) dollars in addition to the licensing cost defined in Section A.6.(d).
- h) The Contractor shall negotiate directly with the EA to determine the terms and conditions, and associated cost for any product or service not covered within this Contract providing the EA receives a detailed proposal outlining scope of work and all associated costs in advance of the cost being incurred by the EA, including:
  - i. New EA onboarding costs
  - ii. Data conversion costs
  - iii. Training costs
  - iv. Non-standard support costs (additional support to that which is defined herein)
  - v. Local deployment support costs
  - vi. System customization costs
- i) The Contractor shall generate an invoice for each EA for use of the System and associated services bi-annually (two (2) times annually) in accordance with the terms and conditions of this Contract. Invoices shall specify payment terms in accordance with the Tennessee Prompt Pay Act and shall be submitted directly to the EA with a copy emailed to the State's contact in Section D.2.
- j) The Contractor shall participate in a bi-annually performance review conducted by the State coinciding with each invoice period. The performance review is intended to assess the Contractor's overall performance and compliance with the terms and conditions of this Contract. If any concern is revealed through this review the Contractor shall be advised of such concern in writing and provided with a statement of the required cure and timeframe for implementation.

A.7. Task Order – General Instructions.

a. Task Order – General Instructions.

- (1) After the procuring EA has determined the selected Contractor for the SOW, the State will develop a Task Order (TO) binding the Contractor to the terms of the Contract. No terms and conditions shall be added to the TO, as outlined in Attachment B. Prior to the Contractor delivering goods/services, all required signatures must be obtained for the TO, including Contractor TO signatory(ies) and the State's signatory(ies). The State will only sign the TO and will not sign any Contractor documents related to the project. A fully executed TO, containing all required signatures, authorizes the Contractor to provide the requested services. The State shall not be liable to pay the Contractor for any work performed prior to the Contractor's receipt of a fully executed TO. The TO will fix the maximum amount of money to be paid in compensation for the services requested on a particular SOW (the "TO Project Price"). This amount cannot be exceeded without a TO amendment. Such a TO amendment, must be within the scope of the associated SOW. The TO amendment will increase the maximum potential compensation due the Contractor for the work in question, and possibly extend the SOW Project End Date. The TO amendment will require the same signatures as the original TO.
- (2) The TO Project Price shall cover all costs, including, but not limited to, manpower, administrative costs, and travel, required to complete the services and deliverables in the project as specified. The TO Project Price can only be increased by TO amendment, and the total increase, whether increased by a single TO amendment or multiple TO amendments cannot exceed seven percent (7%) of the original TO Project Price.
- (3) The State signatories shall vary based on the associated SOW.

b. Task Order – Termination.

- (1) The procuring EA may immediately terminate for convenience any or all of the TOs entered into by the State and the Contractor pursuant to this Contract by giving the Contractor ninety (90) days written notice. The Contractor shall be entitled to receive equitable compensation for satisfactory authorized services completed as of the termination date.
  - i. The Contractor shall be entitled to compensation for all conforming goods delivered and accepted by the State 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 the TO for convenience relieve the Contractor of any liability to the State for any damages or claims arising under this Contract.
- (2) If the Contractor, or Contractor-provided personnel, fail to properly perform their obligations under any TO entered into by the State and the Contractor pursuant to this Contract, or violate any of the terms of this Contract, the State shall have the right to terminate for cause any or all of the Contractor's TOs, and to withhold payments in excess of fair compensation for completed services. The State will provide notification of termination for cause in writing. This notice will: (1) specify in reasonable detail the nature of the breach; (2) provide the Contractor with an opportunity to cure, which must be requested in writing no less than 10 days from the date of the termination notice; and (3) shall specify the effective date of termination in the event the Contractor fails to correct the breach. The Contractor must present the State with a written request detailing the efforts it will take to resolve the problem and the time period for such resolution. The Contractor shall not be relieved of liability to the State for damages sustained by virtue of any breach of this Contract by the Contractor.



- (3) This section shall not limit the State's right to terminate the Contract for convenience or cause in accordance with Contract Section D.3 and Contract Section D.4.
- (4) The State will advise if the termination is due to non-appropriations/non-funding. The State shall pay all amounts due until the equipment is returned to the Contractor in addition to any unpaid invoices that are not in dispute.
- (5) The Contractor shall have all rights concerning the performance of EA under a TO as set forth in Contract Section D.6.

c. Invoicing and Payments for Services.

The services shall be provided and invoiced as described in the SOW and Contract Section C, not to exceed the TO Project Price stated in the TO. Depending upon the specific needs and life-cycle of the project in question, the State may pay the TO Project Price as phase/deliverable/lump-sum payment(s), with each payment predicated upon the completion of deliverable(s), or as a lump-sum payment upon completion of the entire project, including all deliverable(s) associated therewith. The payment method to be used in any case will be described in the SOW and shall always be for completed deliverable(s).

- A.8. 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.9. 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.

- A.10. Offshore Resources Statement:

All State data must remain in the United States, regardless of whether the data is processed, stored, in-transit, or at rest.

Access to State data shall be limited to US-based (onshore) resources only.

Configuration or development of software and code is permitted outside of the United States. However, software applications designed, developed, manufactured, or supplied by persons owned or controlled by, or subject to the jurisdiction or direction of, a foreign adversary, which the U.S. Secretary of Commerce acting pursuant to 15 CFR 7 has defined to include the People's Republic of China, among others are prohibited.

Any testing of code outside of the United States must use fake data. A copy of production data may not be transmitted or used outside the United States.

**B. TERM OF CONTRACT:**

This Contract shall be effective for the period beginning on October 14, 2024 ("Effective Date") and ending on June 30, 2026, ("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:**

There shall be no cost to the State for the performance of services under this Contract. Payment will be made by the EA pursuant to a TO between the EA and Contractor. The TO incorporates the Terms of this Contract. The State will have no payment obligation under this Contract.

**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. Any such 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:

Steven Sanders  
Tennessee Department of Education  
710 James Robertson Parkway  
Nashville, TN 37243  
[Steven.Sanders@tn.gov](mailto:Steven.Sanders@tn.gov)  
(615) 399-4244

The Contractor:

Chris Casey  
 Skyward Inc.  
 2601 Skyward Drive  
 Stevens Point, WI 54482  
[chrisc@skyward.com](mailto:chrisc@skyward.com)  
 (715) 972-4342

All instructions, notices, consents, demands, or other communications shall be considered effectively given 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. 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 effective termination date. Upon such termination, the Contractor shall have no right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- D.5. Termination for Cause. If a Party ("Breaching Party") fails to properly perform its obligations under this Contract in a timely or proper manner, or if a Party materially violates any terms of this Contract ("Breach Condition"), the other Party ("Non-breaching Party") may provide written notice to the Breaching Party specifying the Breach Condition. If within thirty (30) days of notice, the Breaching Party has not cured the Breach Condition, the Non-breaching Party may terminate the Contract. Notwithstanding the above, the Breaching Party shall not be relieved of liability to the Non-breaching Party for damages sustained by virtue of any Breach Condition and the Non-breaching Party may seek other remedies allowed at law or in equity for breach of this Contract.
- D.6. Assignment and Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the services performed under this Contract without obtaining the prior written approval of the State. Notwithstanding any use of 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 of the use of subcontractors in fulfilling the Contractor's obligations under this Contract.
- D.7. Conflicts of Interest. The Contractor warrants that no amount 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.8. 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.9. Prohibition of Illegal Immigrants. The requirements of Tennessee 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 hereby 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 by submitting to the State a completed Attestation (accessible through the Edison Supplier Portal) and included at Attachment C, hereto, 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 Tennessee Code Ann. § 12-3-309 for acts or omissions occurring after its effective date. This law requires the Chief Procurement Officer to prohibit a contractor from contracting with, or submitting an offer, proposal, or bid to contract with the State of Tennessee to supply goods or services for a period of one year after a contractor is discovered to have knowingly used the services of illegal immigrants during the performance of this Contract.
  - e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not either a United States citizen, a Lawful Permanent Resident, or a person whose physical presence in the United States is authorized or allowed by the federal Department of Homeland Security and who, under federal immigration laws and/or regulations, is authorized to be employed in the U.S. or is otherwise authorized to provide services under the Contract.
- D.10. Records. The Contractor shall maintain documentation of services rendered under this Contract. The books, records and documents of the Contractor, insofar as they relate to work performed under this Contract, shall be maintained for a period of five (5) full years from the final date of this Contract 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.
- D.11. 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.12. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.13. 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 such 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.14. Independent Contractor. The Parties shall not act as employees, partners, joint venturers, or associates of one another. It is expressly acknowledged by the Parties that such Parties are independent contracting entities and that nothing in this Contract shall be construed to create an employer/employee relationship or to allow either 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 shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.

The Contractor, being an independent contractor and not an employee of the State, agrees to carry adequate public liability and other appropriate forms of insurance, including adequate public liability and other appropriate forms of insurance on the Contractor's employees, and to pay all applicable taxes incident to this Contract.

- D.15. 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.16. State 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.
- D.17. 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 limited the liability of the Contractor for: (i) intellectual property or any Contractor indemnity obligations for infringement for third-party intellectual property rights; (ii) any claims covered by any specific provision in the Contract providing for liquidated damages; or (iii) any claims for intentional torts, criminal acts, fraudulent conduct, or acts or omissions that result in personal injuries or death.
- D.18. Force Majeure. The obligations of the parties to this Contract are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, natural disasters, riots, wars, epidemics, or any other similar cause.
- D.19. State and Federal Compliance. The Contractor shall comply with all applicable State and Federal laws and regulations in the performance of this Contract.
- D.20. 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 Tennessee Code Ann. §§ 9-8-101-408.

- D.21. Completeness. This Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, 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 relating hereto, whether written or oral.
- D.22. 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.23. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.
- D.24. 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 of this Contract, these items shall govern in the 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, B, and 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.25. 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., 3<sup>rd</sup> 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

- 1) The Contractor shall maintain automobile liability insurance which shall cover liability arising out of any automobile (including owned, leased, hired, and non-owned automobiles).
- 2) The Contractor shall maintain bodily injury/property damage with a limit not less than one million dollars (\$1,000,000) per occurrence or combined single limit.

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.26. 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.27. 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 the 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 such 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.28. 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.29. 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.30. Prohibited Contract Terms. The prohibited contract terms and conditions enumerated in Tenn. Code Ann. § 12-3-515, shall be a material provision of this Contract. The Contractor acknowledges, understands, and agrees that the inclusion of a term or condition prohibited by Tenn. Code Ann. § 12-3-515, shall be null and void and the Contract shall be enforceable as if the Contract did not contain such term or condition.

**E. SPECIAL TERMS AND CONDITIONS:**

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

E.2. Confidentiality of Records. Strict standards of confidentiality of records and information shall be maintained in accordance with applicable state and federal law. All material and information, regardless of form, medium or method of communication, provided to the Contractor by the State or acquired by the Contractor on behalf of the State shall be regarded as confidential information in accordance with the provisions of applicable state and federal law, state and federal rules and regulations, departmental policy, and ethical standards. Such confidential information shall not be disclosed, and all necessary steps shall be taken by the Contractor to safeguard the confidentiality of such material or information in conformance with applicable state and federal law, state and federal rules and regulations, departmental policy, and ethical standards.

The Contractor's obligations under this section do not apply to information in the public domain; entering the public domain but not from a breach by the Contractor of this Contract; previously possessed by the Contractor without written obligations to the State to protect it; acquired by the Contractor without written restrictions against disclosure from a third party which, to the Contractor's knowledge, is free to disclose the information; independently developed by the Contractor without the use of the State's information; or, disclosed by the State to others without restrictions against disclosure. Nothing in this paragraph shall permit Contractor to disclose any information that is confidential under federal or state law or regulations, 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.

It is expressly understood and agreed the obligations set forth in this section shall survive the termination of this Contract.

E.3. Prohibited Advertising or Marketing. The Contractor shall not suggest or imply in advertising or marketing materials that the 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.4. Transfer of Contractor's Obligations.

- a. The Contractor shall immediately notify the State in writing of a proposed merger, acquisition or sale of its business operation, or the part of its business operation that provides services under this Contract, or that this Contract will be sold to or assumed by another entity. The entity that is proposed to assume the Contractor's duties under this Contract, whether through merger, acquisition, sale or other transaction, will be hereinafter described as the "New Entity".
- b. The Contractor (or, if the Contractor no longer exists as a legal entity, the New Entity) will provide to the State within a reasonable time, information that the State may require about the merger, acquisition or sale, which may include:
  - i. the date and terms of the merger, acquisition or sale, including specifically, but not limited to, adequate documentation of the financial solvency and adequate capitalization of the proposed New Entity
  - ii. evidence of financial solvency and adequate capitalization of the proposed New Entity which may consist of,

(1) Debt;

- (2) Assets;
  - (3) Liabilities;
  - (4) Cash flow
  - (5) Percentage of the total revenues of the company that are represented by this Contract;
  - (6) The most recent annual financial reports;
  - (7) The most recent annual financial reports filed with government agencies, if applicable.
- iii. a complete description of the relationship of any New Entity to any parent company or subsidiary or division resulting from the merger, acquisition or sale of the original Contractor's business or the part of the original Contractor's business that provides services under this Contract or from assumption by, or sale to, another entity of the contract itself, including:
- (1) the names and positions of corporate or company officers, project managers, other Contractor management staff with responsibilities under the Contract, and numbers and the type of technical or other personnel who will be responsible for fulfilling the obligations of the Contract, and any subcontracts that will be used to provide any personal or other services under the Contract by the New Entity and,
  - (2) an organizational chart clearly describing the organizational structure of the New Entity, parent company, subsidiary, division or other unit of the entity or parent company with which it has merged or by which it, or the Contract, has been acquired.
- iv. such additional evidence of financial solvency, adequate capitalization and information regarding corporate organizational and personnel assigned to the Contract as the State determines is necessary to evaluate the status of the proposed or consummated merger, acquisition or sale.
- c. The original Contractor shall immediately notify the State in writing in the event of a change in its legal name and/or Federal Employer Identification Number (FEIN). The Contractor shall comply with State requests for copies of any documents that have been filed with state corporate records officials or other officials in the state of its incorporation that verify the name change and a narrative description of the reasons for the name change. If a New Entity has succeeded to the interest of the original Contractor, it shall immediately provide the State written notification of its Federal Employer Identification Number (FEIN), its complete corporate name, State of incorporation, and other documentation required to effectuate the transfer.
- d. Notwithstanding any other provisions of this Contract to the contrary, the State may immediately terminate this Contract in whole or in stages in the event that it determines that the New Entity
- i. has been debarred from State or Federal contracting in the past five years
  - ii. has had a contract terminated for cause by the State of Tennessee within the past five years.

The Contractor shall be entitled to compensation for satisfactory, authorized service completed as of the termination date, but in no event shall the State be liable to the Contractor or New Entity for compensation for any service which has not been rendered. Upon such termination, the Contractor or New Entity shall have no right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

- e. The New Entity shall provide to the State within ten (10) business days of the State's request, a notarized statement signed by an individual authorized to bind the New Entity certifying that all liabilities and obligations incurred by the former Contractor are assumed by the New Entity.
- f. If the New Entity owes money to the State of Tennessee, it acknowledges that Tennessee Code Ann. § 9-4-604 requires repayment of these funds and will enter into a legally binding agreement for repayment.

E.5. 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.6. 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.7. 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.8. Software License. Contractor grants a limited, nonexclusive, non-transferable, non-assignable, non-sublicensable license to the State to use all software provided under this Contract solely for the purposes set forth in this Contract and for no other purpose whatsoever, without the express written consent of Contractor.
- E.9. 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.10. 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.11. 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 utilizing Federal Information Processing Standard ("FIPS") 140-2 or 140-3 approved algorithms. The Contractor's Progress OpenEdge Database Engine complies with the individual algorithm standards; with the exception of, the current version of the OpenEdge cryptography engine at the time of this amendment does not comply with the FIPS 140-2 standard's run-time cryptographic engine validation requirement. The Contractor shall encrypt Confidential State Data in transit using the current version of Federal Information Processing Standard ("FIPS") 140-2 or 140-3 (current applicable version) validated encryption technologies. The Contractor shall control all access to encryption keys, the Contractor shall allow the State access to the encryption keys within 48 hours of the request. The Contractor shall provide installation and maintenance support at no cost to the State.
- (3) The Contractor and the State's processing environment containing Confidential State Data agrees to utilize administrative, physical, and technical safeguards designed to protect Student Data from unauthorized access, disclosure, acquisition, destruction, use, or modification. The Contractor shall adhere to any applicable law relating to data security. The Contractor shall implement an adequate Cybersecurity Framework based on one of the nationally recognized standard Cybersecurity Framework: Center for Internet Security (CIS) and Critical Security Controls.

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

- (4) The Contractor must annually perform Penetration Tests and Vulnerability Assessments against its Processing Environment. "Processing Environment" shall mean the combination of software and hardware on which the Application runs. "Application" shall mean the computer code that supports and accomplishes the State's requirements as set forth in this Contract. "Penetration Tests" purpose is 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. The State must notify the Contractor at least 48 hours before testing and agree to perform penetration testing outside of business hours. The State must share test methodologies, reports, and results with the Contractor.
- (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 common data format agreed to by the Contractor and 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 thirty (30) business days after destruction.

b. Minimum Requirements

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

c. Comptroller Audit Requirements

Upon reasonable notice and at any reasonable time, the Contractor and Subcontractor(s) agree to allow the State, the Comptroller of the Treasury, or their duly appointed representatives to perform information technology control audits of the Contractor and all Subcontractors used by the Contractor. Provided however, such information technology control audits shall be limited to the extent of Contractor's responsibilities under this Contract. 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 described herein.

The information technology control audit may include a review of general controls and application controls specifically related to Contractor's responsibilities under this Contract, which include the applications, devices, and information and data. 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, which shall be subject to Tenn. Code Ann. § 10-7-504(a)(22) which states that audit working papers of the Comptroller of the Treasury, and state, county and local government internal audit staffs are exempt from disclosure. "Audit working papers" includes, but is not limited to, auditee records, intra-agency and interagency communications, draft reports, schedules, notes, memoranda and all other records relating to an audit or investigation.



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 and State take to in a shared responsibility model 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:  
  
**24 HOURS**
    - ii. Recovery Time Objective ("RTO"). The RTO is defined as the targeted duration of time and a service level within which a business process must be restored after a disaster (or disruption) in order to avoid unacceptable consequences associated with a break in business continuity:  
  
**24 HOURS**
  - (2) The Contractor, State, and the Subcontractor(s) shall perform at least one Disaster Recovery Parallel Test every three hundred sixty-five (365) days. A "Disaster Recovery Parallel Test" shall mean the process of verifying the success of the parallel restoration procedures that are executed after a critical IT failure or disruption occurs for one State Hosted Customer. The State will provide the resources required for the Disaster Recovery Parallel Test as to now impact the State Hosted Production systems. The Disaster Recovery Test shall use an actual State Data Set that mirror production data, and success shall be defined as the Contractor verifying that the Contractor and State can meet the Contractor and State's shared responsibility model 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 Recover Test that its Disaster Recovery Capabilities meet the RPO and RTO requirements.

IN WITNESS WHEREOF,

SKYWARD INC.:



10-05-2024

CONTRACTOR SIGNATURE

DATE

*Ray Ackerland, President*

PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)

TENNESSEE DEPARTMENT OF EDUCATION:

LIZZETTE REYNOLDS, COMMISSIONER

DATE

## Attachment A – Base Functionality

### Base (Core) Functionality for Skyward, Inc.:

- Student Management (Online Course Requests, Message Center, Report Cards & Transcripts, Activities, Custom Forms, Scheduling, Attendance, Behavior Management, Reporting)
- Educator Gradebook (Standards and Secondary)
- Family and Student Access
- Health Records
- State Reporting
- Test Score Import
- Fee Tracking
- Graduation Requirements
- Professional Development Center

**Attachment B [Task Order (TO)]**TASK  
ORDER  
BETWEENTHE  
[INSERT EA  
NAME]

and

[INSERT CONTRACTOR  
NAME]

This Task Order (TO), by and between the [INSERT EA NAME], hereinafter referred to as the "EA" and [INSERT CONTRACTOR NAME], hereinafter referred to as the "Contractor" is as follows:

The Contractor understands and agrees that this TO is governed by the provisions of Edison Contract Number [INSERT CONTRACTOR EDISON CONTRACT NUMBER], hereinafter referred to as the "Master Contract". In the provision of services pursuant to this TO, the Contractor will conform to these provisions in their entirety. In the event of a conflict between the TO and the Master Contract, the documents shall govern in the order of preference given in the Master Contract.

This TO shall be effective for the period commencing on [INSERT START DATE], and ending on [INSERT END DATE], unless amended.

The Contractor hereby grants to EA a limited, nonexclusive, non-transferable, non-assignable, non-sublicensable license to use the Contractor's software described below, solely for the purposes set forth in the Master Contract and for no other purpose whatsoever, without the express written consent of the Contractor.

Subscriber Student Enrollment	Permitted Number of Support Contacts	Permitted Number of IT Contacts	Additional Support Contact for Food Service or Special Education
0 – 5,000	2	1	1
5,001 – 10,000	3	2	1
10,001 – 20,000	4	3	2
20,000+	5	4	2

In no event shall the maximum liability of the EA under this TO exceed [INSERT DOLLAR AMOUNT]. For the services provided pursuant to this TO, this amount shall constitute the TO Project Price and the entire potential compensation due the Contractor for the goods and/or services and all of the Contractor's obligations hereunder regardless of the difficulty, travel, administrative fees, or materials/equipment required. The Contractor shall be compensated as specified in the associated Statement of Work at the fixed-prices and/or hourly rate(s) quoted in the Contractor's Project Quote and transcribed here:

<b>Service Description</b>	<b>Amount</b> (per compensable increment)
DELIVERABLE	\$Number
JOB TITLE	\$Number per hour
Use & Repeat Rows Above as Necessary	

Payments to the Contractor pursuant to this TO will be made in accordance with the Tennessee Prompt Payment Act. Invoices shall be submitted to:

[INSERT AGENCY NAME AND BILLING ADDRESS FROM THE SOW]

The EA may, at any time and for any reason, terminate this TO in accordance with Contract Section A.7.b.

This TO may be modified only by a written amendment in accordance with the Contract.

INSERT EA AND CONTRACT SIGNATURE LINES

## ATTACHMENT C

## ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE

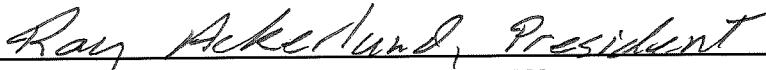
SUBJECT CONTRACT NUMBER:	83609
CONTRACTOR LEGAL ENTITY NAME:	Skyward Inc
EDISON VENDOR IDENTIFICATION NUMBER:	0000169597

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. If said individual is not the chief executive or president, this document shall attach evidence showing the individual's authority to contractually bind the Contractor.



PRINTED NAME AND TITLE OF SIGNATORY



DATE OF ATTESTATION