

Learning Management System Request for Application

Table of Contents

- **Part I: Administrative and General Information**
 - Purpose, Background, and Goals
 - Definitions
 - Schedule of Events
 - Proposal Format
 - Point Allocations for Submission
 - Legal Notifications
- **Part II: Scope of Work**
 - Description of work
 - Deliverables
- **Part III: Data, Intellectual Property Rights and Security**
- **Part IV: Attachments**

PART I: ADMINISTRATIVE AND GENERAL INFORMATION

Purpose, Goals, and Objectives

This Request for Applications (RFA) is issued by the Louisiana Department of Education, Office of Teaching and Learning for the purpose of obtaining proposals from high quality vendors that provide a Learning Management System (LMS) and related services as detailed in Attachment I. The high-quality vendors selected will be published in a Learning Management System Vendor Guide to be used by Louisiana school systems to select a vendor for these services.

Louisiana’s educational technology vision is that all students graduate with the skills, knowledge, and experiences to compete in a highly-connected digital world. Louisiana believes technology has the power to transform learning for both teachers and learners and that it provides Louisiana’s students the opportunity to compete with their peers nationwide.

Since continuous education is now a part of how school systems operate, a Learning Management System is essential. School systems operate virtually with educators providing support for teachers, instruction for students, and communications with families. Some school systems lack a cohesive system to implement these services effectively in the virtual setting.

In alignment with Louisiana’s Educational Technology Plan, LDOE will provide a high quality LMS vendor guide to relieve school systems of the time-intensive process of securing an LMS during a global pandemic and ensure equity in pricing and quality of LMS vendors across the state. Any resulting contractual agreements from this RFA will be with Louisiana School(s)/Districts, in accordance with provisions of a contract with Software House International (SHI).

BACKGROUND

The Louisiana State Board of Elementary and Secondary Education (BESE) and the Louisiana Department of Education (LDOE) serve over 700,000 students and 45,000 teachers across over 200 school systems.

BESE and the LDOE are committed to ensuring every student is on track to be successful in post-secondary education and the workforce through their comprehensive plan – *Louisiana Believes*.

Louisiana Believes is built on the premise that Louisiana students are just as capable as any students in America, and that those closest to children – parents and teachers – are best positioned to help students achieve those expectations. This plan focuses on raising expectations and educational outcomes for students in five major focus areas:

- **Unification of child care, Head Start and Pre-Kindergarten** to ensure that all students are ready for Kindergarten
- **Alignment of standards, curriculum, assessments, and professional development** to provide students and teachers with the tools they need to meet new standards
- **Preparation of every aspiring educator** under the guidance of an effective mentor, in the classroom, on the job
- **Creation of opportunities for every graduate** through Jump Start career education and college-level Advanced Placement or dual enrollment coursework
- **Focus on students in persistently struggling schools** by transforming those schools and creating new options for their families

Teachers are most effective when they have access to a **high-quality curriculum, ongoing professional development** that helps them use that curriculum effectively, and data from a limited number of **standards-aligned non-summative assessments** which measure how well students are meeting the outcomes of the high-quality curriculum.



DEFINITIONS

- A. Shall and Will** –The terms “shall” and “will” denote mandatory requirements.
- B. Must** – The term “must” denotes mandatory requirements.
- C. May and Can** – The terms “may” and “can” denote an advisory or permissible action.
- D. Should** – The term “should” denotes a desirable action.
- E. Agency** – Any department, commission, council, board, office, bureau, committee, institution, agency, government, corporation, or other establishment of the executive branch of this state authorized to participate in any contract resulting from this solicitation.
- F. Curriculum** – For the purposes of this RFA, curriculum refers to high-quality birth-12 curriculum as determined by the LDOE.
- G. Discussions** – For the purposes of this RFA, a formal, structured means of conducting written or oral communications/presentations with responsible Proposers who submit proposals in response to this RFA.
- H. DOA** – Division of Administration
- I. LDOE** – Louisiana Department of Education, herein referred to as the State
- J. Louisiana Student Standards** – [Louisiana’s academic content standards](#) are typically reviewed and revised by committees of Louisiana educators every 7 years. BESE reserves the right to modify academic standards each year.
- K. OSP** – Office of State Procurement
- L. Proposer** – A firm or individual who responds to this RFA
- M. RFA** – Request for Application
- N. State** – The State of Louisiana
- O. Authorized User** - State agencies, public and private local education agencies, and other parties authorized to procure services related to this RFA and the associated state contract

SCHEDULE OF EVENTS

Event	Date
Advertise RFA and Mail Public Announcements	By March 26, 2021
Deadline for Receipt of Written Inquiries	April 2, 2021
Issue Responses to Written Inquiries	April 6, 2021
Deadline for Receipt of Proposals	April 16, 2021
Notice of Intent to Award Announcement	April 21, 2021
Vendor Guide Released	April 23, 2021

PROPOSAL SUBMISSION

Firms/individuals who are interested in providing services requested under this RFA must submit a proposal containing the mandatory information specified. The proposal must be received by the RFA Coordinator on or before 2:00 p.m. Central Daylight Time on the date specified in the Schedule of Events. Application materials should be uploaded to <https://louisianabelieves.smapply.io> and two soft copies (on flash drive) should be mailed to the address below allowing sufficient delivery time to ensure receipt of their proposal by the time specified. The proposal package must be delivered at the proposer's expense to:

Nicole Wilson, Procurement Manager
Louisiana Department of Education
Office of Management and Finance
P.O. Box 94064
Baton Rouge, LA 70804-9064
Phone: (225) 342-3828

For courier delivery, the street address is Louisiana Department of Education, Purchasing and Contracts Section, **1201 North 3rd Street, 5th Floor, Room 5-242, Baton Rouge, LA 70802**, and the telephone number is 225-342-3828. It shall be solely the responsibility of each proposer to ensure that its proposal is delivered at the specified place and prior to the deadline for submission. Proposals received after the deadline will not be considered.

Mandatory Qualifications

Proposers must meet the following qualifications prior to the deadline for receipt of proposals.

- Has successfully implemented and provided an online learning management system for an organization that serves students and school systems

Desirable Qualification for Proposer

All partners approved through this RFA will be expected to:

- Collaborate with LDOE and school systems to incorporate content and PD created and provided by teachers, school systems, and LDOE (ELA Guidebooks, formative assessment items, Content Leaders, tutoring resources)

- Collaborate with Software House International (SHI) to provide per student pricing for all LMS components (both base and add-ons) and per hour cost for any services/training under Louisiana State Contract [4400011410](#)
- Complete the Feature Survey at this address: <https://forms.gle/tAwRbpynadX11tYN7>
- Work directly with Louisiana School(s)/Districts on any resulting contractual agreements from this RFA, in accordance with provisions of a contract with SHI.

State Contract Contact for Proposers at Software House International (SHI):

Ashley Dunn, State of LA Account Executive

Ashley_Dunn@shi.com

225-326-3962

Additional Opportunities for Approved Partners

Upon selection as an approved vendor in the LMS Vendor Guide, all vendors approved through this RFA are authorized to:

- Contract directly with school systems to deliver services available through SHI for the deliverables approved in the partner's application

The work tasks and deliverables described in the RFA constitute a challenging project that requires year-round implementation and support. The proposer shall provide a sufficient number of qualified personnel to work closely with the State to manage the design and possible execution of the LMS and training. Proposers must carefully consider the human resources necessary to complete the work activities of the RFA and will demonstrate in their proposals that they have sufficient human resources to complete project work in a timely manner. Companies should consider submitting a proposal only if they are committed to assigning the necessary resources to complete a project of this magnitude.

- The proposer must have three (3) years' experience delivering and supporting small (1000 or less students), medium (1000-10000 students) and large school system (more than 10,000 students) implementations, prior to the deadline for proposal submittal, in working on projects similar in size, scope, technical requirements, and function to the proposed agreement. Similar projects focused in other content areas are acceptable.
- Proposers with statewide multi-school systems implementation experience are preferred.
- Names, titles, addresses, e-mails, and telephone numbers of at least three references for whom similar large-scale projects have been developed and implemented shall be supplied. Brief descriptions of these projects in terms of work performed should include the development and implementation of customized, curriculum-based professional development.

The LDOE estimates that at least two staff members will be needed. The proposer must show evidence, with resumes, that staff members assigned to this project possess the credentials and experience required below.

- The program management staff has credentials in management with experience in managing similar large-scale programs.
- The staff has credentials in educational technology, plus experience in developing and leading professional development for teachers.

PROPOSAL FORMAT

Proposers interested in submitting an application for this RFA, shall include the following components:

- **Cover Letter:** A cover letter should be submitted on the proposer's official business letterhead explaining the intent of the proposer.
- **Table of Contents:** The proposal should be organized in the order contained herein.
- **Proposal:** This section should include the following:
 1. **Section 1: Provider Summary**
 - a. Organization name

- b. Organization contact name
 - c. Contact email address
 - d. Contact phone number
 - e. Brief description of organization (corporate structure, number of years in business, mission statement etc.)
- 2. Section 2: Provider Goals, Background and Experience**
- a. Interest in LMS work
 - b. Approach to LMS implementation and support
 - c. Prior experience in working on projects similar in size, scope, and function to the proposed contract.
 - 1. Include professional development and teacher training for similar projects.
 - 2. Examples should reflect three (3) years prior to the application deadline.
 - d. Quality measurement of selected deliverables and results
 - e. Information about all current and pending contracts including schedules and staff assignments
- 3. Section 3: Program Description and Scope of Services**
- a. This section should include the following:
 - 1. Overview and of the LMS Platform
 - 2. Functional and Technological Approach
 - a. Importing and exporting courses
 - b. Administration Tools
 - c. Content Development and sharing
 - d. Assessment Capabilities
 - e. Course Shell Features
 - f. Web Conferencing Tools
 - g. Content Repository
 - h. Third-party Tool Support
 - i. Hosting Environment
 - j. Security
 - k. Disaster Recovery
 - l. Service Level
 - 3. Comprehensive Professional Development Plan
 - a. Draft outline of trainings for school system, school leader, teacher, student, and family users
 - b. Timeline for implementation
 - c. Draft of a training for a school system, school leader, teacher, student, or family user
 - 4. Ongoing Technical Support and Customer Service
 - a. Plan for providing customer service through various avenues (chat, email, phone, face to face, virtual) for students, parents, teachers, and administrative staff
 - 5. Service, Support, Warranty, and Maintenance
 - a. Proposer should describe its functional and technical approach to the conversion of existing courses and materials to the format necessary for the proposed LMS and CR. In addition, the proposer should address and describe the escalation procedures and support levels provided for issues relating to course and materials conversion.
 - b. Proposer should describe its functional approach to technical and implementation support.
 - c. Proposer should describe support offerings available, including times when support is available, contact methods, average response times, and escalation procedure for unresolved issues.

- d. Proposer should define the terms and limitations of any warranty applying to the project.
- e. Proposer should describe any ongoing or standard maintenance required for the system, as well as the support for and implementation of it.

4. Section 4: Qualifications of Personnel

- a. Proposers should clearly describe their ability to exceed the qualifications described in the Mandatory Qualifications for Proposer section.
- b. Proposers should clearly describe their ability to exceed the desired qualifications described in the Desirable Qualifications for Proposer section.
- c. Proposers should provide detailed information about the experience and qualifications of the proposer’s assigned personnel considered key to the success of the project. This information should include education, training, technical experience, functional experience, specific dates and names of employers, relevant and related experience, past and present projects with dates and responsibilities, and any applicable certifications. This should also specifically include the role and responsibilities of each person on this project, his/her planned level of effort, his/her anticipated duration of involvement, and his/her on-site availability. Customer references (name, title, company name, address and telephone number) should be provided for the cited projects in the individual resumes.

5. Section 5: Cost Information

- a. Approved partners are authorized to work with SHI to provide the breakdown of costs. Proposers should provide an assurance (1 page maximum) outlining how they plan to work with SHI to determine the breakdown of costs and how they will provide LDOE with costs in a table format for reading and comprehension ease. Costs include:
 - 1. Cost of Course Migration
 - 2. Cost of Initial Set Up
 - 3. Cost of Professional Development Services
 - 4. LMS base and add-on licensing costs and fees
 - 5. CR licensing costs and fees
 - 6. All hosting services and fees
 - 7. Cost for second license and hosting
 - 8. Cost break out for 5-year contract, including two 1-year extensions beyond initial 3-year contract term, per student
 - 9. Provide cost models or discounts for multi-school system or statewide procurements.
 - 10. Provide cost models or discounts for multi-year procurements.

6. Section 6: Engagement and Support

- a. Process for collecting feedback and responding to teachers regarding their training experiences and use of LMS
- b. Plan to collaborate with teachers and schools

7. Section 7: References

- a. Attach at least three (3) one-page letters of support for your organization. References should include similar large-scale projects that have been developed and implemented.

8. Section 8: Signature

- a. The Proposer must sign the application for it to be validated and submitted for review.

Points Allocation

The LDOE will score each RFA using the following points allocation structure, based on the [Proposal Format](#) section in Part I: Administrative and General Information:

<p>Evaluation Criteria</p> <p>For a proposer to be considered for approval, they must receive a minimum score of 80 points.</p>
<p>Section 1: Provider Summary (5 points)</p>
<p>Section 2: Provider Goals, Background and Experience (15 points)</p>
<p>Section 3: Program Description and Scope of Services (35 points)</p>
<p>Section 4: Qualifications of Personnel (10 points)</p>
<p>Section 5: Cost Information (15 points)</p>
<p>Section 6: Engagement and Support (15 points)</p>
<p>Section 7: References (3 points)</p>
<p>Section 8: Signature (2 points)</p>

The proposal will be evaluated in light of the material and the substantiating evidence presented to the State, not on the basis of what may be inferred.

Number of Copies of Proposals

The State requests that application materials be uploaded to <https://louisianabelieves.smapply.io> and two soft copies (on flash drive) should be mailed to the address below allowing sufficient delivery time to ensure receipt of their proposal by the time specified. All materials, both uploaded to the link above and soft copies, should include original signatures. Two (2) electronic versions should be submitted on a flash drive and received by mail on or before the deadline. A redacted copy of the application materials may be included with confidential information, trade secrets, and proprietary information redacted to the RFA Coordinator to the address specified. A certified copy of a board resolution granting such authority should be submitted if the proposer is a corporation. The copy of the proposal with original signatures will be retained for incorporation in any MOU resulting from this RFA.

Legibility/Clarity

Responses to the requirements of this RFA in the formats requested are desirable with all questions answered in as much detail as practicable. The proposer’s response should demonstrate an understanding of the requirements. Proposals prepared simply and economically, providing a straightforward, concise description of the proposer’s ability to meet the requirements of the RFA are also desired. Each proposer shall be solely responsible for the accuracy and completeness of its proposal.

Licenses and Permits

Contractor shall secure and maintain all licenses and permits, and pay inspection fees required to do the work required to complete this contract.

Confidential Information, Trade Secrets, and Proprietary Information

All financial, statistical, personal, technical and other data and information relating to the State's operation which are designated confidential by the State and made available to the partner in order to carry out this agreement, or which become available to the partner in carrying out this agreement, shall be protected by the partner from unauthorized use and disclosure through the observance of the same or more effective procedural requirements as are applicable to the State. The identification of all such confidential data and information as well as the State's procedural requirements for protection of such data and information from unauthorized use and disclosure shall be provided by the State in writing to the partner. If the methods and procedures employed by the partner for the protection of the partner's data and information are deemed by the State to be adequate for the protection of the State's confidential information, such methods and procedures may be used, with the written consent of the State, to carry out the intent of this paragraph. The partner shall not be required under the provisions of the paragraph to keep confidential any data or information which is or becomes publicly available, is already rightfully in the partner's possession, is independently developed by the partner outside the scope of the contract, or is rightfully obtained from third parties.

Under no circumstance shall the partner discuss and/or release information to the media concerning this project without prior express written approval of the LDOE.

Only information which is in the nature of legitimate trade secrets or non-published financial data shall be deemed proprietary or confidential. Any material within a proposal identified as such must be clearly marked in the proposal and will be handled in accordance with the Louisiana Public Records Act, R.S. 44: 1-44 and applicable rules and regulations. Any proposal marked as confidential or proprietary in its entirety shall be rejected without further consideration or recourse.

PROPOSAL CLARIFICATIONS PRIOR TO SUBMITTAL

Proposer Inquiries

Written questions regarding RFA requirements or Scope of Services must be submitted to the RFA Coordinator.

Email: RFP_LDE@la.gov

The State will consider written inquiries and requests for clarification of the content of this RFA received from potential proposers. Written inquiries must be received by 2:00 p.m. CST on the date specified in the Schedule of Events. The State shall reserve the right to modify the RFA should a change be identified that is in the best interest of the State.

Official responses to all questions submitted by potential partners will be posted by the date specified in the Schedule of Events at <https://wwwcfprd.doa.louisiana.gov/osp/lapac/pubMain.cfm>

Only the RFA Coordinator has the authority to officially respond to a proposer's questions on behalf of the State. Any communications from any other individuals shall be not binding to the State.

Blackout Period

The Blackout Period is a specified period of time during a competitive sealed procurement process in which any proposer, bidder, or its agent or representative, is prohibited from communicating with any state employee or partner of the State involved in any step in the procurement process about the affected procurement. The Blackout Period applies not only to state employees, but also to any partner of the State. "Involvement" in the procurement process includes but may not be limited to project management, design, development, implementation, procurement management, development of specifications, and evaluation of proposals for a particular procurement. All solicitations for competitive sealed procurements will identify a designated contact person, as per Section 1.7.2 of this RFA. All communications to and from potential proposers, bidders, vendors and/or their representatives during the Blackout Period must be in accordance with this solicitation's defined method of

communication with the designated contact person. The Blackout Period will begin upon posting of the solicitation. The Blackout Period will end when the approved partners are awarded.

In instances in which a prospective proposer is also an incumbent partner, the State and the incumbent partner may contact each other with respect to the existing contract only. Under no circumstances may the State and the incumbent partner and/or its representative(s) discuss the blacked-out procurement.

Any bidder, proposer, or state partner who violates the Blackout Period may be liable to the State in damages and/or subject to any other remedy allowed by law.

Any costs associated with cancellation or termination will be the responsibility of the proposer or bidder.

Notwithstanding the foregoing, the Blackout Period shall not apply to:

1. A protest to a solicitation;
2. Duly noticed site visits and/or conferences for bidders or proposers;
3. Oral presentations during the evaluation process
4. Communications regarding a particular solicitation between any person and staff of the procuring agency provided the communication is limited strictly to matters of procedure. Procedural matters include deadlines for decisions or submission of proposals and the proper means of communicating regarding the procurement, but shall not include any substantive matter related to the particular procurement or requirements of the RFA.

Errors and Omissions in Proposal

The State reserves the right to seek clarification of any proposal for the purpose of identifying and eliminating minor irregularities or informalities.

Changes, Addenda, Withdrawals

State shall reserve the right to change the schedule of events or revise any part of the RFA by issuing an addendum to the RFA at any time. Addenda, if any, will be posted at <https://wwwcfprd.doa.louisiana.gov/osp/lapac/pubMain.cfm>. It shall be the responsibility of the proposer to check the website for addenda to the RFA, if any.

Withdrawal of Proposal

A proposer may withdraw a proposal that has been submitted at any time up to the date and time the proposal is due. To accomplish this, a written request signed by the authorized representative of the proposer must be submitted to the RFA Coordinator.

Waiver of Administrative Informalities

The State shall reserve the right, at its sole discretion, to waive minor administrative informalities contained in any proposal.

Proposal Rejection/RFA Cancellation

Issuance of this RFA in no way shall constitute a commitment by the State to select the proposer as an approved partner. The State shall reserve the right to accept or reject, in whole or part, all proposals submitted and/or cancel this RFA if it is determined to be in the State's best interest.

Ownership of Proposal

All materials submitted in response to this RFA shall become the property of the State. Selection or rejection of a proposal shall not affect this right.

Cost of Offer Preparation

The State shall not be liable for any costs incurred by proposers. Costs associated with developing the proposal, preparing for oral presentations, and any other expenses incurred by the proposer in responding to this RFA shall be entirely the responsibility of the proposer and shall not be reimbursed in any manner by the State.

Taxes

Partner shall be responsible for payment of all applicable taxes from the funds to be received under this RFA.

Determination of Responsibility

Determination of the proposer's responsibility relating to this RFA shall be made according to the standards set forth in LAC 34:2536. The State must find that the selected proposer:

- Has adequate financial resources for performance, or has the ability to obtain such resources as required during performance. The State shall review the partner solvency and financial condition during the partner procurement process, annually (upon submission of annual audited financial statements), and upon any suspicion or findings of possible financial inadequacy for performance of the design work and training. The proposer's ability to demonstrate adequate financial resources for performance of the agreement or the ability to obtain such resources as required during performance under the agreement shall be given special emphasis.
- Has the necessary experience, organization, technical qualifications, skills, and facilities, or has the ability to obtain them;
- Is able to comply with the proposed or required time of delivery or performance schedule;
- Has a satisfactory record of integrity, judgment, and performance; and
- Is otherwise qualified and eligible to receive an award under applicable laws and regulations.
- Proposers should ensure that their proposals contain sufficient information for the State to make its determination by presenting acceptable evidence of the above to perform the services outlined in the agreement.

Written or Oral Discussions/Presentations

The State, at its sole discretion, may require all proposers reasonably susceptible of being selected for the award to provide an oral presentation of how they propose to meet the agency's program objectives. Any and all expenses incurred by the proposer for this presentation shall be borne by the proposer. Commitments made by the proposer at the oral presentation, if any, will be considered binding. Due to time constraints, the oral presentations may be delivered virtually rather than in-person and proposers should tentatively reserve the week of November 9, 2020 to provide a virtual presentation on their proposal. The State may adjust technical scoring as a result of clarifications provided during the oral presentations.

Acceptance of Proposal Content

All proposals will be reviewed to determine compliance with administrative and mandatory requirements as specified in the RFA. Proposals that are not in compliance will be rejected from further consideration.

Evaluation and Selection

The evaluation of proposals will be accomplished by an evaluation team, to be designated by the State, which will determine the proposals that are most advantageous to the state, taking into consideration price and the other evaluation factors set forth in the RFA.

Through this RFA, the State seeks to approve multiple organizations that meet the application requirements. Selected organizations must work collaboratively with other selected organizations under the direction of LDOE.

MOU Award and Execution

The State shall reserve the right to enter into a contract without further discussion of the proposal submitted based on the initial offers received.

The RFA and proposal of the selected proposer shall become part of any contract initiated by the State.

The selected proposer shall be expected to enter into a MOU that is substantially the same as the sample MOU included in [Attachment II](#). In no event shall a proposer submit its own standard MOU terms and conditions as a response to this RFA. The proposer should submit with its proposal any exceptions or exact MOU deviations that its firm wishes to negotiate. Negotiations may begin with the announcement of the selected proposer.

If the MOU negotiation period exceeds 14 business days or if the selected proposer fails to sign the final MOU within 7 business days of delivery, the State may elect to cancel the award.

Notice of Intent to Award

The Evaluation Team will compile the scores and make a recommendation to the head of the agency on the basis of the responsive and responsible proposers with the highest scores.

The State will notify the successful proposers and proceed to negotiate terms for final MOU. Unsuccessful proposers will be notified in writing accordingly.

The proposals received (except for that information appropriately designated as confidential in accordance with R.S. 44.1 et seq), selection memorandum, list of criteria used with the weight assigned each criterion, scores of each proposal considered along with a summary of scores, and a narrative justifying selection shall be made available, upon request, to all interested parties after the "Notice of Intent to Award" letter has been issued.

Any proposer aggrieved by the proposed award has the right to submit a protest in writing to the head of the agency issuing the proposal within 14 calendar days after the award has been announced by the agency.

The award of a MOU shall be subject to the approval of BESE the Division of Administration, Office of State Procurement.

Right to Prohibit Award

In accordance with the provisions of R.S. 39:2192, in awarding contracts after August 15, 2010, any public entity shall be authorized to reject a proposal from, or not award the contract to, a business in which any individual with an ownership interest of five percent or more, has been convicted of, or has entered a plea of guilty or nolo contendere to any state felony or equivalent federal felony crime committed in the solicitation or execution of a contract or RFA awarded under the laws governing public contracts under the provisions of Chapter 10 of Title 38 of the Louisiana Revised Statutes of 1950, professional, personal, consulting, and social services procurement under the provisions of Chapter 16 of this Title, or the Louisiana Procurement Code under the provisions of Chapter 17 of this Title.

INSURANCE REQUIREMENTS

Liability Insurance Requirements

Commercial General Liability Insurance: The partner shall maintain during the life of the contract such Commercial General Liability Insurance, if required by the State or Authorized Users, which shall protect him, the State, Authorized Users, and any subcontractors during the performance of work covered by the contract from claims or damages for personal injury, including accidental death, as well as for claims for property damages, which may arise from operations under the contract, whether such operations be by himself or by a subcontractors, or by anyone directly or indirectly employed by either or them, or in such a manner as to impose liability to the State. Such insurance shall name the State and/or Authorized User as additional insured for claims arising from or as the result of the operations of the partner or his subcontractors. In the absence of specific regulations, the amount of coverage shall be as follows: Commercial General Liability Insurance, including bodily injury, property damage and contractual liability, with combined single limits of \$1,000,000.

Staff Insurance Requirements

For the duration of any agreement with the State or an Authorized User, the partner shall procure and maintain insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the partner, his agents, representatives, employees or subcontractors. The cost of such insurance shall be included in the total cost.

Contractor shall indemnify State and its Authorized Users against any loss or expense arising out of any breach of any specified Warranty.

- A. **Period of Coverage.** The Warranty period for software and system components covered under this Contract will begin on the date of acceptance or date of first productive use, whichever occurs later, and will terminate (*spell-out*) (n) months thereafter.
- B. **Free from Defects.** Contractor warrants that the system developed hereunder shall be free from defect in design and implementation and will continue to meet the specifications agreed to during system design and Contractor will, without additional charge to the State, correct any such defect and make such additions, modifications, or adjustments to the system as may be necessary to operate as specified in the Technical Deliverables accepted by the State and Authorized Users.
- C. **Software Standards Compliance.** Contractor warrants that all software and other products delivered hereunder will comply with State standards and/or guides for resource names, programming languages, and documentation as referenced in Attachment II.
- D. **Software Performance.** Specific operating performance characteristics of the software developed and/or installed hereunder are warranted by the Contractor as stated in Attachment I.
- E. **Original Development.** Contractor warrants that all materials produced hereunder will be of original development by Contractor, and will be specifically developed for the fulfillment of this contract. In the event the Contractor elects to use or incorporate in the materials to be produced any components of a system already existing, Contractor shall first notify the State, which after whatever investigation the State may elect to make, may direct the Contractor not to use or incorporate any such components. If the State does not object, Contractor may use or incorporate such components at Contractor's expense and shall furnish written consent of the party owning the same to the State in all events. Such components shall be warranted as set forth herein (except for originality) by the Contractor and the Contractor will arrange to transfer title or the perpetual license for the use of such components to the State for purposes of the contract.
- F. **No Surreptitious Code Warranty.** Contractor warrants that software provided hereunder will be free from any "Self-Help Code". "Self-Help Code" means any back door, time bomb, or drop-dead device or other routine designed to disable a computer program with the passage of time or under the positive control of a person or party other than the State. Excluded from this prohibition are identified and State or Authorized User approved features designed for purposes of maintenance or technical support. "Unauthorized Code" means any virus, Trojan horse, worm or other software routine or component designed to permit unauthorized access to disable, erase, or otherwise harm software, equipment, or data, or to perform any other such actions. "Unauthorized Code" does not include "Self-Help Code".

PERSONNEL SECURITY REQUIREMENTS

Contractor's personnel will always comply with all security regulations in effect at the State's or School Systems' premises, and externally for materials belonging to the State or to the project. Contractor is

Indemnification and Limitation of Liability

Neither party shall be liable for any delay or failure in performance beyond its control resulting from acts of God or force majeure. The parties shall use reasonable efforts to eliminate or minimize the effect of such events upon performance of their respective duties under Contract.

Partners shall be fully liable for the actions of its agents, employees, partners or subcontractors and shall fully indemnify and hold harmless the State and its Authorized Users from suits, actions, damages and costs of every

name and description relating to personal injury and damage to real or personal tangible property caused by partner, its agents, employees, partners or subcontractors, without limitation; provided, however, that the partner shall not indemnify for that portion of any claim, loss or damage arising hereunder due to the negligent act or failure to act of the State. If applicable, partner will indemnify, defend and hold the State and its Authorized Users harmless, without limitation, from and against any and all damages, expenses (including reasonable attorneys' fees), claims, judgments, liabilities and costs which may be finally assessed against the State in any action for infringement of a United States Letter Patent with respect to the Products furnished, or of any copyright, trademark, trade secret or intellectual property right, provided that the State shall give the partner: (i) prompt written notice of any action, claim or threat of infringement suit, or other suit, (ii) the opportunity to take over, settle or defend such action, claim or suit at partner's sole expense, and (iii) assistance in the defense of any such action at the expense of partner. Where a dispute or claim arises relative to a real or anticipated infringement, the State or its Authorized Users may require the partner, at its sole expense, to submit such information and documentation, including formal patent attorney opinions, as the Commissioner of Administration shall require.

The partner shall not be obligated to indemnify that portion of a claim or dispute based upon: i) Authorized User's unauthorized modification or alteration of a Product, Material or Service; ii) Authorized User's use of the Product in combination with other products not furnished by partner; iii) Authorized User's use in other than the specified operating conditions and environment.

In addition to the foregoing, if the use of any item(s) or part(s) thereof shall be enjoined for any reason or if partner believes that it may be enjoined, partner shall have the right, at its own expense and sole discretion as the Authorized User's exclusive remedy to take action in the following order of precedence: (i) to procure for the State the right to continue using such item(s) or part (s) thereof, as applicable; (ii) to modify the component so that it becomes non-infringing equipment of at least equal quality and performance; or (iii) to replace said item(s) or part(s) thereof, as applicable, with non-infringing components of at least equal quality and performance, or (iv) if none of the foregoing is commercially reasonable, then provide monetary compensation to the State up to the dollar amount of the Contract.

For all other claims against the Partner where liability is not otherwise set forth in the final agreement or contract between the State or any Authorized User of the State's contract as being "without limitation", and regardless of the basis on which the claim is made, Partner's liability for direct damages, shall be to the extent allowed by law. Unless otherwise specifically enumerated herein or in the work order mutually agreed between the parties, neither party shall be liable to the other for special, indirect or consequential damages, including lost data or records (unless the Contractor is required to back-up the data or records as part of the work plan), even if the party has been advised of the possibility of such damages. Neither party shall be liable for lost profits, lost revenue or lost institutional operating savings.

The State and Authorized User may, in addition to other remedies available to them at law or equity and upon notice to the Partner, retain such monies from amounts due partner, or may proceed against the performance and payment bond, if any, as may be necessary to satisfy any claim for damages, penalties, costs and the like asserted by or against them.

TERMINATION

Termination of the Contract for Cause

State may terminate any agreement to which it is a party for cause based upon the failure of the partner to comply with the terms and/or conditions of the Contract; provided that the State shall give the partner written notice specifying the partner's failure. If within thirty (30) calendar days after receipt of such notice, the partner shall not have either corrected such failure or, in the case of failure which cannot be corrected in thirty (30) calendar days, begun in good faith to correct said failure and thereafter proceeded diligently to complete such correction, then the State may, at its option, place the partner in default and the Contract shall terminate on the date specified in such

notice. Failure to perform within the time agreed upon in the contract may constitute default and may cause cancellation of the contract.

Partner may exercise any rights available to it under Louisiana law to terminate for cause upon the failure of the State to comply with the terms and conditions of this contract provided that the partner shall give the State written notice specifying the State agency's failure and a reasonable opportunity for the State to cure the defect.

Termination of the Contract for Convenience

State may terminate any agreement to which it is a party at any time without penalty by giving thirty (30) calendar days written notice to the partner of such termination or negotiating with the partner an effective date. Partner shall be entitled to payment for deliverables in progress, to the extent work has been performed satisfactorily.

Termination for Non-Appropriation of Funds

The continuation of any contract to which the State is a party shall be contingent upon the appropriation of funds by the legislature to fulfill the requirements of the contract by the legislature. If the legislature fails to appropriate sufficient monies to provide for the continuation of the contract, or if such appropriation is reduced by the veto of the Governor or by any means provided in the appropriations act of Title 39 of the Louisiana Revised Statutes of 1950 to prevent the total appropriation for the year from exceeding revenues for that year, or for any other lawful purpose, and the effect of such reduction is to provide insufficient monies for the continuation of the contract, the contract shall terminate on the date of the beginning of the first fiscal year for which funds have not been appropriated.

Assignment

No partner shall assign any interest in this contract by assignment, transfer, or novation, without prior written consent of the State. This provision shall not be construed to prohibit the partner from assigning to a bank, trust company, or other financial institution any money due or to become due from approved contracts without such prior written consent. Notice of any such assignment or transfer shall be furnished promptly to the State.

Audit of Records

The State Legislative Auditor, agency, and/or federal auditors and internal auditors of the Division of Administration shall have the option to audit all accounts directly pertaining to the contract for a period of three (3) years from the date of the last payment made under this contract. Records shall be made available during normal working hours for this purpose.

Civil Rights Compliance

The partner shall agree to abide by the requirements of the following as applicable: Title VI and Title VII of the Civil Rights Act of 1964, as amended by the Equal Opportunity Act of 1972, Federal Executive Order 11246, the Federal Rehabilitation Act of 1973, as amended, the Vietnam Era Veteran's Readjustment Assistance Act of 1974, Title IX of the Education Amendments of 1972, the Age Act of 1975, and partner shall agree to abide by the requirements of the Americans with Disabilities Act of 1990.

The Partner agrees not to discriminate in its employment practices, and will render services under this contract without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, veteran status, political affiliation, disability, or age in any matter relating to employment. Any act of discrimination committed by partner, or failure to comply with these statutory obligations when applicable shall be grounds for termination of this contract.

Record Ownership

All records, reports, documents, products, or other material related to any contract resulting from this RFA and/or obtained or prepared by partner in connection with the performance of the services contracted for herein shall become the property of the State and shall, upon request, be returned by partner to the State, at partner's expense, at termination or expiration of the contract.

Any records, reports, documents, materials, or products created or developed under this contract shall be the property of the State. Any work undertaken by Contractor pursuant to this contract shall be work made for hire, and the contractor hereby transfers and assigns to the State any intellectual property rights, including but not limited to the copyright of any records, reports, documents, materials or products created or developed by Contractor in connection with the performance of this contract. No records, reports, documents, materials or products created or developed under this contract can be distributed free or for profit without explicit written approval from the State Superintendent of Education.

Entire Agreement/ Order of Precedence

This contract, together with the RFA and addenda issued thereto by the State, the proposal submitted by the partner in response to the State's RFA, and any exhibits incorporated herein by reference, shall constitute the entire agreement between the parties with respect to the subject matter.

In the event of any inconsistent or incompatible provisions, this signed agreement (excluding the RFA and the partner's proposal) shall take precedence, followed by the provisions of the RFA, and then by the terms of the partner's proposal.

Contract Changes

No amendment or variation of the terms of any contract shall be valid unless made in writing, signed by the parties and approved as required by law. No oral understanding or agreement not incorporated in the contract shall be binding on any of the parties.

Substitution of Personnel

The partner's personnel assigned to this Contract shall not be replaced without the prior written consent of the State. Such consent shall not be unreasonably withheld or delayed provided an equally qualified replacement is offered. In the event that any State or partner personnel become unavailable due to resignation, illness, or other factors, excluding assignment to project outside this contract, outside of the State's or partner's reasonable control, as the case may be, the State or the partner shall be responsible for providing an equally qualified replacement in time to avoid delays in completing tasks. The partner will make every reasonable attempt to assign the personnel listed in his proposal.

Governing Law

This contract shall be governed by and interpreted in accordance with the laws of the State of Louisiana. Venue of any action brought with regard to this contract shall be in the Nineteenth Judicial District Court, parish of East Baton Rouge, State of Louisiana.

Claims or Controversies

Any claim or controversy arising out of any contract to which the State is a party shall be resolved by the provisions of Louisiana Revised Statutes 39:1672.2-1672.4.

Code of Ethics

Proposers shall be responsible for determining that there will be no conflict or violation of the Ethics Code if their company is awarded the contract. The Louisiana Board of Ethics shall be the only entity which can officially rule on ethics issues.

Corporate Requirements

If the partner is a corporation not incorporated under the laws of the State of Louisiana, the partner shall have obtained a certificate of authority pursuant to R. S. 12:301-302 from the Secretary of State of Louisiana.

If the partner is a for-profit corporation whose stock is not publicly traded, the partner shall ensure that a disclosure of ownership form has been properly filed with the Secretary of State of Louisiana.

II. Scope of Work

PART II: SCOPE OF WORK/SERVICES

LEARNING MANAGEMENT SYSTEM GOALS

Goal 1: Louisiana school systems can select an LMS from a Learning Management System Vendor Guide that includes a clear price per student.

Goal 2: All LMS users deeply understand how to utilize the LMS.

Goal 3: All LMS users are provided ongoing technical support.

Goal 4: A comprehensive school system professional development plan for all users

DESCRIPTION OF DELIVERABLES:

The proposed LMS vendors will provide proposals for:

1. An LMS platform
2. A comprehensive school system professional development plan for all users
3. Ongoing technical support for all users

Deliverable 1: An LMS proposal

The proposal will include pricing for an LMS platform with the following features. Additional features or options, if available, along with pricing should be provided.

- A web-based platform with the ability to deliver synchronous and asynchronous instruction including features for teacher planning; lesson creation; and creating, tracking, providing feedback on assignments and capabilities to measure progress, assessments provide feedback (video, text, and chat), and create reports on student participation, engagement, and mastery to the students, school and district staff, and families
- Interoperability with common Louisiana student information systems to include automated synchronization of roster, calendar, and gradebook data.
- The ability to publish, share and or export content across LMS implementations at the state, school system or school level.
- A list of third-party integration APIs or packages

Deliverable 2: A Proposal for a Comprehensive Professional Development Plan

The proposal will include pricing for a comprehensive professional development plan which includes:

- A timeline for implementation
- Modules for school system, school leader, teacher, student, and family users
- Synchronous and asynchronous modules on all features within the user permissions
- Goals and objectives for all modules
- Steps for ensuring users understand and know how to use the system
- Incorporate content and PD created and provided by teachers, school systems, and LDOE (ELA Guidebooks, formative assessment items, Content Leaders, tutoring resources)

Deliverable 3: A Proposal for an Ongoing Technical Support and Customer Service Plan

The proposal will include pricing for technical support which includes:

- Provide sophisticated levels of technical support through various avenues (chat, email, phone, face to face, virtual)
- Provide ongoing, high-quality technical and design support at the student, parent, teacher, and administrative levels to ensure successful system implementation and usage

- Have the capacity to support technical and customer service requests for all school systems in a timely manner
- Provide frequent reports to school systems and LDOE on quality and quantity of support requests
- Provide a user-friendly guide on how to use all features within the system

PERFORMANCE STANDARDS

Performance Requirements will be defined by the Partner and State or Authorized User as part of their agreement under the State's Master Contract with SHI. Performance documentation will include performance measurements, performance evaluation metrics, and a monitoring plan. For this RFA, the proposer should provide an example performance plan used in the past for a similar project as described within the Scope of Services.

PART III: DATA AND SECURITY REQUIREMENTS

3.1 CONFIDENTIAL, PROPRIETARY AND PERSONALLY IDENTIFIABLE DATA/INFORMATION

3.1.1 DATA INDEMNIFICATION AND LIMITATION OF LIABILITY

All financial, statistical, personal, technical and other data and information relating to the State's or an Authorized User's operation which are designated confidential by the State, Authorized User or confidential as a matter of law and made available to the Partner in order to carry out all work stipulated under this RFA or agreement under the State Contract, or which become available to the Contractor in carrying out all work stipulated under this RFA or agreement under the State Contract, shall be protected by the partner from unauthorized use and disclosure through the observance of the same or more effective procedural requirements as are applicable to the State. The identification of all such confidential data and information as well as the State's and/or Authorized User's procedural requirements for protection of such data and information from unauthorized use and disclosure shall be provided by the State and/or Authorized User in writing to the Partner. If the methods and procedures employed by the Partner for the protection of the Partner's data and information are deemed by the State and/or Authorized User to be adequate for the protection of the State's and/or Authorized User's confidential information, such methods and procedures may be used, with the written consent of the State and/or Authorized User, to carry out the intent of this paragraph. The Partner shall not be required under the provisions of the paragraph to keep confidential any data or information which is or becomes publicly available, is already rightfully in the Partner's possession, is independently developed by the Partner outside the scope of the State's contract, Authorized User's agreement, or is rightfully obtained from third parties.

Under no circumstance shall the Contractor discuss and/or release information to the media concerning this project without prior express written approval of the State, Authorized User(s) and/or the Louisiana Department of Education.

Contractor agrees to maintain the confidentiality of any and all personally-identifiable student data (hereinafter sometimes referred in this clause as "the data") disclosed to it by State and to use such data for no other purpose other than the fulfillment of its obligations under the contract. Contractor shall retain the original version of the data at a single location and shall not make a copy or extract of the data available to anyone except those who have a need for the data to perform the services referenced in this Contract. Contractor shall maintain the data, whether in hard copy or electronic form, in an area that has limited access only to its authorized personnel. Contractor shall not permit removal of the data from the limited access area. Contractor will ensure that access to the data maintained on computer files or databases is controlled by password protection. Contractor shall establish procedures to ensure that the target data cannot be extracted from a computer file or database by unauthorized individuals. Contractor shall maintain all printouts, disks, or other physical products containing student-level data in locked cabinets, file drawers, or other secure locations when not in use. Contractor also agrees to return such data to the LEA's including all copies, whether in electronic or hard copy form, when it completes the service to be rendered to the State or when this contract is terminated or expires, whichever occurs first.

All data and documentation contained in the Contractor's Proposal, and all Data and Documentation that arise out of this Contract, shall be the property of the State and shall not be copyrighted, trademarked, or patented by the Contractor.

All Data shall be the property of Authorized Users. Contractor shall acquire no rights or licenses, including without limitation intellectual property rights or licenses, to use the Data for its own purposes by virtue of this Contract or otherwise. The Contractor shall not acquire and shall not claim any security interest in the Data. The Contractor shall not mine, access or use in demonstrations any information from the Data for any purpose. Contractor may use the Data solely for the purposes of carrying out its obligations under this Contract.

All information stored in or accessed by the Application that is the result of any processing of Data shall be the property of the Authorized Users. The Authorized Users shall have the ability to access the Data and such information twenty-four (24) hours per day except during Excusable Downtime.

All reports, outputs or results generated in connection with this RFA and associated State Contract shall be the property of the State or Authorized User and shall not be used for demonstrations or for any purpose except as authorized by the State or Authorized User.

Data is and shall remain the sole and exclusive property of the Authorized User, including Intellectual Property rights therein. Additionally, all right, title and interest in and to any Data relating to an Authorized User's business shall remain the property of such Authorized User, whether or not supplied to Contractor or uploaded into the Application. Nothing in this RFA, associated State Contract, or agreement shall be construed as conveying any rights or interest in the Data to the Contractor or any Third Party.

Contractor may collect Authorized User-specific information only as necessary to provide the Licensed Services and to implement, improve and maintain the Application. Contractor shall not disclose or provide any information or Data regarding any Authorized User to any Third Party for any reason unless required by this Contract, by law, by regulation, or by an order of a court of competent jurisdiction. The requirement of non-disclosure shall extend beyond the Life of the Contract.

Upon termination or expiration of this Contract, Contractor shall either provide the Data in whole within a database structure with full access to all information by the State and, if applicable, the LEA, and the Authorized User or, at the direction of the State, destroy such Data and certify in writing to the State that said Data in all formats have been destroyed. The Contractor shall not charge any access fees for any reason for requested Data from the State or an Authorized User. The Contractor shall not charge any fees for migration, export, files or any method of Data transfer from the Contractor to the State during the Life of the Contract, at the end of the Contract or during transition for any reason.

Contractor shall not use information disclosed to it by the State for any purpose not expressly permitted in this Contract. Contractor cannot disclose any document, whether in hard copy or electronic form, or otherwise disclose to any third party any information in any form whatsoever or under any circumstances which would directly or indirectly makes a student's identity easily traceable. This contract is entered into by Contractor and the State in accordance with the provisions of the Family Educational Rights and Privacy Act, 20 U.S.C. Section 1231(g), *et seq.*, (FERPA), the Individuals with Disabilities Education Act, 20 U.S.C. Section 1400, *et seq.*, (IDEA), and La. R.S. 17:3913. Contractor hereby acknowledges that all documents which include student information contained in or derived from a student's education records are deemed confidential pursuant to FERPA, IDEA and La. R.S. 17:3913. Contractor agrees not to re-disclose any such student information without the prior written consent of the student's parent or the student, in the case of students who have reached the age of majority, or unless re-disclosure is otherwise authorized by law. Contractor agrees to return all documents deemed confidential pursuant to FERPA, IDEA and/or La. R.S. 17:3913 to LDOE at the conclusion of this contract.

3.1.2 Duty of Non-Disclosure and Security Precautions

Contractor shall not use Confidential Information for any purpose other than the limited purposes set forth in this Contract. Contractor shall hold the Confidential Information in confidence, and shall not disclose such Confidential Information to any persons other than its Contracted Personnel who have a business related need to have access to such Confidential Information in furtherance of the limited purposes of this Contract and who have been apprised of, and agree to maintain, the confidential nature of such information in accordance with the terms of this Contract. Contractor shall be responsible for the breach of this Contract by any of its Contracted Personnel.

Contractor shall institute and/or maintain such procedures as are reasonably required to maintain the confidentiality of the Confidential Information, and shall apply the same level of care as it employs to protect its own confidential

information of like nature.

Contractor shall ensure that all indications of confidentiality contained on or included in any item of Confidential Information shall be reproduced by Contractor on any reproduction, modification, or translation of such Confidential Information. If requested by the State, Contractor shall make a reasonable effort to add a proprietary notice or indication of confidentiality to any tangible materials within its possession that contain Confidential Information of the State, as directed.

3.1.3 Limitations on Obligations

The obligations of confidentiality assumed by the Contractor with respect to Confidential Information, pursuant to this Contract, shall not apply to the extent Contractor can demonstrate that such information:

- is part of the public domain without any breach of this Contract by Contractor;
- is or becomes generally known on a non-confidential basis, through no wrongful act of Contractor;
- was known by Contractor prior to disclosure hereunder without any obligation to keep it confidential;
- was disclosed to Contractor by a Third Party, which to the best of Contractor's knowledge, is not required to maintain its confidentiality;
- was independently developed by Contractor; or
- is the subject of a written agreement whereby the State consented to the disclosure of such information by Contractor on a non-confidential basis.

3.1.4 Legal Disclosure

If Contractor or any of its Contracted Personnel shall be under a legal obligation in any administrative, regulatory or judicial circumstance to disclose any Confidential Information, Contractor shall give the State prompt notice thereof (unless it has a legal obligation to the contrary) so that the State may seek a protective order or other appropriate remedy. In the event that such protective order is not obtained, Contractor and its Contracted Personnel shall furnish only that portion of the information that is legally required and shall disclose the Confidential Information in a manner reasonably designed to preserve its confidential nature.

3.1.5 Unauthorized Use, Disclosure, or Loss

If Contractor becomes aware of any threatened or actual use or disclosure of any Confidential Information that is not specifically authorized by this Contract, or if any Confidential Information is lost or cannot be accounted for, Contractor shall notify the State's Contract Manager or Contract-Liaison within the same business day the Contractor becomes aware of such use, disclosure, or loss. Such notice shall include, to the best of the Contractor's knowledge at that time, the persons affected, their identities, and the Confidential Information disclosed.

The Contractor shall take immediate steps to mitigate any harmful effects of the unauthorized use, disclosure, or loss. The Contractor shall reasonably cooperate with the State's efforts to seek appropriate injunctive relief or otherwise prevent or curtail such threatened or actual breach, or to recover its Confidential Information, including complying with a reasonable Corrective Action Plan, created by the State, that shall require the Contractor to do the following:

- Notify the affected individuals by mail or the method previously used by the State to communicate with the individual. If the Contractor cannot with reasonable diligence determine the mailing address of the affected individual and the State has not previously contacted that individual, the Contractor shall provide notice by a method reasonably calculated to provide actual notice.
- Notify consumer reporting agencies of the unauthorized release.
- Offer credit monitoring and identify theft insurance to affected individuals from a company and under terms acceptable to the State for one (1) year from the date the individual enrolls in credit monitoring.

- Provide a customer service hotline to receive telephone calls and provide assistance and information to affected individuals during hours that meet the needs of the affected individuals, as established by the State.
- Adequately staff customer service telephone lines to assure an actual wait time of less than five (5) minutes for callers.

3.1.6 Liability for Loss of Data

The Contractor shall maintain adequate supporting material or copies to enable Contractor to regenerate Data furnished to Contractor by the State or LEA. In the event of loss of such State or LEA supplied Data due to machine failure or negligence of the Contractor or its Contracted Personnel, the Contractor shall be liable for such loss and shall replace or regenerate the lost Data from the Contractor's supporting material by the methods or means deemed most suitable as agreed between the Parties.

3.1.7 Remedies for Breach of This Section

3.1.7.1 Indemnification

In the event of a breach of this Section by Contractor, Contractor shall indemnify and hold harmless the State and any of its officers, employees, or agents from any claims arising from the acts or omissions of the Contractor, and its Contracted Personnel, in violation of this Section, including but not limited to costs of monitoring the credit of all persons whose Confidential Information was disclosed, disallowances and penalties from federal oversight agencies, and any court costs, expenses, and reasonable attorney fees, incurred by the State and/or LEA(s) in the enforcement of this Section. In addition, notwithstanding anything to the contrary herein, the Contractor shall compensate the State and/or LEA(s) for the actual staff time and other costs associated with the State's and LEA(s) response to the unauthorized use or disclosure of the Confidential Information constituting the breach.

3.1.8 Equitable Relief

The Contractor acknowledges and agrees that the unauthorized use, disclosure, or loss of Confidential Information may cause immediate and irreparable injury to the individuals whose information is disclosed and to the State and LEAs, which injury shall not be compensable by money damages and for which there is not an adequate remedy available at law. Accordingly, the Parties specifically agree that the State, on its own behalf or on behalf of the affected individuals shall be entitled to obtain injunctive or other equitable relief to prevent or curtail any such breach, threatened or actual, without posting security and without prejudice to such other rights as may be available under this Contract or under applicable law.

3.1.9 Compliance Reviews

The State may conduct a compliance review of the Contractor's security procedures to protect Confidential Information under this, Confidential, Proprietary and Personally Identifiable Information, of this Contract.

3.1.10 Liability for Loss of Data/Confidential Information

In the event of loss of the State's, LEAs', and Authorized Users' Data due to machine failure or negligence of Contractor or, its agent(s) or Subcontractor(s), Contractor shall be liable for such loss and shall replace or regenerate the lost Data. The Contractor shall be subject to Liquidated Damages for breach of this Section.

3.2 INTELLECTUAL PROPERTY RIGHTS

3.2.1 Data

Contractor shall obtain no rights whatsoever in or to the Data or in or to any Authorized User's Intellectual Property. The Authorized Users shall own all Intellectual Property Rights in the Data.

3.2.2 Intellectual Property (IP) Infringement

Without limitation and notwithstanding any provision in this Contract, Contractor shall, upon receipt of notification, defend and indemnify the State, its instrumentalities, agencies, departments, boards, political subdivisions and all their respective officers, agents and employees against all actions, proceedings or claims of any nature (and all damages, settlement payments, attorneys' fees (including inside counsel), costs expenses, losses or liabilities attributable thereto) by any Third Party for actual or alleged infringement of any patent, copyright, trademark, service mark, trade secret or other property right based upon the use, copying, or modification permitted by this Contract of any software, documentation, or source code asserting or involving an IP right related to an item provided by Contractor pursuant to this Contract. The State shall allow Contractor to defend such claim so long as the defense is diligently and capably prosecuted. The State shall allow Contractor to settle such claim so long as (i) all settlement payments are made by Contractor, and (ii) the settlement imposes no non-monetary obligation upon the State. The State shall reasonably cooperate with Contractor's defense of such claim.

In the event an injunction or order shall be obtained against the State's use of any acquired item pursuant to this Contract, or if in Contractor's opinion, the acquired item is likely to become the subject of a claim of infringement or violation of an IP right, Contractor shall, without in any way limiting the foregoing, and at its expense, either: (1) procure for the State the right to continue to use, or have used, the acquired item, or (2) replace or modify the acquired item so that it becomes non-infringing but only if the modification or replacement does not adversely affect the specifications for the acquired item or its use by the State. If neither (1) or (2) above is practical, the State may require that Contractor remove the infringing item, refund to the State any charges paid by the State therefore, and take all steps necessary to have the State released from any further liability.

Contractor's obligations under this paragraph do not apply to a claim to the extent (i) that the claim is caused by Contractor's compliance with specifications furnished by the State unless Contractor knew its compliance with the State's specifications would infringe an IP right, or (ii) that the claim is caused by Contractor's compliance with specifications furnished by the State if the State knowingly relied on a third Party's IP right to develop the specifications provided to Contractor and failed to identify such product to Contractor. Contractor's obligations under this paragraph shall survive the termination, cancellation, rejection, or expiration of this Contract.

3.2.3 Defense

Contractor shall have the sole right to conduct the defense of any infringement claim or action resulting from the use of the Application or the Licensed Services and all negotiations for the compromise or settlement of such claim or action provided that, Contractor shall not enter into any compromise or settlement that shall have the effect of creating any liability or obligation (whether legal or equitable) on its part without the prior written consent of the State, and no such compromise or settlement is hereby authorized unless the Party to be indemnified obtains such compromise or settlement and complete release of liability under such compromise or settlement. If Contractor, after receiving notice of any such proceeding, fails to immediately begin the defense of such claim or action, the State may (without further notice to Contractor) retain counsel and undertake the defense, compromise, or settlement of such claim or action at the expense of Contractor.

3.2.4 Infringement Remedies

In the event that a final injunction shall be obtained against the State's use of the Licensed Services, the Application or Source Code by reason of infringement, or in the State's opinion the Licensed Services, the Application or Source Code is likely to become the subject of a claim of infringement, Contractor shall, upon notice thereof from the State, either (a) procure for the State the right to continue to use the Licensed Services, the Application and Source Code, or (b) replace or modify the Licensed Services, the Application or Source Code to make its use under this Contract non-infringing while being capable of performing the same functions, with the same performance, and operational characteristics. If the Contractor does not immediately elect and complete (a) or (b) above, the State may terminate this Contract without further obligation or liability. In such event, Contractor shall promptly refund to the State one hundred percent (100%) of all Fees paid to Contractor under this Contract, including Licensing, Hosting and Support Fees, and implementation/installation Fees.

3.3 SECURITY AUDITS

3.3.1 Annual Security Audit

During the life of the Contract, Security audits shall be conducted as agreed to by the State. Contractor shall at its expense conduct or have conducted the security audits. Examples of possible audits include:

- SAS70
- SSAE 16 SOC2 audit
- Vulnerability scan
- Full Penetration test is required to attempt a compromise of the SQL Server Integration Services (SSIS)
- ISO 27001/27002. Audit report shall include the scoping statement outlining what the audit covers and the statement of applicability that outlines the controls put in place.

Contractor shall provide the State with a complete copy of the audits and the results of the above audits, certifications, scans, and tests within seven (7) business days of the Contractor's receipt of such results.

Contractor shall give the State notice of any security/data breaches, and, to the extent that Authorized User notification is legally required, such notice should preferably be in advance or at the same time as the State notification (which shall be the Contractor's responsibility). Notification of any security/data breaches shall be given to the State's Contract Manager and appropriate LEA's and Authorized Users within twenty-four (24) hours of the Contractor becoming aware of such use, disclosure or loss. Such notice shall include, to the best of Contractor's knowledge at that time, the persons affected, their identities, and the Confidential Information and Data disclosed. See [Section 3.1](#), CONFIDENTIAL, PROPRIETARY AND PERSONALLY IDENTIFIABLE DATA/INFORMATION.

The State reserves the right to conduct a security audit at any time during the life of the Contract.

Contractor shall permit the State or its authorized representatives to carry out security or audit checks pertaining to Contractor's security and usage of personally-identifiable student information and Contractor shall cooperate with the State fully in that regard. The State or its authorized representatives shall have access, at all reasonable times on working days during working hours at Contractor's business premises, to Contractor's employees, together with records, books and correspondence and other papers and documentation or media of every kind in possession of Contractor and Contractor's employees pertaining to this Contract that are necessary for the State to carry out such security and audit checks. The State or its authorized representatives shall have the right to reproduce and/or retain copies at its expense of any of the aforementioned information and documents.

3.3.2 Family Educational Rights and Privacy Act (FERPA)

- I. In the course of providing services during the term of this Contract, Contractor may have access to student education records that are subject to the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g, *et seq.* and the regulations promulgated thereunder. Such information is considered confidential and is therefore protected. To the extent that Contractor has access to "education records" under this Contract, it is deemed a "school official," as each of these terms are defined under FERPA. Contractor agrees that it shall not use education records for any purpose other than in the performance of this Contract. Except as required by law, Contractor shall not disclose or share education records with any Third Party unless permitted by the terms of this Contract or to Contracted Personnel unless they have agreed to maintain the confidentiality of the education records to the same extent required of Contractor under this Contract.
- II. In the event any individual(s) seek to access protected education records, whether in accordance with FERPA or other federal or relevant State law or regulations, the Contractor shall immediately inform the State of such request in writing if allowed by law or judicial and/or administrative order. Contractor shall not provide direct access to such Data or information or respond to individual requests. Contractor shall only retrieve such Data or information upon receipt of, and in accordance with, written directions by the State and shall only provide such Data and information to the State. It shall be the State's sole responsibility

to respond to requests for Data or information received by Contractor regarding the State's Data or Information. Should Contractor receive a court order or lawfully issued subpoena seeking the release of such Data or information, Contractor shall provide immediate notification to the State of its receipt of such court order or lawfully issued subpoena and shall immediately provide State with a copy of such court order or lawfully issued subpoena prior to releasing the requested Data or information, if allowed by law or judicial and/or administrative order.

- III. If Contractor experiences a Security Breach concerning any education record covered by this Contract, then Contractor shall immediately notify the State and take immediate steps to limit and mitigate such Security Breach to the extent possible. Any breach of the confidentiality obligation set forth in this Contract may, at the State's discretion, result in cancellation of this Contract, and ineligibility of further contract awards for a period of not less than five (5) years. In addition, Contractor agrees to indemnify and hold the State harmless for any loss, costs, damage or expense suffered by the State, including but not limited to the cost of notification of affected individuals, as a direct result of the unauthorized disclosure of education records.

As used in this Agreement, "Security Breach" means any act or omission that compromises either the security, confidentiality, or integrity of personally-identifiable student information; or the physical, technical, administrative or organizational safeguards put in place by Contractor that relate to the protection of the security, confidentiality or integrity of PII; or receipt of a verifiable complaint in relation to the privacy practices of Contractor; or a breach of this Agreement relating to such privacy practices.

Contractor shall take commercially reasonable steps and best efforts, in accordance with industry standards, to prevent security breaches. Contractor shall also take commercially reasonable steps, in accordance with industry standards, to immediately remedy any security breach and prevent any further Security Breach at Contractor's expense in accordance with standard industry practices and applicable law.

Contractor shall: (i) provide the State with the name and contact information for an employee of Contractor who shall serve as the State's primary security contact and shall be available to assist State twenty-four (24) hours per day, seven (7) days per week as a contact in resolving issues and fulfilling obligations associated with a Security Breach, as well as the name and contact information of an employee to serve this role when the primary contact cannot be available; and (ii) immediately notify the State in writing of a Security Breach within twenty-four (24) hours once Contractor becomes aware of it.

Immediately following Contractor's notification to the State of a Security Breach, Contractor and the State shall coordinate with each other to investigate the Security Breach. Contractor agrees to fully cooperate with the State in the State's handling of the matter, including, without limitation: (i) assisting with any investigation; (ii) providing the State with physical access to the facilities and operations affected; (iii) facilitating interviews with Contractor's employees and others involved in the matter; (iv) making available all relevant records, logs, files, data reporting and other materials required to comply with applicable law or industry standards and as otherwise required by the State; and (v) providing any notices to persons or organizations affected by the Security Breach as required by law and as required by the State.

3.3.3 Louisiana Legislation R.S. 17:3913 (Act 837 of the 2014 Legislative Session)

In June 2014, the Louisiana legislature passed legislation, [Act 837](#), which provides for limitations and prohibitions on the collection and sharing of student information. Act 837 required the State to adjust all processes related to the exchange of personally identifiable information (PII) with LEAs. Specifically, assessment and accountability systems will be affected in the following ways:

Replace social security number with unique student identifiers: Act 837 required LDOE to create a unique statewide student identifier system. The unique student identifier must not include or be based on social security numbers, and students must retain their unique identifier throughout their tenure in Louisiana public schools. The unique student IDs must be assigned to all students enrolled in public schools. The State of Louisiana has acquired a vendor

to assist in assigning unique identifiers to historical student data in its assessment files, data systems, and data warehouse. Successful proposers are required to integrate appropriate APIs required for data exchanges using the State's Unique Identifier Contractor, eScholar.

3.4 PREMISES SECURITY

3.4.1 Security of Premises, Equipment, Data, and Personnel

From time to time during the performance of this Contract, Contractor may have access to the personnel, premises, equipment, and other property, including Data files, and materials belonging to an Authorized User. Contractor shall preserve the safety, security and integrity of such personnel, premises, equipment, Data, and other property, in accordance with the instruction of the State and LEA. Contractor shall be responsible for damage to the State's and LEAs' equipment, workplace, and its contents, and for the loss of Data, when such damage or loss is caused by Contractor or Contracted Personnel, and shall reimburse the State or LEA accordingly upon demand. This remedy shall be in addition to any other remedies available to the State or LEA by law or in equity.

Contractor shall provide a secure environment for the Application, Data and any hardware and software, including servers, network and data components, as part of its performance under this Contract in accordance with current industry practices and the Contractor's plan approved by the State in order to prevent unauthorized access to and use or modification of, and to otherwise protect, the Application and the Data. The assessment system, including all hardware, software and data shall be hosted at a Tier 3 or Tier 4 data center geographically located within the boundaries of the United States. The Contractor may utilize a remote location within the continental United States geographic boundaries to back up the assessment databases and for a Disaster Recovery off-site facility, and at the remote facility, the Contractor shall, at a minimum, implement the following procedures designed to protect the security of the Data:

- User identification and access controls designed to limit access to Data to Authorized Users;
- External connections to the World Wide Web that shall have appropriate security controls including industry standard intrusion detection and countermeasures that shall detect and terminate any unauthorized activity prior to entering the firewall maintained by the Contractor;
- Industry standard firewalls regulating all Data entering the Contractor's internal data network from any external source that shall enforce secure connections between internal and external
- systems and shall permit only specific types of Data to pass through;
- Industry standard encryption techniques that shall be used when Data is transmitted to and from Contractor on behalf of an Authorized User;
- Physical security measures, including securing all Data on a secure server, in locked data cabinets within a secure facility. Access to facilities housing the Application, Data and Confidential Information restricted to only allow access to Contracted Personnel who have a need to know in connection with the operation and Support of the Application;
- Regular training for Contractor's Contracted Personnel regarding the security and Data recovery programs referenced in this Section;
- Other premises, physical security and confidentiality requirements that the State, LEA, or Authorized Users may implement.

3.4.2 Security of Premises, Equipment, Data and Personnel on State or LEA Property

During the performance of Licensed Services under this Contract, the Contractor may have access to the personnel, premises, equipment, and other property, including data files, tape files, card files, printer outputs, information, materials or other data belonging to the State or LEA. The Contractor shall preserve the safety, security, and the integrity of the personnel, premises, equipment, Data and other property of the State or LEA, in accordance with the instructions of the State and/or data sharing agreements with LEAs. The Contractor shall be responsible for damage to the State's or LEAs' equipment, workplace, and its contents, or for the loss of Data, when such damage

or loss is caused by the Contractor or Contracted Personnel and shall reimburse the State or LEA accordingly upon demand and without delay. This remedy shall be in addition to any other remedies available to the State and by law or in equity.

3.5 DATA RETENTION AND DESTRUCTION

3.5.1 Data Retention

In the event of termination, cancellation, expiration or if the State invokes its rights to the escrow, or a Release Event, the Data shall continue to be available to the State, in a usable format, for at least three (3) years. In addition, any records/data stored within the Contractor's platform which is owned by LEAs or schools shall be delayed from destruction during this same retention period.

3.5.2 Destruction of Data

Upon notification from the State that the Data Retention period has ended and the requirements have been fulfilled, the Contractor shall destroy all Data not covered separately by an existing contract with a LEA. The Contractor shall provide notice and certification of destruction. Certification from a Certified Information System Security Professional (CISSP) shall include such person's certification number.

3.5.3 Records Management

Contractor shall comply with citations to pertinent laws, codes and regulations such as 44 U.S.C. chapters 21, 29, 31 and 33; Freedom of Information Act (5 U.S.C. 552); Privacy Act (5 U.S.C. 552a); 36 CFR Part 1222 and Part 1228.

Contractor shall treat all Deliverables under the Contract as the property of the State for which the State shall have unlimited rights to use, dispose of, or disclose the data contained therein as it determines to be in the best interest of the State. Contractor shall not create or maintain any records that are not specifically authorized by this Contract. Contractor shall not retain, use, sell, or disseminate copies of any Deliverable that contains information covered by the Privacy Act of 1974 or that, which is generally protected by the Freedom of Information Act.

The Authorized Users shall own the rights to all Data/records produced as a part of this Contract. The State owns the rights to all electronic information (electronic data, electronic information systems, electronic databases, etc.) and all supporting documentation created as part of this Contract. Contractor shall deliver sufficient technical documentation with all Deliverables to permit the Authorized User to use such Deliverables.

No disposition of documents shall be allowed without the prior written consent to the State Contract Manager. The State and its Contractors are responsible for preventing the alienation or unauthorized destruction of records, including all forms of mutilation. Willful or unlawful destruction, damage or alienation of student records is subject to the fines and penalties imposed by 18 U.S.C. 2701. Records may not be removed from the legal custody of the State or destroyed without regard to the provisions of Agency records schedules. Contractor shall obtain the DPI Contract Manager's approval prior to engaging in any contractual relationship with a Subcontractor in support of this Contract, which requires disclosure of Data, information, documentary material and/or records generated under, or relating to this Contract. The Contractor and its subcontractors are required to abide by State guidance for protecting sensitive and proprietary information. Contractor shall comply with the Louisiana Records Retention Schedule for LEAs as it applies to hard copy and electronic records including notice and certification of destruction where required.

Contractor shall comply with federal and State records management policies, including those policies associated with safeguarding records covered by the Privacy Act of 1974. These policies include the preservation of all records created or received regardless of format (paper, electronic, etc.) or mode of transmission (e-mail, fax) or state of completion (draft, final).

Contractor shall comply with the latest version of the Department of Defense 5015.2-STD Design Criteria Standard for Electronic Records Management Software Applications to offer security over electronic records to ensure its trustworthiness to meet any legal challenge.

3.5.4 STORAGE OF DATA

The Contractor shall store all data of the State within the United States to include, but not be limited to, current database data, back-up data, and the archived data. The Contractor is required to use a Tier 3 or Tier 4 data center geographically located within the boundaries of the United States to house this data.

3.5.5 IMPORT/EXPORT OF DATA

Contractor shall not store, export or re-export any Data collected, developed, analyzed, or obtained by Contractor pursuant to Contractor's performance of this Contract, or any Data, to any country, individual, entity, or end user without the express written permission of the State.

3.6 DISASTER RECOVERY AND DATA BACK-UP

3.6.1 Disaster Recovery

Contractor shall maintain a disaster recovery plan to include but not be limited to: back-up servers and data communications connections to such servers and the back-ups of State's, LEA's, and Authorized User's data such that the Contractor shall be capable of restoring the comprehensive assessment delivery system within twenty-four (24) hours of any disruption, break, interruption, impediment or failure of operation of the LEAP 2025 assessment system.

Contractor shall keep a perpetual historical database that shall be able to be read at any point during the life of the Contract.

3.6.2 Data Back-up

The Contractor shall do all of the following:

- Store all back-up data within the United States.
- Must provide a process for restoration of data in case of any server failure as well as ensure the data is housed in the United States. Imaging shall occur as agreed to by the Contractor and the State.
- Create and maintain a Data Back-Up Plan explaining how the Authorized User's data is able to be recovered.
- Create each business day a back-up of the Authorized User's data for the purpose of off-site archival.
- Retain the backed-up data in a secure off-site environment.

The State reserves the right to request a copy of the backed-up data at any time.

Contractor shall back-up the data received according to the Data Back-up Plan.

3.7 Termination Clause

In the event that a partner commits a material breach of a term or condition of this Agreement, the State and/or Authorized User retains the right, solely at its own discretion, to terminate any Agreement subsequent to the State's Contract with Software House International for LMS solutions. Upon termination, the partner shall comply with section 3.5 with regards to Destruction of Data.

Part IV: Attachments

ATTACHMENT I: CERTIFICATION STATEMENT

The undersigned hereby acknowledges she/he has read and understands all requirements and specifications of the Request for Application (RFA), including attachments.

OFFICIAL MOU. The State requests that the Proposer designate one person to receive all documents and the method in which the documents are best delivered. The Proposer should identify the Contact name and fill in the information below: (Print Clearly)

- A. Official Contact Name: _____
- B. E-mail Address: _____
- C. Facsimile Number with area code: _____
- D. US Mail Address: _____

Proposer shall certify that the above information is true and shall grant permission to the State or Agencies to contact the above-named person or otherwise verify the information provided.

By its submission of this proposal and authorized signature below, Proposer shall certify that:

1. The information contained in its response to this RFA is accurate;
2. Proposer shall comply with each of the mandatory requirements listed in the RFA and will meet or exceed the functional and technical requirements specified therein;
3. Proposer shall accept the procedures, evaluation criteria, mandatory contract terms and conditions, and all other administrative requirements set forth in this RFA.
4. Proposer's quote shall be valid for at least 90 calendar days from the date of proposal's signature below;
5. Proposer shall certify, by signing and submitting a proposal for \$25,000 or more, that their company, any subcontractors, or principals are not suspended or debarred by the General Services Administration (GSA) in accordance with the requirements in OMB Circular A-133. (A list of parties who have been suspended or debarred can be viewed via the Internet at <https://www.sam.gov>).

Signature of Proposer or Authorized Representative _____

Typed or Printed Name: _____

Date: _____

Title: _____

Company Name: _____

Address: _____

City: _____ State: _____ Zip: _____

ATTACHMENT II: SAMPLE MEMORANDUM OF UNDERSTANDING (MOU)

STATE OF LOUISIANA MEMORANDUM OF UNDERSTANDING (MOU)

On this ____ day of _____, 20____, the State of Louisiana, [STATE AGENCY NAME], hereinafter sometimes referred to as the "State", and [PARTNER'S NAME AND LEGAL ADDRESS INCLUDING ZIP CODE], hereinafter sometimes referred to as the "Partner", do hereby enter into a MOU under the following terms and conditions.

1.0 SCOPE OF SERVICES

1.1 CONCISE DESCRIPTION OF SERVICES

[Complete a Concise Description of Services to be provided or Attach Statement of Work]

Define scope of work, services, tasks and services, deliverables, functional requirements, technical requirements or project requirements to be provided by the partner composed from RFA and Proposers Proposal. May be included in an attachment if detail is lengthy.

1.1.1 GOALS AND OBJECTIVES

[LIST GOALS AND OBJECTIVES OF THIS MOU]

1.1.2 PERFORMANCE MEASURES

The performance of the MOU will be measured by the State Project Manager, authorized on behalf of the State, to evaluate the partner's performance against the criteria in the Statement of Work and are identified as:

[LIST PERFORMANCE MEASURES WHICH SHOULD BE MEASURABLE AND TIME BOUND]

1.1.3 MONITORING PLAN

[Name and Title or Position] will monitor the services provided by the partner and the expenditure of funds under this MOU. [Name and Title or Position] will be primarily responsible for the day-to-day MOU with the partner and day-to-day monitoring of the partner's performance.

1.1.4 DELIVERABLES

The MOU will be considered complete when the Partner has delivered and the State has accepted all deliverables specified in the Statement of Work.

1.1.5 SUBSTITUTION OF KEY PERSONNEL

The Partner's personnel assigned to this MOU shall not be replaced without the written consent of the State. Such consent shall not be unreasonably withheld or delayed provided an equally qualified replacement is offered. In the event that any State or Contractor personnel become unavailable due to resignation, illness, or other factors, excluding assignment to project outside this MOU, outside of the State's or Partner's reasonable control, as the case may be, the State or the Partner, shall be responsible for providing an equally qualified replacement in time to avoid delays in completing tasks. The partner will make every reasonable attempt to assign the personnel listed in his proposal.

2.0 ADMINISTRATIVE REQUIREMENTS

2.1 TERM OF MOU

This contract shall begin on [DATE] and shall end on [DATE]. State has the right to enter an agreement for up to a total of two (2) years with the concurrence of the Partner and all appropriate approvals.

2.2 STATE FURNISHED RESOURCES

State shall appoint a Project Coordinator for this MOU who will provide oversight of the activities conducted hereunder. Notwithstanding the Partner's responsibility for management during the performance of this MOU, the assigned Project Coordinator shall be the principal point of contact on behalf of the State and will be the principal point of contact for Partner concerning Partner's performance under this MOU.

2.3 TAXES

Partner is responsible for payment of all applicable taxes from the funds to be received under this MOU. Partner's federal tax identification number is _____.

3.0 COMPENSATION, MAXIMUM AMOUNT OF CONTRACT

Every partner approved through this RFA is authorized to contract through SHI directly with authorized users to define specific compensation for the authorized user's project and scope. The State does not guarantee any minimum or maximum contract amount. The State is not responsible for any payments or services rendered to authorized users under this RFA or under the State's contract with SHI. All contracts and provisions required under the SHI contract and the State or its authorized users will also apply to the partner.

For State purchases under this RFA and the SHI State Contract, ten percent (10%) of fees shall be withheld as retainage pending successful completion of the contract and/or contract deliverables per the pricing/cost schedule and statement of work. Upon completion of all tasks contained in the Statement of Work to the satisfaction of the State, any amounts previously withheld as retainage will be paid.

4.0 TERMINATION

4.1 TERMINATION OF THE MOU FOR CAUSE

State may terminate this MOU for cause based upon the failure of Partner to comply with the terms and/or conditions of the MOU; provided that the State shall give the Partner written notice specifying the Partner's failure. If within thirty (30) calendar days after receipt of such notice, the Partner shall not have either corrected such failure or, in the case of failure which cannot be corrected in thirty (30) calendar days, begun in good faith to correct said failure and thereafter proceeded diligently to complete such correction, then the State may, at its option, place the Partner in default and the MOU shall terminate on the date specified in such notice. Failure to perform within the time agreed upon in the MOU may constitute default and may cause cancellation of the MOU.

Partner may exercise any rights available to it under Louisiana law to terminate for cause upon the failure of the State to comply with the terms and conditions of this MOU provided that the Partner shall give the State written notice specifying the State agency's failure and a reasonable opportunity for the state to cure the defect.

4.2 TERMINATION FOR CONVENIENCE

State may terminate the MOU at any time without penalty by giving thirty (30) calendar days written notice to the Partner of such termination or negotiating with the Partner an effective date. Partner shall be entitled to payment for deliverables in progress, to the extent work has been performed satisfactorily.

4.3 TERMINATION FOR NON-APPROPRIATION OF FUNDS

The continuation of this MOU is contingent upon the appropriation of funds by the legislature to fulfill the requirements of the MOU by the legislature. If the legislature fails to appropriate sufficient monies to provide for the continuation of the contract, or if such appropriation is reduced by the veto of the Governor or by any means provided in the appropriations act of Title 39 of the Louisiana Revised Statutes of 1950 to prevent the total appropriation for the year from exceeding revenues for that year, or for any other lawful purpose, and the effect of such reduction is to provide insufficient monies for the continuation of the MOU, the MOU shall terminate on the date of the beginning of the first fiscal year for which funds have not been appropriated.

5.0 INDEMNIFICATION & LIMITATION OF LIABILITY

Neither party shall be liable for any delay or failure in performance beyond its control resulting from acts of God or force majeure. The parties shall use reasonable efforts to eliminate or minimize the effect of such events upon performance of their respective duties under agreement.

Partner shall be fully liable for the actions of its agents, employees, partners or subcontractors and shall fully indemnify and hold harmless the State and its Authorized Users from suits, actions, damages and costs of every name and description relating to personal injury and damage to real or personal tangible property caused by Partner, its agents, employees, partners or subcontractors, without limitation; provided, however, that the Partner shall not indemnify for that portion of any claim, loss or damage arising hereunder due to the negligent act or failure to act of the State.

If applicable, Partner will indemnify, defend and hold the State and its Authorized Users harmless, without limitation, from and against any and all damages, expenses (including reasonable attorneys' fees), claims, judgments, liabilities and costs which may be finally assessed against the State in any action for infringement of a United States Letter Patent with respect to the Products furnished, or of any copyright, trademark, trade secret or intellectual property right, provided that the State shall give the Partner: (i) prompt written notice of any action, claim or threat of infringement suit, or other suit, (ii) the opportunity to take over, settle or defend such action, claim or suit at Partner's sole expense, and (iii) assistance in the defense of any such action at the expense of Partner. Where a dispute or claim arises relative to a real or anticipated infringement, the State or its Authorized Users may require Partner, at its sole expense, to submit such information and documentation, including formal patent attorney opinions, as the Commissioner of Administration shall require.

The Partner shall not be obligated to indemnify that portion of a claim or dispute based upon: i) Authorized User's unauthorized modification or alteration of a Product, Material or Service; ii) Authorized User's use of the Product in combination with other products not furnished by Partner; iii) Authorized User's use in other than the specified operating conditions and environment.

In addition to the foregoing, if the use of any item(s) or part(s) thereof shall be enjoined for any reason or if Partner believes that it may be enjoined, Partner shall have the right, at its own expense and sole discretion as the Authorized User's exclusive remedy to take action in the following order of precedence: (i) to procure for the State the right to continue using such item(s) or part (s) thereof, as applicable; (ii) to

modify the component so that it becomes non-infringing equipment of at least equal quality and performance; or (iii) to replace said item(s) or part(s) thereof, as applicable, with non-infringing components of at least equal quality and performance, or (iv) if none of the foregoing is commercially reasonable, then provide monetary compensation to the State up to the dollar amount of the MOU.

For all other claims against the Partner where liability is not otherwise set forth in the MOU as being "without limitation", and regardless of the basis on which the claim is made, Partner's liability for direct damages, shall be the greater of \$100,000, the dollar amount of the MOU, or two (2) times the charges rendered by the Partner under the MOU. Unless otherwise specifically enumerated herein or in the work order mutually agreed between the parties, neither party shall be liable to the other for special, indirect or consequential damages, including lost data or records (unless the Partner is required to back-up the data or records as part of the work plan), even if the party has been advised of the possibility of such damages. Neither party shall be liable for lost profits, lost revenue or lost institutional operating savings.

The State and Authorized User may, in addition to other remedies available to them at law or equity and upon notice to the Partner, retain such monies from amounts due Partner, or may proceed against the performance and payment bond, if any, as may be necessary to satisfy any claim for damages, penalties, costs and the like asserted by or against them.

6.0 CONTRACT CONTROVERSIES

Any claim or controversy arising out of the MOU shall be resolved by the provisions of Louisiana Revised Statutes 39:1672.2-1672.4.

7.0 FUND USE

Partner agrees not to use MOU proceeds to urge any elector to vote for or against any candidate or proposition on an election ballot nor shall such funds be used to lobby for or against any proposition or matter having the effect of law being considered by the Louisiana Legislature or any local governing authority. This provision shall not prevent the normal dissemination of factual information relative to a proposition on any election ballot or a proposition or matter having the effect of law being considered by the Louisiana Legislature or any local governing authority.

8.0 ASSIGNMENT

No partner shall assign any interest in this MOU by assignment, transfer, or novation, without prior written consent of the State. This provision shall not be construed to prohibit the partner from assigning to a bank, trust company, or other financial institution any money due or to become due from approved contracts without such prior written consent. Notice of any such assignment or transfer shall be furnished promptly to the State.

9.0 RIGHT TO AUDIT

The State Legislative Auditor, agency, and/or federal auditors and internal auditors of the Division of Administration shall have the option to audit all accounts directly pertaining to the MOU for a period of five (5) years from the date of the last payment made under this agreement. Records shall be made available during normal working hours for this purpose.

10.0 MOU MODIFICATION

No amendment or variation of the terms of this MOU shall be valid unless made in writing, signed by the parties and approved as required by law. No oral understanding or agreement not incorporated in the MOU is binding on any of the parties.

11.0 CONFIDENTIALITY OF DATA

All financial, statistical, personal, technical and other data and information relating to the State's operation which are designated confidential by the State and made available to the contractor in order to carry out this contract, or which become available to the contractor in carrying out this contract, shall be protected by the contractor from unauthorized use and disclosure through the observance of the same or more effective procedural requirements as are applicable to the State. The identification of all such confidential data and information as well as the State's procedural requirements for protection of such data and information from unauthorized use and disclosure shall be provided by the State in writing to the contractor. If the methods and procedures employed by the contractor for the protection of the contractor's data and information are deemed by the State to be adequate for the protection of the State's confidential information, such methods and procedures may be used, with the written consent of the State, to carry out the intent of this paragraph. The contractor shall not be required under the provisions of the paragraph to keep confidential any data or information which is or becomes publicly available, is already rightfully in the contractor's possession, is independently developed by the contractor outside the scope of the contract, or is rightfully obtained from third parties.

12.0 CIVIL RIGHTS COMPLIANCE

The partner agrees to abide by the requirements of the following as applicable: Title VI and Title VII of the Civil Rights Act of 1964, as amended by the Equal Opportunity Act of 1972, Federal Executive Order 11246, the Federal Rehabilitation Act of 1973, as amended, the Vietnam Era Veteran's Readjustment Assistance Act of 1974, Title IX of the Education Amendments of 1972, the Age Act of 1975, and partner agrees to abide by the requirements of the Americans with Disabilities Act of 1990.

Partner agrees not to discriminate in its employment practices, and will render services under this MOU without regard to race, color, religion, sex, sexual orientation, national origin, veteran status, political affiliation, disability, or age in any matter relating to employment. Any act of discrimination committed by Partner, or failure to comply with these statutory obligations when applicable shall be grounds for termination of this MOU.

13.0 INSURANCE

Commercial General Liability Insurance: The Partner shall maintain during the life of the MOU such Commercial General Liability Insurance which shall protect him and the State during the performance of work covered by the contract from claims or damages for personal injury, including accidental death, as well as for claims for property damages, which may arise from operations under the MOU or by anyone directly or indirectly employed by either of them, or in such a manner as to impose liability to the State. Such insurance shall name the State as additional insured for claims arising from or as the result of the operations of the Partner. In the absence of specific regulations, the amount of coverage shall be as follows: Commercial General Liability Insurance, including bodily injury, property damage and contractual liability, with combined single limits of \$1,000,000.

14.0 GOVERNING LAW

This MOU shall be governed by and interpreted in accordance with the laws of the State of Louisiana. Venue of any action brought with regard to this contract shall be in the Nineteenth Judicial District Court, parish of East Baton Rouge, State of Louisiana.

15.0 CODE OF ETHICS

The partner acknowledges that Chapter 15 of Title 42 of the Louisiana Revised Statutes (R.S. 42:1101 et. seq., Code of Governmental Ethics) applies to the Contracting Party in the performance of services called

for in this MOU. The partner agrees to immediately notify the state if potential violations of the Code of Governmental Ethics arise at any time during the term of this MOU.

16.0 SEVERABILITY

If any term or condition of this MOU or the application thereof is held invalid, such invalidity shall not affect other terms, conditions, or applications which can be given effect without the invalid term, condition, or application; to this end the terms and conditions of this MOU are declared severable.

17.0 INDEPENDENT ASSURANCES

The State of Louisiana /State Agency will also require the Partner, if performing a key internal control, to submit to an independent SSAE 16 SOC 1 and/or type II audit of its internal controls and other financial and performance audits from outside companies to assure both the financial viability of the (outsourced) program and the operational viability, including the policies and procedures placed into operation. The audit firm will conduct tests and render an independent opinion on the operating effectiveness of the controls and procedures.

The partner could be required to provide a quality control plan, such as third-party Quality Assurance (QA), Independent Verification and Validation (IV &V), and other internal project/ program reviews and audits.

These audits will require the Partner to provide any assistance, records access, information system access, staff access, and space access to the party selected to perform the indicated audit. The audit firm will submit a final report on controls placed in operations for the project and include a detailed description of the audit firm's tests of the operating effectiveness of controls.

The Partner shall supply the Department with an exact copy of the report within thirty (30) calendar days of completion. Such audits may be performed annually during the term of the contract. The Partner agrees to implement recommendations as suggested by the audits within three (3) months of report issuance at no cost to the State Agency. Cost of the SSAE 16 audit is to be included in the cost being proposed in response to this RFA.

18.0 RECORD OWNERSHIP

All records, reports, documents, products, or other material related to any MOU resulting from this RFA and/or obtained or prepared by the Partner in connection with the performance of the services agreed herein shall become the property of the State and shall, upon request, be returned by the Partner to the State, at the Partner's expense, at termination or expiration of the MOU.

Any records, reports, documents, materials, or products created or developed under this contract shall be the property of the State. Any work undertaken by Contractor pursuant to this contract shall be work made for hire, and the contractor hereby transfers and assigns to the State any intellectual property rights, including but not limited to the copyright of any records, reports, documents, materials or products created or developed by Contractor in connection with the performance of this contract. No records, reports, documents, materials or products created or developed under this contract can be distributed free or for profit without explicit written approval from the State Superintendent of Education.

19.0 COMPLETE MOU

This is the complete MOU between the parties with respect to the subject matter and all prior discussions and negotiations are merged into this MOU. This MOU is entered into with neither party relying on any statement or representation made by the other party not embodied in this MOU and there are no other agreements or understanding changing or modifying the terms. This MOU shall become effective upon final statutory approval.

20.0 ENTIRE AGREEMENT AND ORDER OF PRECEDENCE

This MOU together with the RFA and partner’s proposal which are incorporated herein; shall, to the extent possible, be construed to give effect to all of its provisions; however, where provisions are in conflict, first priority shall be given to the provisions of the MOU, excluding the Request for Applications, its amendments and the Proposal; second priority shall be given to the provisions of the Request for Applications and its amendments; and third priority shall be given to the provisions of the Partner’s Proposal.

(Agency specific terms and conditions may be added, if needed.)

THUS DONE AND SIGNED on the date(s) noted below:

[NAME OF CONTRACTOR]

[AGENCY NAME]

[AUTHORIZED SIGNATURE]

[AUTHORIZED SIGNATURE]

[PRINTED NAME]

[PRINTED NAME]

DATE

DATE