CONTRACT #7
RFS # 332.01-03310
FA # 10-31822-03
Edison # 19758

Tennessee Higher Education Commission (THEC)

VENDOR:
XAP Corporation

RICHARD G. RHODA
Executive Director

BILL HASLAM
Governor

STATE OF TENNESSEE
TENNESSEE HIGHER EDUCATION COMMISSION
PARKWAY TOWERS, SUITE 1900
NASHVILLE, TENNESSEE 37243-0830
(615) 741-3605
FAX: (615) 741-5555
www.state.tn.us/thec/

MEMORANDUM

TO: Leni Chick, Contract and Audit Coordinator, Fiscal Review Committee

FROM: Marcie Mills, Contracts Administration Manager for
Scott Sloan, Associate Executive Director, Legal and Regulatory Affairs

DATE: February 28, 2014

RE: Non-Competitive Contract Amendment Summary
FA1031822-03 XAP Corporation Amendment Four

The Tennessee Higher Education Commission (THEC) proposes to submit a non-competitive contract amendment request to effectuate the term extension as currently provided for in the XAP contract for the provision of electronic transcript services and CollegeforTN initiative;

Pursuant to *Tennessee Code Annotated* § 12-4-109, Procurement of Service, the following information is presented for the Fiscal Review Committee.

Background and Objectives

In 2010, THEC submitted a five-year Contract with XAP Corporation for the provision of electronic transcript services and a college access web portal operating under the name CollegeforTN.org. Due to concerns expressed by the Comptroller's office regarding funding allocations, THEC was asked to prepare a one-year contract with options for subsequent one-year extensions as outlined in section B.2. of the contract agreement. As the current contract term expires on April 30, 2013, THEC is submitting an Amendment request to extend the contract through April 30, 2014.

Aligned with THEC's mission to promote student success and support the State's completion agenda for postsecondary education, the CollegeforTN.org web portal procured from XAP Corporation is designed to be a comprehensive resource for all Tennesseans supporting increased access to higher education. CollegeforTN.org provides users access to a comprehensive suite of career, college, and financial aid planning services and a means of accessing electronic student transcripts and admissions applications in a web-based environment using a single log-on and password.

Actual Expenditures Anticipated in the Proposed Contract Amendment

The Contract term extension is May 1, 2014 through April 30, 2015. Anticipated expenditures include:

Service Description 5/1/12 – 4/30/14	**Amount** (per compensable increment)
Career Planning and Test Preparation Tools (A.4.a.)	$28,350.00 Per Quarter
High School Planning Tools (A.4.b.)	$28,325.00 Per Quarter
College Planning Tools (A.4.c.)	$84,500.00 Per Quarter
Financial Aid Planning Tools (A.4.d.)	$33,000.00 Per Quarter
Life-long Portfolio (A.4.e.)	$ 3,750.00 Per Quarter
Adult Student Module (A.4.f)	$0.00 Included with Contract
Professional Center (A.4.g.) Transcript Services *	$25,000.00 Per Quarter
Middle School Module (A.4.h.)	$28,325.00 Per Quarter
Career Planning and Test Preparation Tools (A.4.a.)	$28,350.00 Per Quarter
TOTAL	**$925,000**

In 2010, the Tennessee Higher Education Commission (THEC) entered into a contract with XAP Corporation in the amount of $1,196,456 for the procurement of CollegeforTN.org, a college and career exploration web portal and transcript exchange tailored to the needs of Tennessee. The 2010 contract was a one year agreement and included four options for annual renewals.

In May 2012, THEC amended the existing contract for the purpose of extending the agreement to April 30, 2013. In exploring the possibility of extending its agreement with XAP Corporation to April 30, 2014, THEC entered negotiations to reduce the annual contract liability for the CollegeforTN.org web portal. As the CollegeforTN.org initiative matures, THEC brought content and stakeholder relationship services once managed by XAP Corporation, as part of Tennessee's contract, in-house. XAP Corporation, therefore, has agreed to reduce Tennessee’s annual contract liability by $46,456.

Further negotiations with XAP for Amendment Three, extending the contract through April 30, 014, reflected 2013 rates, with no increase to the rates for the new year of the contract.

Justification for Non-Competitive Amendment

THEC conducted a review of vendors offering online college access resources and were unable to find another company with the ability to meet all business, functional and technical requirements. It is important to highlight that XAP Corporation is the only company THEC found offering career guidance (K- 12 and adult), customizable school planning, transcript exchange, a professional center, and higher education admissions application resources all in one integrated system access via a single log-on. Upon identifying Tennessee's goals and needs, as described above, and XAP's unique programmatic benefits, staff members secured references from peer states and were advised that XAP is the preferred vendor

of states working to make large gains in high school graduation, college enrollment, and degree production.

Additionally, with the exception of one other company, all companies required the school or organization to purchase a license and required passcodes to enter the site. CollegeforTN is openly available and customizable for the general public.

Lastly, THEC has promoted college access and success using CollegeforTN.org as the call to action in every aspect of this public outreach campaign. All campaign outreach materials direct students and their parents to visit CollegeforTN.org with the tagline "Higher Education. Put Your Mind To It." The campaign has seen much success winning several awards on the regional and national level. Lastly, state personnel, in partnership with XAP, have extensively trained school administrators, school counselors, teachers, higher education personnel, and college access professionals across Tennessee in using the resources of CollegeforTN.org. A change if vendor would result in the need for re-training each of these professionals that would result in a substantial loss of personnel time, state resources and grant funds.

Of note, over the last year the site had 173,244 site visits and 3,235,625 page views.

Efforts to Identify Reasonable, Competitive, Procurement Alternatives

As previously stated, THEC conducted a study of on-line, college access resources including Career Cruising, Connect EDU, Kuder, Inc., My10YearPlan, and Naviance, Inc. Of the six vendors identified, only XAP Corporation meets all business, functional and technical requirements outlined by the state. XAP Corporation is the only vendor found offering career guidance (K-12 and adult), customizable school planning, college access information articles (high school success, college planning, and financial aid), transcript exchange, professional center, and higher education admission application resources in one integrated system.

Supplemental Documentation Required for Fiscal Review Committee

*Contact Name:	Scott Sloan, Associate Executive Director, Legal and Regulatory Affairs, or Marcie Mills, Contracts Administration Manager	*Contact Phone:	615.741.7571 615.532.3500
*Original Contract Number:	FA1031822-03	*Original RFS Number:	33201-03310
Edison Contract Number: (*if applicable*)	19758	Edison RFS Number: (*if applicable*)	33201-03310
*Original Contract Begin Date:	May 1, 2010	*Current End Date:	April 30, 2014

Current Request Amendment Number: (*if applicable*)	FOUR
Proposed Amendment Effective Date: (*if applicable*)	May 1, 2014
*Department Submitting:	Higher Education
*Division:	Tennessee Higher Education Commission (THEC)
*Date Submitted:	February 28, 2014
*Submitted Within Sixty (60) days:	YES
If not, explain:	Not Applicable
*Contract Vendor Name:	XAP Corporation
*Current Maximum Liability:	$4,289,368

*Current Contract Allocation by Fiscal Year:
(as Shown on Most Current Fully Executed Contract Summary Sheet)

FY2011	FY2012	FY2013	FY2014	FY	FY
$ 1,196,456	$1,196,456	$ 971,456	$ 925,000	$	$

*Current Total Expenditures by Fiscal Year of Contract:
(attach backup documentation from STARS or FDAS report)

FY2011	FY2012	FY2013	FY2014	FY	FY
$ 1,196,456	$1,196,456	$971,456	$693.750	$	$

Supplemental Documentation Required for Fiscal Review Committee

IF Contract Allocation has been greater than Contract Expenditures, please give the reasons and explain where surplus funds were spent:	The last quarterly payment for $231,250 for FY14 is not due until April 1, 2014. Once the fourth quarter is paid, the contract will no surplus funds.
IF surplus funds have been carried forward, please give the reasons and provide the authority for the carry forward provision:	NA
IF Contract Expenditures exceeded Contract Allocation, please give the reasons and explain how funding was acquired to pay the overage:	NA

*Contract Funding Source/Amount through 04/30/15:	State:		Federal:	$2,3553,322
Interdepartmental:	$2,861,046 (Lottery)		*Other*:	
If "*other*" please define:				

Dates of All Previous Amendments or Revisions: (*if applicable*)	Brief Description of Actions in Previous Amendments or Revisions: (*if applicable*)
05/01/2011 Amendment One	Contract amendment to effectuate the term extension as provided for in the original contract.
05/02/2012 Amendment Two	Contract Amendment to effectuate the term extension as provided for in the original contract and a negotiated reduction in rates.
05/02/2013 Amendment Three	Contract Amendment to effectuate the term extension as provided for in the original contract and a negotiated reduction in rates.

Method of Original Award: (*if applicable)*	Non-competitive Contract
*What were the projected costs of the service for the entire term of the contract prior to contract award?	NA

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For all new non-competitive contracts and any contract amendment that changes Sections A or C.3. of the original or previously amended contract document, provide estimates based on information provided the Department by the vendor for determination of contract maximum liability. Add rows as necessary to provide all information requested.

If it is determined that the question is not applicable to your contract document attach detailed explanation as to why that determination was made.

Planned expenditures by fiscal year by deliverable. Add rows as necessary to indicate all estimated contract expenditures.

These figures are per quarter:

Deliverable description:	FY: 2011	FY:2012	FY: 2013	FY: 2014	FY: 2015
Career Planning and Test Preparation Tools Module	$ 81,250.00	$ 81,250.00	$ 33,471.75	$28,350.00 *	$28,350.00 *
High School Planning Tools Module	$ 33,471.75	$ 33,471.75	$ 33,471.75	$28,325.00 *	$28,325.00 *
College Planning Tools Module	$ 84,948.75	$ 84,948.75	$ 84,948.75	$84,500.00 +	$84,500.00 +
Financial Aid Planning Tools Module	$ 33,471.75	$ 33,471.75	$ 33,471.75	$33,000.00 +	$33,000.00 +
Life-Long Portfolio and Professional Center Module	$ 33,471.75	$ 33,471.75	$ 3,750.00	$3,750.00 *	$3,750.00 *
Adult Student Module	$ 0.00 (Included with Contract)	$ 0.00 (Included with Contract)	$ 0.00 (Included with Contract)	$ 0.00 (Included with Contract)	$ 0.00 (Included with Contract)
Professional Center Module Transcript Services **	See Above	See Above	$ 25,000.00	$25,000.00 +	$25,000.00 +
Middle School Module	$ 32,500.00	$ 32,500.00	$ 28,750.00	$28,325.00 +	$28,325.00 +
Total	**$299,114.00**	**$299,114.00**	**$242,864.00**	**$231,250.00**	**$231,250.00**

Funding Source
* Federal College Access Challenge Grant / GEAR UP TN
+ Lottery for Education Fund

** Transcript services include technical assistance for school counselors in uploading transcript data,

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creation of transcripts using the state transcript template and the ability for educators to send transcripts to both TSAC and higher education institutions. Transcripts are priced at $2.50 per transcript up to 40,000 transcripts. There is no charge for transcripts beyond 40,000 transcripts.

Proposed savings to be realized per fiscal year by entering into this contract. If amendment to an existing contract, please indicate the proposed savings to be realized by the amendment. Add rows as necessary to define all potential savings per deliverable.

Please note that THEC reflected an annual savings of $225,000 for Amendment Two FY13 and an annual savings of $46,456 for Amendment Three FY14, with no increase to the annual cost for Amendment Four FY15, which is an annual savings of $46,456 from the original negotiated cost for FY15.

Deliverable description:	FY: 2013	FY: 2014	Savings Per QTR	Savings Per Annual
Career Planning and Test Preparation Tools Module	$ 33,471.75	$28,000.00 *	$ 5,121.75 *	$ 20,487.00
High School Planning Tools Module	$ 33,471.75	$28,000.00 *	$ 5,146.75 *	$ 20,587.00
College Planning Tools Module	$ 84,948.75	$84,500.00 +	$ 448.75 +	$ 1,795.00
Financial Aid Planning Tools Module	$ 33,471.75	$33,000.00 +	$ 471.75 +	$ 1,887.00
Life-Long Portfolio and Professional Center Module	$ 3,750.00	$3,750.00 *	$ 0.00 *	$ 0.00 *
Adult Student Module	$ 0.00 (Included with Contract)	$ 0.00 (Included with Contract)	NA	NA
Professional Center Module Transcript Services *	$ 25,000.00	$26,000.00 +	$ 0.00 *	$ 0.00 +
Middle School Module	$ 28,750.00	$28,000.00 +	$ 425.00 *	$ 1,700.00 *
Total	**$242,864.00**	**$231,250.00**	**$ 11,614.00 ****	**$ 46,456.00 ****

Funding Source
* Federal College Access Challenge Grant / GEAR UP TN
+ Lottery for Education Fund

In 2010, the Tennessee Higher Education Commission (THEC) entered into a contract with XAP Corporation in the amount of $1,196,456 for the procurement of CollegeforTN.org, a college and career exploration web portal and transcript exchange tailored to the needs of Tennessee. The 2010 contract was a one year agreement and included four options for annual renewals.

In May 2011, THEC amended the existing contract for the purpose of extending the agreement to

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April 30, 2012. In exploring the possibility of extending its agreement with XAP Corporation to April 30, 2013, THEC entered negotiations to reduce the annual contract liability for the CollegeforTN.org web portal. As the CollegeforTN.org initiative matures, THEC brought content and stakeholder relationship services once managed by XAP Corporation, as part of Tennessee's contract, in-house. XAP Corporation, therefore, has agreed to reduce Tennessee's annual contract liability by $46,456.

Comparison of cost per fiscal year of obtaining this service through the proposed contract or amendment vs. other options. List other options available (including other vendors), cost of other options, and source of information for comparison of other options (e.g. catalog, Web site). Add rows as necessary to indicate price differentials between contract deliverables.

Proposed Vendor Cost: (name of vendor)	FY:	FY:	FY:	FY:	FY:

THEC conducted a study of on-line, college access resources including Career Cruising, Connect EDU, Kuder, Inc., My10YearPlan, and Naviance, Inc. Of the six vendors identified, only XAP Corporation met all business, functional and technical requirements outlined by the state. XAP Corporation was the only vendor found offering career guidance (K -12 and adult), customizable school planning, college access information articles (high school success, college planning, and financial aid), transcript exchange, professional center, and higher education admission application resources in one integrated system. Additionally, with the exception of one other company, all companies required the school or organization to purchase a license and required passcodes to enter the site. CollegeforTN is openly available and customizable for the general public.

Of the vendors reviewed, ConnectEDU did offer some services similar to the four competencies required by Tennessee. ConnectEDU offered college profile and application information, transcript exchange capabilities, and career exploration and high school planning tools, but did not offer these features in an open web portal format that ensures college access information is accessible to the general public. ConnectEDU's platform focuses exclusively on a portfolio structure where users store information regarding their career and college planning. However, ConnectEDU's portal structure did not provide space for users to learn how financial aid works or what steps are required in the college admissions process, in fact there is no instructional properties provided by ConnectEDU. XAP's product is designed as a web portal where the general public can learn more about how to access higher education while benefiting from the tools and resources that help users make decisions regarding their postsecondary plans, providing both college access information such as high school success content, college planning articles, financial aid planning guides, and state-customized content, and and an online portfolio comprised of interactive tools such as career assessments, SAT/ACT test prep, college applications, and four year course plans.

During the initial contract process, THEC compiled a cost comparison of states currently using XAP Corporation's Transitions product. Using public secondary student enrollment as a metric for comparison, the cost analysis indicated that Tennessee's negotiated contract rate resulted in

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an annual per student cost that is in line with other states. Only Georgia, Illinois, and Iowa have an annual per student cost lower than Tennessee's negotiated rate. However, unlike Georgia, Illinois, and Iows, Tennessee's contract with XAP Corporation provides career exploration resources to all elementary students. This significant feature difference accounts for the slightly higher annual cost per student.

ID 19758 FA 1031822-03 XAP Corporation Amendment Four Reconciliation									
PO No.	PO Date	PO Amount	Contract Balance	Contract Remaining Amt	Quarterly Payments		Contract Deliverable Rates		Contract Balance Reconciliation
			$ 4,289,368						
846	11/08/10	$ 81,250	$ 4,208,118	$ 231,250			$ 81,250.00		
847	11/08/10	$ 81,250	$ 4,126,868	$ 231,250			$ 33,471.75		
914	12/16/10	$ 435,728	$ 3,691,140	$ 231,250	$ 598,228		$ 84,948.75		
1007	02/07/11	$ 81,250	$ 3,609,890	$ 231,250			$ 33,471.75		
1008	02/08/11	$ 217,864	$ 3,392,026	$ 231,250	$ 299,114		$ 33,471.75		
1241	05/26/11	$ 143,421	$ 3,248,606	$ 231,250			$ 32,500.00		$ 4,289,368
1242	05/26/11	$ 70,208	$ 3,178,398	$ 231,250			$ 299,114.00	QTR	$ (1,196,456)
1243	05/26/11	$ 85,486	$ 3,092,912	$ 231,250	$ 299,114	*2	$ 598,228.00		$ 3,092,912
		$ 1,196,456		**FY11**	**$ 1,196,456**	*3	$ 897,342.00		
						* 4	**$ 1,196,456.00**	YR	
1408	08/11/11	$ 85,486	$ 3,007,426	$ 231,250					
1409	08/11/11	$ 70,208	$ 2,937,219	$ 231,250					
1414	08/12/11	$ 143,421	$ 2,793,798	$ 231,250	$ 299,114				
1663	12/08/11	$ 143,421	$ 2,650,378	$ 231,250					
1664	12/08/11	$ 85,486	$ 2,564,892	$ 231,250					
1665	12/08/11	$ 70,208	$ 2,494,684	$ 231,250	$ 299,114				
1799	02/16/12	$ 143,421	$ 2,351,264	$ 231,250					
1800	02/16/12	$ 70,208	$ 2,281,056	$ 231,250					
1801	02/16/12	$ 85,486	$ 2,195,570	$ 231,250	$ 299,114				$ 4,289,368
2038	06/08/12	$ 143,421	$ 2,052,150	$ 231,250					$ (1,196,456)
2039	06/08/12	$ 85,486	$ 1,966,664	$ 231,250					$ (1,196,456)
2040	06/08/12	$ 70,208	$ 1,896,456	$ 231,250	$ 299,114				$ 1,896,456
		$ 1,196,456		**FY12**	**$ 1,196,456**				
2179	08/27/12	$ 242,864	$ 1,653,592	$ 231,250	$ 242,864				
2366	12/05/12	$ 143,421	$ 1,510,172	$ 231,250					
2367	12/05/12	$ 65,972	$ 1,444,200	$ 231,250			$ 33,471.75		
2368	12/05/12	$ 33,472	$ 1,410,728	$ 231,250	$ 242,864		$ 33,471.75		
2600	02/27/13	$ 286,841	$ 1,123,887	$ 231,250			$ 84,948.75		
2628	03/05/13	$ 143,421	$ 980,467	$ 231,250			$ 33,471.75		
2656	03/11/13	$ (286,841)	$ 1,267,308	$ 231,250			$ 3,750.00		
2684	03/17/13	$ (143,421)	$ 1,410,729	$ 231,250			$ 25,000.00		$ 4,289,368
2710	04/08/13	$ 242,864	$ 1,167,865	$ 231,250	$ 242,864		$ 28,750.00		$ (1,196,456)
2803	04/30/13	$ 65,972	$ 1,101,893	$ 231,250			$ 242,864.00	Qtr	$ (1,196,456)
2804	04/30/13	$ 33,472	$ 1,068,421	$ 231,250		*2	$ 485,728.00		$ (971,456)
2805	04/30/13	$ 143,421	$ 925,001	$ 231,250	$ 242,864	*3	$ 728,592.00		$ 925,001
		$ 971,456		**FY13**	**$ 971,456**	* 4	**$ 971,456.00**	YR	
3057	08/20/13	$ 143,500	$ 781,501	$ 231,250			$ 28,350.00		
3058	08/20/13	$ 59,750	$ 721,751	$ 231,250			$ 28,325.00		
3059	08/20/13	$ 28,000	$ 693,751	$ 231,250	$ 231,250		$ 84,500.00		
3347	12/09/13	$ 28,000	$ 665,751	$ 231,250			$ 33,000.00		$ 4,289,368
3348	12/09/13	$ 59,750	$ 606,001	$ 231,250			$ 3,750.00		$ (1,196,456)
3349	12/09/13	$ 143,500	$ 462,501	$ 231,250	$ 231,250		$ 25,000.00		$ (1,196,456)
3512	02/11/14	$ 143,500	$ 319,001	$ 231,250			$ 28,325.00		$ (971,456)
3513	02/11/14	$ 28,000	$ 291,001	$ 231,250			$ 231,250.00	Qtr	$ (693,750)
3514	02/11/14	$ 59,750	$ 231,251	$ 231,250	$ 231,250	*2	$ 462,500.00		$ 231,251
		$ 693,750			**$ 693,750**	*3	$ 693,750.00		
						* 4	**$ 925,000.00**	YR	

Amendment Request

Route a completed request, as one file in PDF format, via e-mail attachment sent to: Agsprs.Agsprs@tn.gov

APPROVED	
CHIEF PROCUREMENT OFFICER	DATE

Request Tracking #	**33201-03310**
1. Procuring Agency	**Tennessee Higher Education Commission (THEC)**
2. Contractor	**XAP Corporation**
3. Contract #	**FA1031822-03**
4. Proposed Amendment #	**FOUR**
5. Edison ID #	**197581**
6. Contract Begin Date	**May 01, 2010**
7. Current Contract End Date *– with ALL options to extend exercised*	**April 30, 2015**
8. Proposed Contract End Date *– with ALL options to extend exercised*	**April 30, 2015**
9. Current Maximum Contract Cost *– with ALL options to extend exercised*	**$ 5,214,368.00**
10. Proposed Maximum Contract Cost *– with ALL options to extend exercised*	**$ 5,214,368.00**
11. Office for Information Resources Endorsement *– information technology service (N/A to THDA)*	☐ **Not Applicable** ☒ **Attached**
12. eHealth Initiative Support *– health-related professional, pharmaceutical, laboratory, or imaging*	☒ **Not Applicable** ☐ **Attached**
13. Human Resources Support *– state employee training service*	☒ **Not Applicable** ☐ **Attached**

14. Explanation of Need for the Proposed Amendment

In 2010, THEC submitted a five-year Contract with XAP Corporation for the provision of electronic transcript services and a college access web portal operating under the name CollegeforTN.org. Due to concerns expressed by the Comptroller's office regarding the funding distribution, THEC was asked to prepare a one-year contract with options for subsequent one-year extensions as outlined in section B.2. of the contract agreement. As the current contract term expires on April 30, 2014, THEC is submitting an Amendment request to extend the contract through April 30, 2015.

Aligned with THEC's mission to promote student success and support the State's completion agenda for

postsecondary education, the CollegeforTN.org web portal procured from XAP Corporation is designed to be a comprehensive resource for all Tennesseans supporting increased access to higher education. CollegeforTN.org provides users access to a comprehensive suite of career, college, and financial aid planning services and a means of accessing electronic student transcripts and admissions applications in a web-based environment using a single log-on and password.

15. Name & Address of the Contractor's Principal Owner(s)
– NOT required for a TN state education institution

XAP Corporation
3534 Hayden Ave.
Culver City, CA 90232

16. Evidence Contractor's Experience & Length Of Experience Providing the Service

XAP is the industry leader in developing and providing students and adults with the online tools to explore careers and explore, plan and apply to colleges and universities. The company pioneered the development of the electronic college application, the electronic transcript, and Internet-based student management systems enabling students to apply to college online. With the acquisition of Bridges Transitions in 2006, XAP acquired the leading provider of online career exploration and personal assessment tools for students and adults.

XAP clients include university and college systems, state agencies, and regional education organizations (*e.g.,* College Foundation of North Carolina, www.cfnc.org; Iowa College Student Aid Commission, www.ihaveaplaniowa.gov; , the California State University System, www.csumentor.edu; Georgia Student Finance Commission, www.gacollege411.org; Southern Regional Education Board, www.electronic campus.org). For these organizations and many others, XAP has designed, developed and implemented technology solutions focused on improving postsecondary-attending rates, increasing awareness of postsecondary opportunities, and facilitating online admissions applications and electronic student record exchange.

Today, XAP processes more than 4 million electronic college applications and 1.5 million electronic transcripts annually making it the largest provider of these services in North America. XAP's products are used by more than 900 colleges and universities and more than 8,000 middle and high schools in the United States and Canada and several other countries around the world.

Highlights of XAP Corporation's experience include:

- 25+ years of vendor experience providing career planning resources across an international landscape to students and adults;
- 12+ years of vendor experience delivering Internet-based college planning resources across a national landscape; and
- Experience in providing integrated college access systems in Colorado, Georgia, North Carolina, Rhode Island, and 25 other states, and the Southern Regional Education Board.

17. Efforts to Identify Reasonable, Competitive, Procurement Alternatives

THEC conducted a study of vendors providing online college access resources, including Career Cruising; ConnectEDU; Kuder, Inc.; My10YearPlan; and Naviance, Inc. Of the six vendors identified, only XAP Corporation meets all business, functional, and technical requirements outlined by Tennessee. XAP Corporation is the only vendor found offering career guidance (K-12 and adult), customizable school planning, college access information articles (high school success, college planning, and financial aid), transcript exchange, professional center, and higher education admission application resources in one integrated system.

Additionally, with the exception of one other company, all researched vendors require individual schools or organizations to purchase a product license and require passcodes to access product resources. XAP's product, on the other hand, is openly available and customizable for the general public. Additionally, XAP holds extensive knowledge of Tennessee State Board of Education policies as well as the curriculum standards required by Tennessee law for school counselors. This broad-base of

Request Tracking #	**33201-03310**

knowledge proves invaluable and fosters the portal's success.

18. Justification – *specifically explain why non-competitive negotiation is in the best interest of the state*

As stated previously, THEC conducted a review of vendors offering online college access resources and were unable to find another company with the ability to meet all business, functional and technical requirements. It is important to highlight that XAP Corporation is the only company THEC found offering career guidance (K- 12 and adult), customizable school planning, transcript exchange, a professional center, and higher education admissions application resources all in one integrated system access via a single log-on. Upon identifying Tennessee's goals and needs, as described above, and XAP's unique programmatic benefits, staff members secured references from peer states and were advised that XAP is the preferred vendor of states working to make large gains in high school graduation, college enrollment, and degree production.

Agency Head Signature and Date – *MUST be signed by the ACTUAL agency head as detailed on the current Signature Certification. Signature by an authorized signatory is acceptable only in documented exigent circumstances*

RICHARD G. RHODA, EXECUTIVE DIRECTOR TENNESSEE HIGHER EDUCATION COMMISSION - DATE

CONTRACT AMENDMENT

Agency Tracking #	Edison ID	Contract #	Amendment #
33201-03310	19758	FA1031822-03	FOUR

Contractor Legal Entity Name	Edison Vendor ID
XAP Corporation	00000067443

Amendment Purpose & Effect(s)

This Contract Amendment is to effectuate the term extension provided for in the Contract for the provision of electronic transcript services and student access web portal CollegeforTN initiative.

Amendment Changes Contract End Date: ☒ YES ☐ NO **End Date:** April 30, 2015

TOTAL Contract Amount INCREASE per this Amendment (zero if N/A)**:** **$925,000**

Funding —

FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
FY11		$ 622,774.00	$ 573,682.00		$1,196,456.00
FY12		$ 622,774.00	$ 573,682.00		$1,196,456.00
FY13		$ 397,774.00	$ 573,682.00		$ 971,456.00
FY14		$ 355,000.00	$ 570,000.00		$ 925,000.00
Fy15		$ 355,000.00	$ 570,000.00		$ 925,000.00
TOTAL:		**$2,353,322**	**$2,861,046.00**		**$5,214,368.00**

American Recovery and Reinvestment Act (ARRA) Funding: ☐ YES ☒ NO

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

Russ Deaton, Associate Executive Director of Fiscal Affairs
615.532.3860

Speed Chart (optional)	Account Code (optional)
332010517 332010511	

OCR USE

AMENDMENT FOUR
OF CONTRACT FA1031822-03

This Amendment is made and entered by and between the State of Tennessee, Tennessee Higher Education Commission (THEC), hereinafter referred to as the "State" and XAP Corporation, hereinafter referred to as the "Contractor." For good and valuable consideration, the sufficiency of which is hereby acknowledged, it is mutually understood and agreed by and between said, undersigned contracting parties that the subject contract is hereby amended as follows:

1. Contract section B.1. is deleted in its entirety and replaced with the following:

   B.1. This Contract shall be effective for the period commencing on May 1, 2010 and ending on April 30, 2015. The State shall have no obligation for services rendered by the Contractor which are not performed within the specified period.

2. Contract section C.1. Maximum Liability is deleted in its entirety and replaced with the following:

   C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed Five Million Two Hundred Fourteen Thousand Three Hundred Sixty-Eight Dollars ($5,214,368.00). The payment rates in Section C.3 shall constitute the entire compensation due the Contractor for the Service and all of the Contractor's obligations hereunder regardless of the difficulty, materials or equipment required. The payment rates include, but are not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by the Contractor.

   The Contractor is not entitled to be paid the maximum liability for any period under the Contract or any extensions of the Contract for work not requested by the State. The maximum liability represents available funds for payment to the Contractor and does not guarantee payment of any such funds to the Contractor under this Contract unless the State requests work and the Contractor performs said work. In which case, the Contractor shall be paid in accordance with the payment rates detailed in Section C.3. The State is under no obligation to request work from the Contractor in any specific dollar amounts or to request any work at all from the Contractor during any period of this Contract.

3. The following is added as Contract section E.12. Tennessee Department of Revenue Registration.

   E.12. Tennessee Department of Revenue Registration. The Contractor shall be registered with the Department of Revenue for the collection of Tennessee sales and use tax. This registration requirement is a material requirement of this Contract.

Required Approvals. The State is not bound by this Amendment until it is signed by the contract parties and approved by appropriate officials in accordance with applicable Tennessee laws and regulations (depending upon the specifics of this contract, said officials may include, but are not limited to, the Commissioner of Finance and Administration, the Commissioner of Human Resources, and the Comptroller of the Treasury).

Amendment Effective Date. The revisions set forth herein shall be effective May 1, 2014. All other terms and conditions of this Contract not expressly amended herein shall remain in full force and effect.

IN WITNESS WHEREOF,

XAP CORPORATION:

PETER KNEPPER, CHIEF EXECUTIVE OFFICER **DATE**

TENNESSEE HIGHER EDUCATION COMMISSION:

RICHARD G. RHODA, EXECUTIVE DIRECTOR **DATE**

GENERAL ASSEMBLY OF THE STATE OF TENNESSEE
FISCAL REVIEW COMMITTEE

320 Sixth Avenue, North – 8th Floor
NASHVILLE, TENNESSEE 37243-0057
615-741-2564

Sen. Bill Ketron, Chairman
Senators
Douglas Henry, Reginald Tate
Brian Kelsey, Ken Yager
Steve Southerland
Randy McNally, *ex officio*
Lt. Governor Ron Ramsey, *ex officio*

Rep. Mark White, Vice-Chairman
Representatives
Charles Curtiss, Pat Marsh
Jeremy Faison, Mark Pody
Brenda Gilmore, David Shepard
Matthew Hill, Tim Wirgau
Charles Sargent, *ex officio*
Speaker Beth Harwell, *ex officio*

MEMORANDUM

TO: Jessica Robertson, Chief Procurement Officer
Department of General Services

FROM: Senator Bill Ketron, Chairman BK
Representative Mark White, Vice-Chairman MW

DATE: April 22, 2013

SUBJECT: **Contract Comments**
(Fiscal Review Committee Meeting 4/22/13)

RFS# 332.01-03310 (Edison # 19758)
Department: Tennessee Higher Education Commission (THEC)
Vendor: XAP Corporation
Summary: The vendor is responsible for electronic transcript services and the CollegeforTN initiative. The proposed amendment specifies the vendor's service obligations including a Service Level Agreement and a provision for credit to be applied when service issues and service unavailability occur; extends current contract an additional year through April 30, 2014; increases maximum liability by $925,000; and provides for a 10 percent reduction in payment rates.
Current maximum liability: $3,364,368
Proposed maximum liability: $4,289,368

After review, the Fiscal Review Committee voted to recommend approval of the contract amendment.

cc: Dr. Richard Rhoda, Executive Director

RICHARD G. RHODA
Executive Director

BILL HASLAM
Governor

STATE OF TENNESSEE
TENNESSEE HIGHER EDUCATION COMMISSION
PARKWAY TOWERS, SUITE 1900
NASHVILLE, TENNESSEE 37243-0830
(615) 741-3605
FAX: (615) 741-5555
www.state.tn.us/thec/

MEMORANDUM

TO: Leni Chick, Contract and Audit Coordinator, Fiscal Review Committee

FROM: Marcie Mills, Contracts Administration Manager for
Scott Sloan, Associate Executive Director, Legal and Regulatory Affairs

DATE: March 13, 2013

RE: Non-Competitive Contract Amendment Summary
FA1031822 XAP Corporation Amendment Three

The Tennessee Higher Education Commission (THEC) proposes to submit a non-competitive contract amendment request to effectuate the term extension as currently provided for in the XAP contract for the provision of electronic transcript services and CollegeforTN initiative; reflect a ten percent reduction in rates; strengthen THEC's rights to Student Personal Privacy Information (SPPI); and memorialize the Contractor's service obligations including a Service Level Agreement, and a provision for a credit to be applied when service issues and service unavailability occur.

Pursuant to *Tennessee Code Annotated* § 12-4-109, Procurement of Service, the following information is presented for the Fiscal Review Committee.

Background and Objectives

In 2010, THEC submitted a five-year Contract with XAP Corporation for the provision of electronic transcript services and a college access web portal operating under the name CollegeforTN.org. Due to concerns expressed by the Comptroller's office regarding funding, THEC was asked to prepare a one-year contract with options for subsequent one-year extensions as outlined in section B.2. of the contract agreement. As the current contract term expires on April 30, 2013, THEC is submitting an Amendment request to extend the contract through April 30, 2014.

Aligned with THEC's mission to promote student success and support the State's completion agenda for postsecondary education, the CollegeforTN.org web portal procured from XAP Corporation is designed to be a comprehensive resource for all Tennesseans supporting increased access to higher education. CollegeforTN.org provides users access to a comprehensive suite of career, college, and financial aid planning services and a means of accessing electronic student transcripts and admissions applications in a web-based environment using a single log-on and password.

Actual Expenditures Anticipated in the Proposed Contract Amendment

The Contract term extension is May 1, 2012through April 30, 2013. Anticipated expenditures include:

Service Description 5/1/12 – 4/30/13	**Amount** (per compensable increment)
Career Planning and Test Preparation Tools Module	$28,350.00 *
High School Planning Tools Module	$28,325.00 *
College Planning Tools Module	$84,500.00 +
Financial Aid Planning Tools Module	$33,000.00 +
Life-Long Portfolio and Professional Center Module	$3,750.00 *
Adult Student Module	$ 0.00 (Included with Contract)
Professional Center Module Transcript Services *	$25,000.00 +
Middle School Module	$28,325.00 +
Total	**$231,250.00**

Funding Source
* Federal College Access Challenge Grant / GEAR UP TN
+ Lottery for Education Fund

In 2010, the Tennessee Higher Education Commission (THEC) entered into a contract with XAP Corporation in the amount of $1,196,456 for the procurement of CollegeforTN.org, a college and career exploration web portal and transcript exchange tailored to the needs of Tennessee. The 2010 contract was a one year agreement and included four options for annual renewals.

In May 2012, THEC amended the existing contract for the purpose of extending the agreement to April 30, 2013. In exploring the possibility of extending its agreement with XAP Corporation to April 30, 2014, THEC entered negotiations to reduce the annual contract liability for the CollegeforTN.org web portal. As the CollegeforTN.org initiative matures, THEC brought content and stakeholder relationship services once managed by XAP Corporation, as part of Tennessee's contract, in-house. XAP Corporation, therefore, has agreed to reduce Tennessee's annual contract liability by $46,456.

Justification for Non-Competitive Amendment

THEC conducted a review of vendors offering online college access resources and were unable to find another company with the ability to meet all business, functional and technical requirements. It is important to highlight that XAP Corporation is the only company THEC found offering career guidance (K- 12 and adult), customizable school planning, transcript exchange, a professional center, and higher education admissions application resources all in one integrated system access via a single log-on. Upon identifying Tennessee's goals and needs, as described above, and XAP's unique programmatic benefits, staff members secured references from peer states and were advised that XAP is the preferred vendor

of states working to make large gains in high school graduation, college enrollment, and degree production.

Additionally, with the exception of one other company, all companies required the school or organization to purchase a license and required passcodes to enter the site. CollegeforTN is openly available and customizable for the general public.

Lastly, THEC has promoted college access and success using CollegeforTN.org as the call to action in every aspect of this public outreach campaign. All campaign outreach materials direct students and their parents to visit CollegeforTN.org with the tagline "Higher Education. Put Your Mind To It." The campaign has seen much success winning several awards on the regional and national level. Lastly, state personnel, in partnership with XAP, have extensively trained school administrators, school counselors, teachers, higher education personnel, and college access professionals across Tennessee in using the resources of CollegeforTN.org. A change if vendor would result in the need for re-training each of these professionals that would result in a substantial loss of personnel time, state resources and grant funds.

Of note, over the last year the site had 173,244 site visits and 3,235,625 page views.

Efforts to Identify Reasonable, Competitive, Procurement Alternatives

As previously stated, THEC conducted a study of on-line, college access resources including Career Cruising, Connect EDU, Kuder, Inc., My10YearPlan, and Naviance, Inc. Of the six vendors identified, only XAP Corporation meets all business, functional and technical requirements outlined by the state. XAP Corporation is the only vendor found offering career guidance (K-12 and adult), customizable school planning, college access information articles (high school success, college planning, and financial aid), transcript exchange, professional center, and higher education admission application resources in one integrated system.

Supplemental Documentation Required for Fiscal Review Committee

*Contact Name:	Scott Sloan, Associate Executive Director, Legal and Regulatory Affairs, or Marcie Mills, Contracts Administration Manager,	*Contact Phone:	615.741.7571, or 615.532.3500
*Original Contract Number:	FA1031822-02	*Original RFS Number:	33201-03310
Edison Contract Number: *(if applicable)*	19758	Edison RFS Number: *(if applicable)*	33201-03310
*Original Contract Begin Date:	May 1, 2010	*Current End Date:	April 30, 2013
Current Request Amendment Number: *(if applicable)*		THREE	
Proposed Amendment Effective Date: *(if applicable)*		May 1, 2013	
*Department Submitting:		Higher Education	
*Division:		Tennessee Higher Education Commission (THEC)	
*Date Submitted:		March 14, 2013	
*Submitted Within Sixty (60) days:		No (51 Days)	
If not, explain:		Although this is a perfunctory annual amendment due to a term restriction placed on the original contract by the Comptroller, THEC has been in negotiations with the Contractor to lower the current rates, achieving a 10% reduction for a savings of $46,500 for FY14; strengthening THEC's position regarding rights to Student Personal Privacy Information (SPPI); and adding language to the Contract regarding the Contractor's service obligations, including the addition of a Service Level Agreement that includes provisions for credit to be applied due to service issues and service unavailability.	
*Contract Vendor Name:		XAP Corporation	
*Current Maximum Liability:		$3,364,368.00	
*Current Contract Allocation by Fiscal Year: ***(as Shown on Most Current Fully Executed Contract Summary Sheet)***			

Supplemental Documentation Required for Fiscal Review Committee

FY:2011	FY:2012	FY: 2013		FY	FY
$ 1,196,456	$1,196,456	$ 971,456		$	$
*Current Total Expenditures by Fiscal Year of Contract: ***(attach backup documentation from STARS or FDAS report)***					
FY:2011	FY: 2012	FY: 2013		FY	FY
$ 897,342	$1,196,456	$ 485,728		$	$

IF Contract Allocation has been greater than Contract Expenditures, please give the reasons and explain where surplus funds were spent:	FY2011: The contract was not approved until the beginning of the second quarter of the first year. Funds were not spent and will revert back to the grant fund. FY2013: Pending 4th Quarter Pymt, upon payment there will be no surplus.
IF surplus funds have been carried forward, please give the reasons and provide the authority for the carry forward provision:	NA
IF Contract Expenditures exceeded Contract Allocation, please give the reasons and explain how funding was acquired to pay the overage:	NA

*Contract Funding Source/Amount through 04/30/14:	State:		Federal:	$1,998,322.00
Interdepartmental:	$2,291,046.00 (Lottery)		*Other*:	
If "*other*" please define:				

Dates of All Previous Amendments or Revisions: *(if applicable)*	Brief Description of Actions in Previous Amendments or Revisions: *(if applicable)*
05/01/2011 Amendment One	Contract amendment to effectuate the term extension as provided for in the original contract.
05/02/2012 Amendment Two	Contract Amendment to effectuate the term extension as provided for in the original contract and a negotiated reduction in rates.
Method of Original Award: *(if applicable)*	Non-competitive Contract
*What were the projected costs of the service for the entire term of the contract prior to contract award?	NA

Supplemental Documentation Required for Fiscal Review Committee

For all new non-competitive contracts and any contract amendment that changes Sections A or C.3. of the original or previously amended contract document, provide estimates based on information provided the Department by the vendor for determination of contract maximum liability. Add rows as necessary to provide all information requested.

If it is determined that the question is not applicable to your contract document attach detailed explanation as to why that determination was made.

Planned expenditures by fiscal year by deliverable. Add rows as necessary to indicate all estimated contract expenditures.

These figures are per quarter:

Deliverable description:	FY: 2011	FY:2012	FY: 2013	FY: 2014
Career Planning and Test Preparation Tools Module	$ 81,250.00	$ 81,250.00	$ 33,471.75	$28,350.00 *
High School Planning Tools Module	$ 33,471.75	$ 33,471.75	$ 33,471.75	$28,325.00 *
College Planning Tools Module	$ 84,948.75	$ 84,948.75	$ 84,948.75	$84,500.00 +
Financial Aid Planning Tools Module	$ 33,471.75	$ 33,471.75	$ 33,471.75	$33,000.00 +
Life-Long Portfolio and Professional Center Module	$ 33,471.75	$ 33,471.75	$ 3,750.00	$3,750.00 *
Adult Student Module	$ 0.00 (Included with Contract)	$ 0.00 (Included with Contract)	$ 0.00 (Included with Contract)	$ 0.00 (Included with Contract)
Professional Center Module Transcript Services **	See Above	See Above	$ 25,000.00	$25,000.00 +
Middle School Module	$ 32,500.00	$ 32,500.00	$ 28,750.00	$28,325.00 +
Total	**$299,114.00**	**$299,114.00**	**$242,864.00**	**$231,250.00**

Funding Source
* Federal College Access Challenge Grant / GEAR UP TN
+ Lottery for Education Fund

** Transcript services include technical assistance for school counselors in uploading transcript data, creation of transcripts using the state transcript template and the ability for educators to send transcripts to both TSAC and higher education institutions. Transcripts are priced at $2.50 per transcript up to 40,000 transcripts. There is no charge for transcripts beyond 40,000 transcripts.

Supplemental Documentation Required for Fiscal Review Committee

Proposed savings to be realized per fiscal year by entering into this contract. If amendment to an existing contract, please indicate the proposed savings to be realized by the amendment. Add rows as necessary to define all potential savings per deliverable.

(^ Please note that THEC reflected an annual savings of $225,000 for Amendment Two FY13)
Savings to be Realized for Amendment Three FY2014

Deliverable description:	FY: 2013	FY: 2014	Savings Per QTR	Savings Per Annual
Career Planning and Test Preparation Tools Module	$ 33,471.75	$28,000.00 *	$ 5,121.75 *	$ 20,487.00
High School Planning Tools Module	$ 33,471.75	$28,000.00 *	$ 5,146.75 *	$ 20,587.00
College Planning Tools Module	$ 84,948.75	$84,500.00 +	$ 448.75 +	$ 1,795.00
Financial Aid Planning Tools Module	$ 33,471.75	$33,000.00 +	$ 471.75 +	$ 1,887.00
Life-Long Portfolio and Professional Center Module	$ 3,750.00	$3,750.00 *	$ 0.00 *	$ 0.00 *
Adult Student Module	$ 0.00 (Included with Contract)	$ 0.00 (Included with Contract)	NA	NA
Professional Center Module Transcript Services *	$ 25,000.00	$26,000.00 +	$ 0.00 *	$ 0.00 +
Middle School Module	$ 28,750.00	$28,000.00 +	$ 425.00 *	$ 1,700.00 *
Total	**$242,864.00**	**$231,250.00**	**$ 11,614.00 ****	**$ 46,456.00 ****

Funding Source
* Federal College Access Challenge Grant / GEAR UP TN
+ Lottery for Education Fund

** Savings FY2013: In 2010, the Tennessee Higher Education Commission (THEC) entered into a contract with XAP Corporation in the amount of $1,196,456 for the procurement of CollegeforTN.org, a college and career exploration web portal and transcript exchange tailored to the needs of Tennessee. The 2010 contract was a one year agreement and included four options for annual renewals.

In May 2012, THEC amended the existing contract for the purpose of extending the agreement to April 30, 2013. In exploring the possibility of extending its agreement with XAP Corporation to April 30, 2014, THEC entered negotiations to reduce the annual contract liability for the CollegeforTN.org web portal. As the CollegeforTN.org initiative matures, THEC brought content and stakeholder relationship services once managed by XAP Corporation, as part of Tennessee's contract, in-house. XAP Corporation, therefore, has agreed to reduce Tennessee's annual contract liability by $46,456.

Supplemental Documentation Required for Fiscal Review Committee

Comparison of cost per fiscal year of obtaining this service through the proposed contract or amendment vs. other options. List other options available (including other vendors), cost of other options, and source of information for comparison of other options (e.g. catalog, Web site). Add rows as necessary to indicate price differentials between contract deliverables.

Proposed Vendor Cost: (name of vendor)	FY:	FY:	FY:	FY:	FY:

THEC conducted a study of on-line, college access resources including Career Cruising, Connect EDU, Kuder, Inc., My10YearPlan, and Naviance, Inc. Of the six vendors identified, only XAP Corporation met all business, functional and technical requirements outlined by the state. XAP Corporation was the only vendor found offering career guidance (K -12 and adult), customizable school planning, college access information articles (high school success, college planning, and financial aid), transcript exchange, professional center, and higher education admission application resources in one integrated system. Additionally, with the exception of one other company, all companies required the school or organization to purchase a license and required passcodes to enter the site. CollegeforTN is openly available and customizable for the general public.

Of the vendors reviewed, ConnectEDU did offer some services similar to the four competencies required by Tennessee. ConnectEDU offered college profile and application information, transcript exchange capabilities, and career exploration and high school planning tools, but did not offer these features in an open web portal format that ensures college access information is accessible to the general public. ConnectEDU's platform focuses exclusively on a portfolio structure where users store information regarding their career and college planning. However, ConnectEDU's portal structure did not provide space for users to learn how financial aid works or what steps are required in the college admissions process, in fact there is no instructional properties provided by ConnectEDU. XAP's product is designed as a web portal where the general public can learn more about how to access higher education while benefiting from the tools and resources that help users make decisions regarding their postsecondary plans, providing both college access information such as high school success content, college planning articles, financial aid planning guides, and state-customized content, and and an online portfolio comprised of interactive tools such as career assessments, SAT/ACT test prep, college applications, and four year course plans.

During the initial contract process, THEC compiled a cost comparison of states currently using XAP Corporation's Transitions product. Using public secondary student enrollment as a metric for comparison, the cost analysis indicated that Tennessee's negotiated contract rate resulted in an annual per student cost that is in line with other states. Only Georgia, Illinois, and Iowa have an annual per student cost lower than Tennessee's negotiated rate. However, unlike Georgia, Illinois, and Iows, Tennessee's contract with XAP Corporation provides career exploration resources to all elementary students. This significant feature difference accounts for the slightly higher annual cost per student.

33201-03310 ID 19758 XAP Corporation

EDISON Payments Against a Contract

Contract	Unit	PO No.	PO Date	Quantity	PO Amount	Balance
						$3,364,368.00
19758	33201	846	11/8/2010	1	$81,250.00	$3,283,118.00
19758	33201	847	11/8/2010	1	$81,250.00	$3,201,868.00
19758	33201	914	12/16/2010	1	$435,728.00	$2,766,140.00
19758	33201	1007	2/7/2011	1	$81,250.00	$2,684,890.00
19758	33201	1008	2/8/2011	1	$217,864.00	$2,467,026.00
19758	33201	1241	5/26/2011	0.9999	$143,420.50	$2,323,605.50
19758	33201	1242	5/26/2011	0.9999	$70,207.63	$2,253,397.87
19758	33201	1243	5/26/2011	0.9999	$85,485.87	$2,167,912.00
19758	33201	1408	8/11/2011	1	$85,485.87	$2,082,426.13
19758	33201	1409	8/11/2011	1	$70,207.63	$2,012,218.50
19758	33201	1414	8/12/2011	1	$143,420.50	$1,868,798.00
19758	33201	1663	12/8/2011	1	$143,420.50	$1,725,377.50
19758	33201	1664	12/8/2011	1	$85,485.87	$1,639,891.63
19758	33201	1665	12/8/2011	1	$70,207.63	$1,569,684.00
19758	33201	1799	2/16/2012	1	$143,420.50	$1,426,263.50
19758	33201	1800	2/16/2012	1	$70,207.63	$1,356,055.87
19758	33201	1801	2/16/2012	1	$85,485.87	$1,270,570.00
19758	33201	2038	6/8/2012	1	$143,420.50	$1,127,149.50
19758	33201	2039	6/8/2012	1	$85,485.87	$1,041,663.63
19758	33201	2040	6/8/2012	1	$70,207.63	$971,456.00
19758	33201	2179	8/27/2012	0.9999	$242,864.00	$728,592.00
19758	33201	2366	12/5/2012	1	$143,420.50	$585,171.50
19758	33201	2367	12/5/2012	1	$65,971.75	$519,199.75
19758	33201	2368	12/5/2012	1	$33,471.75	$485,728.00
19758	33201	2600	2/27/2013	2	$286,841.00	$198,887.00
19758	33201	2628	3/5/2013	1	$143,420.50	$55,466.50

XAP Corporation ID 19758

Payments by Funding Distribution

Fiscal Year	Date	Voucher ID	Invoice	Program	Sum Amount
2011	11/12/2010	00001249	XAP July 10079	CACG3	81,250.00
2011	12/1/2010	00001250	XAP Aug 10197	CACG3	81,250.00
2011	12/21/2010	00001357	10132	LOTTERY	217,864.00
2011	12/21/2010	00001361	10361	LOTTERY	217,864.00
2011	3/3/2011	00001507	10418	CACG3	81,250.00
2011	3/3/2011	00001498	10417	LOTTERY	217,864.00
2011	6/9/2011	00001821	11062	GEARUPFY11	70,207.63
2011	6/9/2011	00001820	11061	CACG3	85,485.87
2011	6/9/2011	00001822	11063	LOTTERY	143,420.50
					1,196,456.00
Fiscal Year	Date	Voucher ID	Invoice	Program	Sum Amount
2012	9/1/2011	00002039	11253	GEARUPFY11	70,207.63
2012	9/1/2011	00002040	11252	CACG3	85,485.87
2012	9/1/2011	00002041	11254	LOTTERY	143,420.50
2012	12/15/2011	00002385	11356	CACG4	70,207.63
2012	12/15/2011	00002386	11355	CACG4	85,485.87
2012	12/15/2011	00002387	11357	LOTTERY	143,420.50
2012	3/1/2012	00002595	12017	LOTTERY	85,485.87
2012	3/1/2012	00002593	12019	LOTTERY	143,420.50
				47817.50-CACG4	
2012	3/6/2012	00002594	12018	22390.13 Indirect	70,207.63
2012	6/21/2012	00003004	12049	CACG4	70,207.63
2012	6/21/2012	00003003	12048	CACG4	85,485.87
2012	6/21/2012	00003002	12050	LOTTERY	143,420.50
					1,196,456.00
Fiscal Year	Date	Voucher ID	Invoice	Program	Sum Amount
2013	9/7/2012	00003245	12320	CACG4	33,471.75
2013	9/7/2012	00003244	12318	CACG4	65,971.75
2013	9/7/2012	00003243	12319	LOTTERY	143,420.50
2013	12/17/2012	00003510	12356	CACG4	33,471.75
2013	12/17/2012	00003509	12354	CACG4	65,971.75
2013	12/17/2012	00003508	12355	LOTTERY	143,420.50
					485,728.00
					2,878,640.00

GEARUPFY11	140,415.26
CACG3	414,721.74
CACG4	558,091.50
LOTTERY	1,743,021.37
Indirect	22,390.13
	2,878,640.00

Non-Competitive Amendment Request

NOT required for a contract with a federal, Tennessee, or Tennessee local government entity or a grant.
Route a completed request, as one file in PDF format, via e-mail attachment sent to: Agsprs.Agsprs@state.tn.us

APPROVED
COMMISSIONER OF FINANCE & ADMINISTRATION

Request Tracking #	**33201-03310**
1. Procuring Agency	**Tennessee Higher Education Commission (THEC)**
2. Contractor	**XAP Corporation**
3. Contract #	**FA1031822-01**
4. Proposed Amendment #	**THREE**
5. Edison ID #	**197581**

6. Contract Begin Date	**May 01, 2010**
7. Current Contract End Date *– with ALL options to extend exercised*	**April 30, 2015**
8. Proposed Contract End Date *– with ALL options to extend exercised*	**April 30, 2015**
9. Current Maximum Contract Cost *– with ALL options to extend exercised*	**$ 5,307,280.00**
10. Proposed Maximum Contract Cost *– with ALL options to extend exercised*	**$ 5,214,368.00**
11. Office for Information Resources Endorsement *– information technology service (N/A to THDA)*	☐ **Not Applicable** ☒ **Attached**
12. eHealth Initiative Support *– health-related professional, pharmaceutical, laboratory, or imaging*	☒ **Not Applicable** ☐ **Attached**
13. Human Resources Support *– state employee training service*	☒ **Not Applicable** ☐ **Attached**

14. Explanation of Need for the Proposed Amendment

In 2010, THEC submitted a five-year Contract with XAP Corporation for the provision of electronic transcript services and a college access web portal operating under the name CollegeforTN.org. Due to concerns expressed by the Comptroller's office regarding funding, THEC was asked to prepare a one-year contract with options for subsequent one-year extensions as outlined in section B.2. of the contract agreement. As the current contract term expires on April 30, 2013, THEC is submitting an Amendment request to extend the contract through April 30, 2014.

Request Tracking #	33201-03310

Aligned with THEC's mission to promote student success and support the State's completion agenda for postsecondary education, the CollegeforTN.org web portal procured from XAP Corporation is designed to be a comprehensive resource for all Tennesseans supporting increased access to higher education. CollegeforTN.org provides users access to a comprehensive suite of career, college, and financial aid planning services and a means of accessing electronic student transcripts and admissions applications in a web-based environment using a single log-on and password.

Additionally, while perfunctory in nature, THEC took this opportunity to begin negotiations to reduce the annual contract liability for the CollegeforTN.org web portal. As the CollegeforTN.org initiative matures, THEC brought content and stakeholder relationship services once managed by Xap Corporation, as part of Tennessee's contract, in-house. XAP Corporation, therefore, has agreed to reduce Tennessee's annual contract liability by $46,456.

15. Name & Address of the Contractor's Principal Owner(s)
– NOT required for a TN state education institution

XAP Corporation
3534 Hayden Ave.
Culver City, CA 90232

16. Evidence Contractor's Experience & Length Of Experience Providing the Service

XAP is the industry leader in developing and providing students and adults with the online tools to explore careers and explore, plan and apply to colleges and universities. The company pioneered the development of the electronic college application, the electronic transcript, and Internet-based student management systems enabling students to apply to college online. With the acquisition of Bridges Transitions in 2006, XAP acquired the leading provider of online career exploration and personal assessment tools for students and adults.

XAP clients include university and college systems, state agencies, and regional education organizations (*e.g.*, College Foundation of North Carolina, www.cfnc.org; Iowa College Student Aid Commission, www.ihaveaplaniowa.gov; , the California State University System, www.csumentor.edu; Georgia Student Finance Commission, www.gacollege411.org; Southern Regional Education Board, www.electronic campus.org). For these organizations and many others, XAP has designed, developed and implemented technology solutions focused on improving postsecondary-attending rates, increasing awareness of postsecondary opportunities, and facilitating online admissions applications and electronic student record exchange.

Today, XAP processes more than 4 million electronic college applications and 1.5 million electronic transcripts annually making it the largest provider of these services in North America. XAP's products are used by more than 900 colleges and universities and more than 8,000 middle and high schools in the United States and Canada and several other countries around the world.

Highlights of XAP Corporation's experience include:

- 25+ years of vendor experience providing career planning resources across an international landscape to students and adults;
- 12+ years of vendor experience delivering Internet-based college planning resources across a national landscape; and
- Experience in providing integrated college access systems in Colorado, Georgia, North Carolina, Rhode Island, and 25 other states, and the Southern Regional Education Board.

17. Efforts to Identify Reasonable, Competitive, Procurement Alternatives

THEC conducted a study of vendors providing online college access resources, including Career Cruising; ConnectEDU; Kuder, Inc.; My10YearPlan; and Naviance, Inc. Of the six vendors identified, only XAP Corporation meets all business, functional, and technical requirements outlined by Tennessee. XAP Corporation is the only vendor found offering career guidance (K-12 and adult), customizable school planning, college access information articles (high school success, college planning, and financial aid), transcript exchange, professional center, and higher education admission application resources in one

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integrated system.

Additionally, with the exception of one other company, all researched vendors require individual schools or organizations to purchase a product license and require passcodes to access product resources. XAP's product, on the other hand, is openly available and customizable for the general public. Additionally, XAP holds extensive knowledge of Tennessee State Board of Education policies as well as the curriculum standards required by Tennessee law for school counselors. This broad-base of knowledge proves invaluable and fosters the portal's success.

18. Justification – *specifically explain why non-competitive negotiation is in the best interest of the state*

As stated previously, THEC conducted a review of vendors offering online college access resources and were unable to find another company with the ability to meet all business, functional and technical requirements. It is important to highlight that XAP Corporation is the only company THEC found offering career guidance (K- 12 and adult), customizable school planning, transcript exchange, a professional center, and higher education admissions application resources all in one integrated system access via a single log-on. Upon identifying Tennessee's goals and needs, as described above, and XAP's unique programmatic benefits, staff members secured references from peer states and were advised that XAP is the preferred vendor of states working to make large gains in high school graduation, college enrollment, and degree production.

Agency Head Signature and Date – *MUST be signed by the ACTUAL agency head as detailed on the current Signature Certification. Signature by an authorized signatory is acceptable only in documented exigent circumstances*

RICHARD G. RHODA, EXECUTIVE DIRECTOR TENNESSEE HIGHER EDUCATION COMMISSION - DATE

CONTRACT AMENDMENT

Agency Tracking #	Edison ID	Contract #	Amendment #
33201-03310	19758	FA1031822-01	THREE

Contractor Legal Entity Name	Edison Vendor ID
XAP Corporation	00000067443

Amendment Purpose & Effect(s)

This Contract Amendment is to effectuate the term extension provided for in the Contract for the provision of electronic transcript services and student access web portal CollegeforTN initiative.

Amendment Changes Contract End Date: ☒ YES ☐ NO **End Date:** April 30, 2014

TOTAL Contract Amount INCRESE per this Amendment (zero if N/A): **$925,000** (This reflects a $46,456 decrease from last year's annual value)

Funding —

FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
FY11		$ 622,774.00	$ 573,682.00		$1,196,456.00
FY12		$ 622,774.00	$ 573,682.00		$1,196,456.00
FY13		$ 397,774.00	$ 573,682.00		$ 971,456.00
FY14		$ 355,000.00	$ 570,000.00		$ 925,000.00
TOTAL:		**$1,998,322.00**	**$2,291,046.00**		**$4,289,368.00**

American Recovery and Reinvestment Act (ARRA) Funding: ☐ YES ☒ NO

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

Russ Deaton

Russ Deaton, Associate Executive Director of Fiscal Affairs
615.532.3860

Speed Chart (optional)	Account Code (optional)
332010517 332010511	

OCR USE

AMENDMENT THREE
OF CONTRACT FA1031822-02

This Amendment is made and entered by and between the State of Tennessee, Tennessee Higher Education Commission (THEC), hereinafter referred to as the "State" and XAP Corporation, hereinafter referred to as the "Contractor." It is mutually understood and agreed by and between said, undersigned contracting parties that the subject contract is hereby amended as follows:

1. Contract section A.2. Product is deleted in its entirety and replaced with the following:

   A.3. Product: Tennessee procured a solution from XAP Corporation to provide a broad avenue of access to Tennessee education opportunities beyond high school. The resulting website www.CollegeforTN.org ("Web Portal" or "System") is customized especially for use in Tennessee and allows the user, which includes students in grades K – 12, to plan their future careers, begin to understand the need for higher education, know which courses to take in middle and high school to be academically prepared for college, prepare for tests, including ACT, SAT, and GRE, and learn how to apply for financial aid. Additionally, postsecondary students, parents, guidance counselors, and college access professionals will have access to a comprehensive suite of career, college, and financial aid planning services in a web-based environment using a single log-on and password.

2. Contract section A.3. Web Portal is deleted in its entirety and replaced with the following:

   A.4. Web Portal. The Contractor shall provide the following specific and unique features of the Web Portal:

      a. Career planning and test preparations tools which will provide a comprehensive career exploration and standardized test preparation experience for all Tennessee citizens. Career assessments will include an Interest Profile, Career Cluster Survey, Basic Skills Survey, Transferable Skill checklist, Career Key and Work Values Sorter. Career exploration resources will also include career search and matching functionality organized around the career clusters as determined by the U.S. Department of Labor and will be tailored to reflect Tennessee's Department of Education career cluster customizations. Elementary School students will have access to age appropriate career exploration tools in the module Paws in Jobland. The career exploration resources found on the Web Portal will change in content and form dependent on the age of the user ensuring that all users have a career exploration experience customized to their needs and age level. The Web Portal will also provide standardized test preparation tools for the ACT, SAT and GRE.

      b. High School planning tools which include a planning timeline and a personalized plan of study, outlining what students and parents should be doing throughout a student's high school career to effectively plan for college. The personalized plan of study will allow students to make high school course plans. The plans of study will be populated with all courses listed as approved by the Tennessee Department of Education and will be organized in accordance with Tennessee course and graduation standards. Local districts and schools will have the ability to customize course offerings, course sequences, and options for the personalized plan of study of students that attend their particular school or district.

      c. College planning tools which offer resources allowing students to explore postsecondary education options. Web Portal users will be able to browse higher education institutions, view program and major profiles and access college

preparation content. The State will have the capability to customize and add college planning content as it sees fit. The Web Portal will provide online applications for admissions to all Tennessee higher education institutions including Tennessee Technology Centers and institutions eligible to participate in the Tennessee Education Lottery Scholarship program. Additionally, the Web Portal will provide electronic transcript services for high school, high school equivalent and college transcripts.

d. Financial Aid planning tools which include a set of comprehensive financial aid resources including financial aid calculators, an Expect Family Contribution (EFC) calculator, user-personalized financial planning tool and scholarship search tools. The State will have the ability to customize and supplement the financial aid and financial literacy information provided. The portal will also provide the ability of users to transfer information found in user profiles directly to the Free Application for Federal Student Aid (FAFSA) form.

e. Life-long Portfolio that provides users with a personal web-based portfolio that will house all career, high school, college, and financial aid planning activity outcomes. Users will be able to manage items such as careers, postsecondary institutions, and academic programs of interest. The portfolio provides resources including email, calendar, and the capability of communicating with school personnel.

f. Adult Student Module which provides career planning, college planning, financial aid planning, life-long portfolio and professional center tools tailored to the adult student. Workforce development and career centers will have access to the Professional Center to better aid in facilitating resources to adults. The adult portions of the website will be customizable in appearance and content to better reflect the needs of Tennessee.

g. Professional Center which gives designated school, university, and workforce center personnel access to the accounts of all individuals associated with their respective programs. Professional center users will have the ability to segment individuals in a variety of ways (i.e. grade level, last name, career interests, etc) to maximize use. Professional center users will be able to track Web Portal user's progress in completing site activities including assessment, college applications, and high school plans. Messages and event notices can be sent to individual portal user accounts. School personnel can upload and send transcripts through the Professional Center. User-friendly reports are available in the Professional Center to track, engage and keep portal users accountable. Sample reports include a list of students who are interested in majoring in Biology, which users have applied to college, or a list of students who have not yet completed a personalized plan of study. The Professional Center provides tools to more efficiently manage portal user's career, high school, college and financial aid planning. Additionally, school district and state level educators will have the capability of obtaining aggregate and disaggregate data regarding student usage and outcomes.

h. Middle School Module which provides career planning, college planning, financial aid planning, life-long portfolio and professional center tools tailored to the middle school student. All Tennessee middle schools will have access to the Professional Center to better aid in facilitating resources to middle school students. The student portions of the website will be customizable in appearance and content to better reflect the needs of Tennessee.

3. Contract section A.4. Functional Requirement is deleted in its entirety and replaced with the following:

A.5 Functional Requirements: The Contractor shall provide the following functional requirements:

a. Customizable user access permission levels to accommodate multiple user roles.

b. Customizable user interface that integrates and/or supports social networking.

c. A single integrated portal with no or limited links to subsystems or websites without the expressed approval of the State.

d. Single sign-on capabilities in a secure online environment requiring the use of a secured user id and password.

e. Ability to identify, track and record student career interests.

f. Tennessee-specific K-12 roadmaps that lead and measure a student's progress through the system's functionality and activities in a logical order culminating with the student arriving at their chosen college or career destination.

g. A lifelong electronic portfolio to support students' future education and employment goals.

h. Integrated ACT/SAT/GRE test preparation and recording capabilities.

i. Electronic admissions application capabilities to Tennessee higher education institutions including Tennessee Technology Centers and institutions eligible to participate in the Tennessee Education Lottery Scholarship program.

j. Electronic academic transcripts delivery to include high school to high school, high school to Tennessee agencies, high school to college, and college to college.

k. Student and adult learner resume development capabilities.

l. Capabilities to provide or support the delivery of financial aid information on federal and Tennessee grants, scholarships, work study and student loans including the capabilities to provide and/or integrate electronic applications associated with each program.

m. Capabilities to upload, store, retrieve and update academic and career related documents.

n. The ability to link to external websites and/or return pre-determined student support services and/or program information to the student.

o. On demand training related to the tools, features, and functionality for regional and Tennessee level users and administrators.

4. Contract section A.5. Technical Requirements is deleted in its entirety and replaced with the following:

A.6. Technical Requirements: The Contractor shall provide the following technical requirements:

a. A low cost, interoperable, and commercial off-the-shelf solution that avoids new development, and leverages new or existing technologies.

b. Compliance with the Children's Online Privacy Protection Act (COPPA).

c. Compatibility and integration with the Occupational Employment Statistics Program (OES).

d. Electronically supported administration of assessments and accountability as outlined by the No Child Left Behind (NCLB) Act.

e. Interoperability (easy import, export or integration) with Tennessee student information systems (local education agency, higher education and state level), GEAR UP programs, and other College and Career applications.

f. The ability to add and change content, links, and pages to best suit the needs of Tennessee.

g. The ability to incorporate Tennessee based information including employment outlook data to address Tennessee specific needs (i.e. the creation of a College Access Network page or a page dedicated to Tennessee-specific financial aid options).

h. Both standard and ad-hoc reporting on the state, district, and school level with capabilities of offering aggregated or disaggregated data on system usage, student portfolios, career interests individually or by groups, academic progress, pre-determined lesson plans, academic assessments, test and/or exit exam scores.

i. Timely system updates reflecting policy changes at both the federal and state levels, provided that State provides prompt notice of such policy changes to Contractor.

j. Both on-site and fully hosted software options.

k. 24 x 7 support capabilities, except for scheduled maintenance as per section A.5.m.

l. The Web Portal will be available 99.5 percent of the time in any given calendar quarter, excluding interruptions resulting from scheduled maintenance, customer equipment or LAN failure, and customer caused disruptions including without limitation, the State's failure to timely respond to information requests by the Contractor; interconnections to or from the internet; or force majeure events, i.e., events that are beyond the Contractor's control, including without limitation, any interruptions caused by third parties outside of the Contractors control.

m. Scheduled maintenance should occur during the period between 10 p.m. and 1 a.m. Pacific Standard Time (12 a.m. and 3 a.m. Central Standard Time) and other low usage times when feasible. In addition, the Contractor may perform scheduled maintenance at any time by providing notice to the State notice at least three (3) business days in advance of the interruption. Any scheduled maintenance set forth in such a notice, must be acknowledged and approved by the State in writing; provided, however, that if State does not provide such

approval or rejection prior to the start of such scheduled maintenance, the State will be deemed to have approved the scheduled maintenance. This notice and approval requirement does not apply to the regularly-scheduled maintenance window set forth above. Any scheduled maintenance that occurs outside the regularly-scheduled maintenance window or without notification and approval for other scheduled maintenance will be considered unscheduled maintenance and count as system unavailability.

n. In the case of unscheduled maintenance or service interruption as outlined in section A.5.l., the Contractor agrees to immediately notify the State of the nature of the interruption. The Contractor will ascribe to the service level requirements as outlined in Attachment B Service Level Agreement.

o. The Contractor shall renew the domain name CollegeforTN.org as required.

5. Contract section A.6. Domain Name is deleted in its entirety and replaced with the following:

A.7. Domain Name. At such time as this contract expires and is not renewed, or it is terminated pursuant to the terms of this contract, the Contractor agrees to transfer all rights to the domain name "CollegeforTN.org," to the State. The Contractor shall not be responsible for any costs associated with the transfer and future renewals if the State chooses to take ownership of the domain name.

6. Contract section B.1. Contract Term is deleted in its entirety and replaced with the following:

B.1. This Contract shall be effective for the period commencing on May 1, 2010 and ending on April 30, 2014. The State shall have no obligation for services rendered by the Contractor which are not performed within the specified period.

7. Contract section C.1. Maximum Liability is deleted in its entirety and replaced with the following:

C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed Four Million Two Hundred Eighty-Nine Thousand Three Hundred Sixty-Eight Dollars ($4,289,368.00). The payment rates in Section C.3 shall constitute the entire compensation due the Contractor for the Service and all of the Contractor's obligations hereunder regardless of the difficulty, materials or equipment required. The payment rates include, but are not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by the Contractor.

The Contractor is not entitled to be paid the maximum liability for any period under the Contract or any extensions of the Contract for work not requested by the State. The maximum liability represents available funds for payment to the Contractor and does not guarantee payment of any such funds to the Contractor under this Contract unless the State requests work and the Contractor performs said work. In which case, the Contractor shall be paid in accordance with the payment rates detailed in Section C.3. The State is under no obligation to request work from the Contractor in any specific dollar amounts or to request any work at all from the Contractor during any period of this Contract.

8. Contract section C.3. Payment Methodology is deleted in its entirety and replaced with the following:

C.3. Payment Methodology. The Contractor shall be compensated based on the payment rates herein for units of service authorized by the State in a total amount not to exceed the Contract Maximum Liability established in Section C.1.

a. The Contractor's compensation shall be contingent upon the satisfactory completion of units, milestones, or increments of service defined in Section A.

b. The Contractor shall be compensated for said units, milestones, or increments of service based upon the following payment rates:

Service Description	Amount Per Compensable Unit
Career Planning and Test Preparation Tools (A.4.a.)	$28,350.00 Per Quarter
High School Planning Tools (A.4.b.)	$28,325.00 Per Quarter
College Planning Tools (A.4.c.)	$84,500.00 Per Quarter
Financial Aid Planning Tools (A.4.d.)	$33,000.00 Per Quarter
Life-long Portfolio (A.4.e.)	$ 3,750.00 Per Quarter
Adult Student Module (A.4.f)	$ 0.00 Included with Contract
Professional Center (A.4.g.) Transcript Services *	$25,000.00 Per Quarter
Middle School Module (A.4.h.)	$28,325.00 Per Quarter

* Transcript services include technical assistance for school counselors in uploading transcript data, creation of transcripts using the state transcript template and the ability for educators to send transcripts to both TSAC and higher education institutions. Transcripts are priced at $2.50 per transcript up to 40,000 transcripts. There is no charge for transcripts beyond 40,000 transcripts.

c. The Contractor shall not be compensated for travel time to the primary location of service provision.

d. Customization Credit. The Contractor will provide the State with an annual customization credit of Fifty Thousand Dollars ($50,000) that may be applied against customizations to the System as outlined in Section A, but not specifically outlined in Section C.

e. Service Credit. For each day of service level credit, based on the table as referenced in Attachment B Service Level Agreement, the State shall receive a credit equal to one/ninetieth (1/90) of the quarter's fee.

9. Contract section E.2. Communications and Contacts is deleted in its entirety and replaced with the following:

E.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by certified, first class mail, return receipt requested and postage prepaid, by overnight courier service with an asset tracking system, or by EMAIL or facsimile transmission with recipient confirmation. Any such communications, regardless of method of transmission, shall be addressed to the respective party at the appropriate mailing address, facsimile number, or EMAIL address as set forth below or to that of such other party or address, as may be hereafter specified by written notice.

The State:

Troy Grant, Director of College Access Initiatives
Tennessee Higher Education Commission
Suite 1900, Parkway Towers
404 James Robertson Parkway
Nashville, TN 37243
Email: Troy.Grant@tn.gov
Telephone Number: 615. 532.0423
Fax Number: 615.741.2630

All Refunds or other Monetary Returns:

Russ Deaton, Associate Executive Director, Fiscal Affairs
Tennessee Higher Education Commission
Suite 1900, Parkway Towers, 404 James Robertson Parkway
Nashville, TN 37243
Russ.Deaton@tn.gov
Telephone: 615. 615-532-3860
FAX: 615.741.6230

The Contractor:

Peter Knepper, Chief Executive Officer
XAP Corporation
100 Corporate Pointe, Suite 100
Culver City, CA 90230
pknepper@xap.com
Telephone Number: 424.750.3903
FAX Number: 310.842.9898

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

10. Contract section E.9. Ownership of Software and Work Products is deleted in its entirety and replaced with the following:

E.9. Ownership of Software and Work Products.

a. Definitions.

(1) "Contractor-Owned Software," which shall mean commercially available software the rights to which are owned by Contractor, including but not limited to the System and the user interface Web Portal and any commercial "off-the-shelf" software which is not developed using State's money or resources.

(2) "Custom-Developed Application Software," which shall mean customized application software developed by Contractor solely for State.

(3) "Rights Transfer Application Software," which shall mean any pre-existing application software owned by Contractor or a third party, provided to State and to which Contractor will grant and assign, or will facilitate the granting and assignment of, all rights, including the source code, to State.

(4) "Third-Party Software," which shall mean software not owned by the State or the Contractor.

(5) "Work Product," which shall mean all deliverables exclusive of hardware, such as software, software source code, documentation, planning, etc., that are created, designed, developed, or documented by the Contractor for the State during the course of the project using State's money or resources, including Custom-Developed Application Software. The parties acknowledge and agree that the System and the user interface Web Portal are not and shall not be deemed Work Product, Custom-Developed Application Software, or Rights Transfer Application Software under this Agreement.

b. Rights and Title to the Software.

(1) All right, title and interest in and to the Contractor-Owned Software shall at all times remain with Contractor, subject to any license granted herein. Notwithstanding anything to the contrary in this Contract, the State acknowledges and agrees that the Web Portal has been customized by the Contractor to comply with the State's requirements, but that the Contractor shall maintain all right, title, and interest in and to the Web Portal, which the State may use only during the term of this Contract. During the term of this Contract, after the expiration of this Contract, or termination of this Contract for any reason, the technology, source code, object code, data processing tools, original artwork, graphic design, Contractor trademarks, parser, and specialized software tools constituting and pertaining to the System and user interface Web Portal, including all copyright, trademark, trade secret, patent, and other intellectual property rights therein and all applications and registrations therefore, shall remain the sole and exclusive property of the Contractor.

The State acknowledges and agrees that it shall not, directly or indirectly, reverse engineer, decompile, disassemble, or otherwise attempt to discover the source code of the System or user interface Web Portal, or perform any other action to determine how the System or user interface Web Portal works, either during the term of this Contract or thereafter.

The foregoing shall not apply to the State's trademarks, artwork, graphic designs, or information that the State provides to the Contractor for use in the user interface Web Portal, and the State shall maintain all rights, titles, and interest in and to such trademarks, artwork, graphic designs, and information.

(2) All right, title and interest in and to the Work Product, and to modifications thereof made by State, including without limitation all copyrights, patents, trade secrets and other intellectual property and other proprietary rights embodied by and arising out of the Work Product, shall belong to State. To the extent such rights do not automatically belong to State, Contractor hereby assigns, transfers, and conveys all right, title and interest in and to the Work Product, including without limitation the copyrights, patents, trade secrets, and other intellectual property rights arising out of or embodied by the Work Product. Contractor shall execute any other documents that State or its counsel deem necessary or desirable to document this transfer and/or allow State to register its claims and rights to such intellectual property rights

or enforce them against third parties, and Contractor shall cooperate fully in the foregoing endeavors.

(3) All right, title and interest in and to the Third-Party Software shall at all time remain with the third party, subject to any license granted thereby.

c. Nothing in this Contract shall prohibit the Contractor's use for its own purposes of the general knowledge, skills, experience, ideas, concepts, know-how, and techniques obtained and used during the course of providing the services requested under this Contract.

d. Nothing in the Contract shall prohibit the Contractor from developing for itself, or for others, materials which are similar to and/or competitive with those that are produced under this Contract.

11. The following is added as Contract section E.11. State Student Personal Privacy Information (SPPI).

E.10. State Student Personal Privacy Information (SPPI). In the course of the Contractor's hosting of the System outlined in section A.2., and the provision of services to the State, the Contractor receives, maintains and makes available through the Web Portal to the State student personal privacy information (SPPI) pursuant to the Web Portal privacy statement(s) and informed consent provisions of the Contractor-provided System. The State has right of approval for any and all privacy statements and informed consent provisions and agrees to observe those conditions in any use or dissemination of the SPPI during the term of the Contract and thereafter for as long as the State possesses or influences the use or dissemination of the SPPI. The State also acknowledges that Web Portal users may, for their benefit, use the data input into the Web Portal on the Contractor's website and other Contractor-provided web portals that permit the use of such user data. The State acknowledges that the System utilizes a common database, which enables users who have established an account on the System through any web portal (including without limitation the Web Portal under this Contract) to utilize the data entered with respect to that account to populate applications and use other offerings on the System offered by the Contractor. As a result, users will be able to access and complete applications and utilize other offerings on compatible web portals operated as part of the System, including web portals that are being paid for by entities that compete with the State.

The State and the Contractor will comply with all obligations applicable to them under all applicable data protection legislation and other laws and regulations in relation to all SPPI that is processed by them in the course of performing their obligations under this Contract, including without limitation, by: (i) Complying with all data protection legislation applicable to cross border data flows of SPPI and required security measures for SPPI; (ii) using all SPPI only with the express consent of the user and only for the purpose for which the user provides express consent; (iii) encrypting SPPI in transmission; (iv) password protecting SPPI when it resides on a server; and (v) ensuring that all personnel having access to SPPI have been instructed regarding the confidentiality and use requirements with respect to such SPPI.

Required Approvals. The State is not bound by this Amendment until it is signed by the contract parties and approved by appropriate officials in accordance with applicable Tennessee laws and regulations (depending upon the specifics of this contract, said officials may include, but are not limited to, the Commissioner of Finance and Administration, the Commissioner of Human Resources, and the Comptroller of the Treasury).

Amendment Effective Date. The revisions set forth herein shall be effective May 1, 2013. All other terms and conditions of this Contract not expressly amended herein shall remain in full force and effect.

IN WITNESS WHEREOF,

XAP CORPORATION: 5/10/2013

PETER KNEPPER, CHIEF EXECUTIVE OFFICER **DATE**

TENNESSEE HIGHER EDUCATION COMMISSION:

Richard G. Rhoda / mns 5/14/13

RICHARD G. RHODA, EXECUTIVE DIRECTOR **DATE**

ATTACHMENT B

SERVICE LEVEL AGREEMENT

Table of Contents

1.1 Service Levels, Notification and Remediation
1.2 Service Level Measurement
1.3 Definitions
1.4 Service Level Credits Table

1.1. Service Levels, Notification and Remediation

Description	Details/Notification	Minimum Acceptable Service Level	Remedy
Unscheduled Maintenance/Downtime	Unscheduled Maintenance Downtime is the time when all System Users are unable to transmit or access information from the System (an inactive communications connection), and includes unavailability associated with any maintenance activity other than that associated with Scheduled Downtime/Maintenance. XAP will provide immediate notification of Unscheduled Maintenance/Downtime to System Users, when possible, and escalation to the State after 30 minutes of interruption	System availability of 99.5% of the time per Contract quarter (see below for interruptions that are excluded from downtime percentage)	Service Level Credits: XAP will credit the State in the amounts set forth in § 1.4. Exhibit 1 to this Attachment, for levels of network downtime per month up to but not exceeding 100% of one month's recurring charges for any given month. Credit issued per quarter.

CENTRAL PROCUREMENT OFFICE

1.2. Service Level Measurement

XAP will designate the method of measurement for each of the key metrics defined in this document. XAP is responsible for providing this information with a regular report. The measurement must be done on a weekly basis and reported monthly with monthly, quarterly and yearly statistical totals. When service falls below the thresholds identified in this document, XAP will work to identify the root cause and resolve service problems in a timely manner. If the service levels for a particular metric fall below the threshold for more than three (3) consecutive months (or in the event of any unplanned outage), XAP must provide a report to the State within five (5) business days after the third month (or after an outage occurs) outlining the issues, the plan for resolution and progress on resolution until the service levels have been restored. This analysis should include suggestions for improvements to prevent future issues.

Description	Details/Notification	Minimum Acceptable Service Level
Scheduled Maintenance	Scheduled Maintenance is time when a System User is unable to transmit or access information from the system (an inactive communications connection), but which is pre-scheduled and does not count toward unscheduled downtime. The period between 10 p.m. and 1 a.m. Pacific Standard Time (12 a.m. and 3 a.m. Central Standard Time) and other low usage times when feasible, is always considered regularly Scheduled Maintenance. XAP may perform Scheduled Maintenance at any other time by providing notice at least three (3) business days in advance of the interruption. Any scheduled maintenance that occurs outside the regularly-scheduled maintenance window and without notification will be considered unscheduled maintenance and count as system unavailability.	The System will be available 99.5% of the time in any given Contract quarter, excluding interruptions resulting from Scheduled Maintenance, State equipment or LAN failure, State caused disruptions including without limitation failure to timely respond to information requests from XAP, interconnections to or from the Internet or force majeure events, i.e., events that are beyond XAP's control, including without limitation, any interruptions caused by third parties outside of XAP's control. Scheduled maintenance should occur during low usage times when feasible.
Concurrent System Users	The system will be able to support up to 10,000 Concurrent System Users per hour	As measured by the 99.5% availability

CENTRAL PROCUREMENT OFFICE

ATTACHMENT B

Description	Details/Notification	Minimum Acceptable Service Level
Transaction response time	XAP must provide notification to System Users if the system is experiencing response time issues. If the issues continue for more than one (1) day XAP must provide an explanation and remediation steps to the State.	95% of all transactions should complete within two (2) seconds and no single transaction should exceed five (5) seconds. As used here, the term "transaction" excludes reporting, use of administrative tools, retrieval of data and similar resource intensive transactions each of which may take longer than five (5) seconds.

CENTRAL PROCUREMENT OFFICE

1.3 Definitions

Term	Acronym	Definition
Concurrent System User		A System User accessing the System at the same time as one or more other System Users.
Equipment		Shall mean all computing, networking, telecommunications and other equipment (hardware and firmware) procured, provided, operated, supported, or used by XAP or the State in connection with the Services, including (a) midrange, server and distributed computing equipment and associated attachments, features, accessories, peripheral devices and cabling, (b) personal computers, laptop computers, workstations and personal data devices and associated attachments, features, accessories, printers, multi-functional printers, peripheral or network devices and cabling, and (c) voice, data, video and wireless telecommunications and network and monitoring equipment and associated attachments, features, accessories, cell phones, peripheral devices and cabling.
Service Levels		Shall mean the levels and standards for the performance of the Services.
Service Level Failure		Customer is unable to access the services based upon the agreed service levels.
Transaction Response Time		The time it takes for a server to service a request – such as a web page.

1.4 Service Level Credits Table

Uptime		In Hours	Number of Days of Credit
From	To		
100.0%	99.5%	> 30 mins and up to 4 hours	0.00
99.5%	99.0%	4.01 – 8.0 hours	1.00
99.0%	98.5%	8.01 to 12.0 hours	2.00
98.5%	98.0%	12.01 – 16 hours	3.00
98.0%	97.5%	16.01 to 20.0 hours	4.00
97.5%	97.0%	20.01 to 24.0 hours	5.00
97.0%	< 97.0%	24.01 hours and above	6.00

For each day of service level credit, based on the table above, the State shall receive a credit equal to 1/90th of the quarter's fee.

GENERAL ASSEMBLY OF THE STATE OF TENNESSEE
FISCAL REVIEW COMMITTEE

320 Sixth Avenue, North – 8th Floor
NASHVILLE, TENNESSEE 37243-0057
615-741-2564

Sen. Bill Ketron, Chairman
Senators
Douglas Henry, Reginald Tate
Brian Kelsey, Ken Yager
Eric Stewart
Randy McNally, *ex officio*
Lt. Governor Ron Ramsey, *ex officio*

Rep. Curtis Johnson, Vice-Chairman
Representatives
Tommie Brown, David Shepard
Jim Coley, Tony Shipley
Charles Curtiss, Curry Todd
Johnny Shaw, Mark White
Charles Sargent, *ex officio*
Speaker Beth Harwell, *ex officio*

MEMORANDUM

TO: The Honorable Mark Emkes, Commissioner
Department of Finance and Administration

FROM: Senator Bill Ketron, Chairman
Representative Curtis Johnson, Vice-Chairman

DATE: March 29, 2012

SUBJECT: **Contract Comments**
(Fiscal Review Committee Meeting 3/26/12)

RFS# 332.01-03310 (Edison # 19758)
Department: Tennessee Higher Education Commission (THEC)
Vendor: XAP Corporation
Summary: The vendor is responsible for electronic transcript services and support for the College4TN program. The proposed amendment extends the current contract an additional year through April 30, 2013; increases maximum liability by $971,456; and reduces annual payment rate for the extension year.
Current maximum liability: $2,392,912
Proposed maximum liability: $3,364,368

After review, the Fiscal Review Committee voted to recommend approval of the contract amendment.

cc: Dr. Richard Rhoda, Executive Director, THEC
Ms. Jessica Robertson, Chief Procurement Officer

RICHARD G. RHODA
Executive Director

BILL HASLAM
Governor

STATE OF TENNESSEE
TENNESSEE HIGHER EDUCATION COMMISSION
PARKWAY TOWERS, SUITE 1900
NASHVILLE, TENNESSEE 37243-0830
(615) 741-3605
FAX: (615) 741-5555
www.state.tn.us/thec/

MEMORANDUM

TO: Leni Chick, Contract and Audit Coordinator, Fiscal Review Committee

FROM: Will Burns, Associate Executive Director, Legal and Regulatory Affairs

DATE: February 13, 2011

RE: Non-Competitive Contract Amendment Summary
XAP Corporation FA1031822 – Fiscal Analysis

The Tennessee Higher Education Commission (THEC) proposes to submit a non-competitive contract amendment request to effectuate the term extension as currently provided for in the contract for the provision of electronic transcript services and CollegeforTN initiative with XAP Corporation.

Pursuant to *Tennessee Code Annotated* § 12-4-109, Procurement of Service, the following information is presented for the Fiscal Review Committee.

Background and Objectives

Tennessee lags regional and national averages in the educational attainment level. According to the National Center for Higher Education Management Systems, only six states have a working age population with a lower proportion of college graduates than Tennessee. Currently, only 29.9 percent of Tennessee's adults aged 25-64 hold an Associate's degree or higher, compared to an average of 34.3 percent for Southern Regional Education Board states and 37.2 percent for the nation.

Tennessee currently produces approximately 35,000 college graduates per year. Holding conditions constant, current production indicates that annual degree production will be about 38,000 in 2015. To meet the national average, Tennessee needs to produce a cumulative additional 269,000 degrees (Associates and Bachelors) by 2025. To achieve this goal, Tennessee higher education must produce 44,000 postsecondary degrees per year by 2015 and eventually 59,000 degrees per year by 2025. In the other words, Tennessee needs to increase the number of individuals obtaining degrees by 3.5 percent every year from now until 2025, according to MeeetingtheChallengfromTN.gov/moa/what goal.

In 2005, the Tennessee Department of Education (TDOE), Tennessee Student Assistance Corporation (TSAC), and Tennessee Higher Education commission (THEC) sought a solution that would provide a broad avenue of access to Tennessee educational opportunities beyond high school.

Tennessee procured a solution from XAP Corporation to provide a broad avenue of access to Tennessee education opportunities beyond high school. The resulting website www.CollegeforTN.org is designed

especially for use in Tennessee and allows the user, which includes students in grades K- 12, to plan their future careers, begin to understand the need for higher education, know which courses to take in middle and high school to be academically prepared for college, prepare for tests, including ACT, SAT, and GRE, and learn how to apply for financial aid. Additionally, postsecondary students, parents, guidance counselors, and college access professionals will have access to a comprehensive suite of career, college, and financial aid planning services in a web-based environment using a single log-on and password.

Actual Expenditures Anticipated in the Proposed Contract Amendment

The Contract term extension is May 1, 2012through April 30, 2013. Anticipated expenditures include:

Service Description 5/1/12 – 4/30/13	**Amount** (per compensable increment)
Career Planning and Test Preparation Tools Module	$ 33,471.75 per quarter
High School Planning Tools Module	$ 33,471.75 per quarter
College Planning Tools Module	$ 84,948.75 per quarter
Financial Aid Planning Tools Module	$ 33,471.75 per quarter
Life-Long Portfolio Module	$ 3,750.00 per quarter
Adult Module	$ 0.00 (Incl with Contract)
Professional Center Module Transcript Services Educator Access to Student Portfolios	 $ 25,000.00 per quarter $ 0.00 (Incl with Contract)
Middle School Module	$ 28,750.00 per quarter
Total	**$ 971,456.00**

In 2010, the Tennessee Higher Education Commission (THEC) entered into the contract with XAP Corporation in the amount of $1,196,456 for the procurement of CollegeforTN.org, a college and career exploration web portal and transcript exchange tailored to the needs of Tennessee. At the recommendation of the Comptroller's Office, the contract was a one year agreement with four options for annual renewals. In May 2011, THEC amended the 2010 contract for the purpose of extending the agreement to April 30, 2012. In exploring the possibility of extending its agreement with XAP Corporation to April 30, 2013, THEC entered negotiations with XAP to reduce the annual contract liability for the CollegeforTN.org web portal. Negotiations for a reduction in contract liability were prompted by a loss of $280,830.52 in funding due to the closing of Tennessee's federal GEAR UP grant and a reduction in services provided by XAP Corporation. During the 2010 and 2011 contract years, XAP Corporation provided initial development services that are no longer needed going forward. XAP agreed to reduce Tennessee's annual contract liability by $225,000.

Justification for Non-Competitive Amendment

The State found no other entities who offer the comprehensive array of career, high school, college and financial aid planning services needed by THEC, TSAC and the Tennessee school systems. No other

vendor offers the total package of needed solutions including: transcript, higher education admission application, career exploration, high school planning, college planning, and financial aid planning resources needed by Tennessee integrated into one common system. XAP also holds extensive knowledge of State Board Rules and Regulations as well as the content/ and curriculum standards required by Tennessee law for school counselors, such institutional knowledge is invaluable to the partnership and fosters the portal's success.

THEC conducted a study of on-line, college access resources including Career Cruising, Connect EDU, Kuder, Inc., My10YearPlan, and Naviance, Inc. Of the six vendors identified, only XAP Corporation meets all business, functional and technical requirements outlined by the state. XAP Corporation is the only vendor found offering career guidance (K-12 and adult), customizable school planning, college access information articles (high school success, college planning, and financial aid), transcript exchange, professional center, and higher education admission application resources in one integrated system. Additionally, with the exception of one other company, all companies required the school or organization to purchase a license and required passcodes to enter the site. CollegeforTN is openly available and customizable for the general public.

The Tennessee Higher Education has promoted college access and success using CollegeforTN.org as the call to action in every aspect of this public outreach campaign. All campaign outreach materials direct students and their parents to visit CollegeforTN.org with the tagline "Higher Education. Put Your Mind To It." The campaign has seen much success winning several awards on the regional and national level. Lastly, state personnel, in partnership with XAP, have extensively trained school administrators, school counselors, teachers, higher education personnel, and college access professionals across Tennessee in using the resources of CollegeforTN.org. A change if vendor would result in the need for re-training each of these professionals that would result in a substantial loss of personnel time, state resources and grant funds.

XAP Corporation provided exemplary services for the State of Tennessee for the last several years. The company maintains historical data, experience and background knowledge that all other vendors lack. In the past year, the site has had over 935,000 site visits, 7,567,000 page views, 55,000 student account created, and 46,000 transcripts 209,000 applications were sent to THEC and/or higher education institutions. Since its inception in 2005, over 322,000 student accounts have been created with 282,642 transcripts and 209,000 applications sent to THEC and/or higher education institutions. A new vendor will result in the loss of the portfolio information for each of those accounts and would result in the loss of all records of admission applications submitted, assessments taken, careers explored, high school planning completed for over 255,000 Tennesseans. Furthermore, several local school districts have or are in the process of incorporating CollegeforTN.org into their classroom curriculum.

Supplemental Documentation Required for Fiscal Review Committee

*Contact Name:	Will Burns, Associate Executive Director, Legal and Regulatory Affairs	*Contact Phone:	615.741.7571
*Original Contract Number:	FA1031822-01	*Original RFS Number:	33201-03310
Edison Contract Number: (*if applicable*)	19758	Edison RFS Number: (*if applicable*)	-01
*Original Contract Begin Date:	May 1, 2010	*Current End Date:	April 30, 2012
Current Request Amendment Number: (*if applicable*)		TWO	
Proposed Amendment Effective Date: (*if applicable*)		May 1, 2011	
*Department Submitting:		Higher Education	
*Division:		Tennessee Higher Education Commission (THEC)	
*Date Submitted:		February 13, 2012	
*Submitted Within Sixty (60) days:		76 Days Prior to Effective Date	
If not, explain:		NA	
*Contract Vendor Name:		XAP Corporation	
*Current Maximum Liability:		$2,392,912.00	

*Current Contract Allocation by Fiscal Year:
(as Shown on Most Current Fully Executed Contract Summary Sheet)

FY:2011	FY:2012	FY:	FY:	FY	FY
$ 1,196,456	$1,196,456	$	$	$	$

*Current Total Expenditures by Fiscal Year of Contract:
(attach backup documentation from STARS or FDAS report)

FY:2011	FY:	FY:	FY:	FY	FY
$ 897,342	$1,196,456	$	$	$	$

IF Contract Allocation has been greater than Contract Expenditures, please give the reasons and explain where surplus funds were spent:	The contract was not approved until the beginning of the second quarter of the first year.
IF surplus funds have been carried forward, please give the reasons and provide the authority for the carry forward provision:	NA
IF Contract Expenditures exceeded Contract Allocation, please give the reasons and explain how funding was acquired to pay the overage:	NA

Supplemental Documentation Required for Fiscal Review Committee

*Contract Funding Source/Amount:	State:		Federal:	$622,744.00
Interdepartmental:	$573,682 (Lottery)		*Other*:	
If "*other*" please define:				

Dates of All Previous Amendments or Revisions: (*if applicable*)	Brief Description of Actions in Previous Amendments or Revisions: (*if applicable*)
05/01/2011 Amendment One	Contract amendment to effectuate the term extension as provided for in the original contract.

Method of Original Award: (*if applicable*)	Non-competitive Contract
*What were the projected costs of the service for the entire term of the contract prior to contract award?	NA

Supplemental Documentation Required for Fiscal Review Committee

For all new non-competitive contracts and any contract amendment that changes Sections A or C.3. of the original or previously amended contract document, provide estimates based on information provided the Department by the vendor for determination of contract maximum liability. Add rows as necessary to provide all information requested.

If it is determined that the question is not applicable to your contract document attach detailed explanation as to why that determination was made.

Planned expenditures by fiscal year by deliverable. Add rows as necessary to indicate all estimated contract expenditures.

Deliverable description:	FY: 2011	FY:2012	FY: 2013
Career Planning and Test Preparation Tools Module	$ 81,250.00 per qtr	$ 81,250.00 per qtr	$ 33,471.75 per qtr *
High School Planning Tools Module	$ 33,471.75 per qtr	$ 33,471.75 per qtr	$ 33,471.75 per qtr *
College Planning Tools Module	$ 84,948.75 per qtr	$ 84,948.75 per qtr	$ 84,948.75 per qtr +
Financial Aid Planning Tools Module	$ 33,471.75 per qtr	$ 33,471.75 per qtr	$ 33,471.75 per qtr +
Life-Long Portfolio and Professional Center Module	$ 33,471.75 per qtr	$ 33,471.75 per qtr	See Below
Life-Long Portfolio Module	See Above	See Above	$ 3,750.00 per qtr *
Professional Center Module Transcript Services	See Above	See Above	$ 25,000.00 +
Adult Module	$ 0.00 (Included with Contract)	$ 0.00 (Included with Contract)	$ 0.00 (Included with Contract)
Middle School Module	$ 32,500.00 per qtr	$ 32,500.00 per qtr	$ 28,750.00 per qtr *
Total	**$299,114.00 per qtr**	**$299,114.00 per qtr**	**$242,864.00 per qtr**

Funding 2013
* College Access Challenge Grant
+ Lottery for Education Fund

Proposed savings to be realized per fiscal year by entering into this contract. If amendment to an existing contract, please indicate the proposed savings to be realized by the amendment. Add rows as necessary to define all potential savings per deliverable.

Deliverable description:	FY: 2011	FY: 2012	FY: 2013	Savings *
Career Planning and Test Preparation Tools Module	$81,250.00 (Q)	$81,250.00 (Q)	$ 33,471.75 (Q)	($47,778.25) (Q)

Supplemental Documentation Required for Fiscal Review Committee

Life-Long Portfolio and Professional Center Module	$33,471.75 (Q)	$33,471.75 (Q)	$ 28,750.00 (Q)	($ 4,721.75) (Q)
Middle School Module	$32,500.00 (Q)	$32,500.00 (Q)	$ 28,750.00 (Q)	($ 3,750.00) (Q)

* Savings FY2013: In 2010, the Tennessee Higher Education Commission (THEC) entered into a contract with XAP Corporation in the amount of $1,196,456 for the procurement of CollegeforTN.org, a college and career exploration web portal and transcript exchange tailored to the needs of Tennessee. The 2010 contract was a one year agreement and included four options for annual renewals.

In May 2011, THEC amended the 2010 contract for the purpose of extending the agreement to April 30, 2012. In exploring the possibility of extending its agreement with XAP Corporation to April 30, 2013, THEC entered negotiations with XAP to reduce the annual contract liability for the CollegeforTN.org web portal. Negotiations for a reduction in contract liability were prompted by a loss of $280,830.52 in funding due to the closing of Tennessee's federal GEAR UP grant and a reduction in services provided by XAP Corporation. During the 2010 and 2011 contract years, XAP Corporation provided initial development services that are no longer needed going forward. XAP agreed to reduce Tennessee's annual contract liability by $225,000.

Comparison of cost per fiscal year of obtaining this service through the proposed contract or amendment vs. other options. List other options available (including other vendors), cost of other options, and source of information for comparison of other options (e.g. catalog, Web site). Add rows as necessary to indicate price differentials between contract deliverables.

Proposed Vendor Cost: (name of vendor)	FY:	FY:	FY:	FY:	FY:

THEC conducted a study of on-line, college access resources including Career Cruising, Connect EDU, Kuder, Inc., My10YearPlan, and Naviance, Inc. Of the six vendors identified, only XAP Corporation met all business, functional and technical requirements outlined by the state. XAP Corporation was the only vendor found offering career guidance (K -12 and adult), customizable school planning, college access information articles (high school success, college planning, and financial aid), transcript exchange, professional center, and higher education admission application resources in one integrated system. Additionally, with the exception of one other company, all companies required the school or organization to purchase a license and required passcodes to enter the site. CollegeforTN is openly available and customizable for the general public.

Supplemental Documentation Required for Fiscal Review Committee

Of the vendors reviewed, ConnectEDU did offer some services similar to the four competencies required by Tennessee. ConnectEDU offered college profile and application information, transcript exchange capabilities, and career exploration and high school planning tools, but did not offer these features in an open web portal format that ensures college access information is accessible to the general public. ConnectEDU's platform focuses exclusively on a portfolio structure where users store information regarding their career and college planning. However, ConnectEDU's portal structure did not provide space for users to learn how financial aid works or what steps are required in the college admissions process, in fact there is no instructional properties provided by ConnectEDU. XAP's product is designed as a web portal where the general public can learn more about how to access higher education while benefiting from the tools and resources that help users make decisions regarding their postsecondary plans, providing both college access information such as high school success content, college planning articles, financial aid planning guides, and state-customized content, and and an online portfolio comprised of interactive tools such as career assessments, SAT/ACT test prep, college applications, and four year course plans.

During the initial contract process, THEC compiled a cost comparison of states currently using XAP Corporation's Transitions product. Using public secondary student enrollment as a metric for comparison, the cost analysis indicated that Tennessee's negotiated contract rate resulted in an annual per student cost that is in line with other states. Only Georgia, Illinois, and Iowa have an annual per student cost lower than Tennessee's negotiated rate. However, unlike Georgia, Illinois and Iowa, Tennessee's contract with XAP Corporation provides career exploration resources to all elementary students. This significant feature difference accounts for the slightly higher annual cost per student.

TN_PU_POS_AGAINST_CONTRACT - Purchase Orders against a Cont

Contract Number: 00000000000 0

Download results in : Excel SpreadSheet CSV Text File XML File (5 kb)

1-14 of 14

	Contract	PO No.	Line	SetID	PO Date	Qty	UOM	PO Amount
1	19758	0000000846	1	SHARE	11/08/2010	1.0000	EA	81250.000
2	19758	0000000847	1	SHARE	11/08/2010	1.0000	EA	81250.000
3	19758	0000000914	1	SHARE	12/16/2010	1.0000	EA	435728.000
4	19758	0000001007	1	SHARE	02/07/2011	1.0000	EA	81250.000
5	19758	0000001008	1	SHARE	02/08/2011	1.0000	EA	217864.000
6	19758	0000001241	1	SHARE	05/26/2011	0.9999	EA	143420.500
7	19758	0000001242	1	SHARE	05/26/2011	0.9999	EA	70207.630
8	19758	0000001243	1	SHARE	05/26/2011	0.9999	EA	85485.870
9	19758	0000001408	1	SHARE	08/11/2011	1.0000	EA	85485.870
10	19758	0000001409	1	SHARE	08/11/2011	1.0000	EA	70207.630
11	19758	0000001414	1	SHARE	08/12/2011	1.0000	EA	143420.500
12	19758	0000001663	1	SHARE	12/08/2011	1.0000	EA	143420.500
13	19758	0000001664	1	SHARE	12/08/2011	1.0000	EA	85485.870
14	19758	0000001665	1	SHARE	12/08/2011	1.0000	EA	70207.630

Non-Competitive Amendment Request

NOT required for a contract with a federal, Tennessee, or Tennessee local government entity or a grant.
Route a completed request, as one file in PDF format, via e-mail attachment sent to: Agsprs.Agsprs@state.tn.us

APPROVED
COMMISSIONER OF FINANCE & ADMINISTRATION

Request Tracking #	33201-03310
1. Procuring Agency	Tennessee Higher Education Commission (THEC)
2. Contractor	XAP Corporation
3. Contract #	FA1031822-01
4. Proposed Amendment #	TWO
5. Edison ID #	197581
6. Contract Begin Date	May 01, 2010
7. Current Contract End Date *– with ALL options to extend exercised*	April 30, 2015
8. Proposed Contract End Date *– with ALL options to extend exercised*	April 30, 2015
9. Current Maximum Contract Cost *– with ALL options to extend exercised*	$ 5,982,280.00
10. Proposed Maximum Contract Cost *– with ALL options to extend exercised*	$ 5,307,280.00
11. Office for Information Resources Endorsement *– information technology service (N/A to THDA)*	☐ Not Applicable ☒ Attached
12. eHealth Initiative Support *– health-related professional, pharmaceutical, laboratory, or imaging*	☒ Not Applicable ☐ Attached
13. Human Resources Support *– state employee training service*	☒ Not Applicable ☐ Attached

14. Explanation Need for the Proposed Amendment

In 2010, THEC submitted a five-year Contract with XAP Corporation for the provision of electronic transcript services and CollegeforTN initiative. Due to concerns expressed by the Comptroller's office regarding funding, THEC was asked to prepare a one-year contract with provision B.2. Term Extension, so that these services would receive an annual review. This option was extended for one year May 1, 2011, and as the Contract expires April 30, 2011, THEC is submitting the Amendment request accordingly.

Request Tracking #	33201-03310

The original need for the services offered by XAP, comes from THEC's mission for Tennessee's twenty-first century system of higher education of elevating the overall educational attainment of citizens in the State through increased accessibility to mission-focused institutions, which deliver educational services on campus, as well as through a planned network of off-campus instruction and to prepare citizens responsibly for success by providing high quality teaching and research in an environment that serves the needs of its consumers.

The CollegeforTN.org initiative provided by XAP allows students in grades K-12, to plan their future careers, begin to understand the need for higher education, know which courses to take in middle and high school to be academically prepared for college, prepare for tests, including ACT, SAT, and GRE, and learn how to apply for financial aid. Additionally, postsecondary students, parents, guidance counselors, and college access professionals will have access to a comprehensive suite of career, college, and financial aid planning services and a means of accessing student transcripts in a web-based environment using a single log-on and password.

15. Name & Address of the Contractor's Principal Owner(s)
– NOT required for a TN state education institution

XAP Corporation
3534 Hayden Ave.
Culver City, CA 90232

16. Evidence Contractor's Experience & Length Of Experience Providing the Service

XAP is a trusted and proven partner to numerous organizations including university and college systems, state agencies (*e.g.,* College Foundation of North Carolina - as found at www.cfnc.org, Florida Department of Education, Mississippi Department of Education, Oklahoma State Regents for Higher Education, the California State University System - as found at www.csumentor.edu, and California Community College System – as found at www.cccapply.org), regional education compacts (*e.g.,* Southern Regional Education Board – as found at www.electroniccampus.org), and the U.S. Department of Education (see www.studentaid.ed.gov). For these organizations and many others, XAP has designed, developed and implemented technology solutions aligned with the partners' stated objectives, such as improving postsecondary-attending rates, increasing awareness of postsecondary opportunities, and facilitating online admissions applications and electronic student record exchange.

Today, XAP continues to be the leader in college success portals, helping serve over 40 million students and their families to build aspirations and increase opportunities.

- 25+ years of vendor experience providing career planning resources across an international landscape to students and adults;
- 12+ years of vendor experience delivering Internet-based college planning resources across a national landscape; and
- Experience in providing integrated college access systems in Colorado, Georgia, North Carolina, Rhode Island, and 25 other states, Southern Regional Education Board and US Department of Education

17. Efforts to Identify Reasonable, Competitive, Procurement Alternatives

The State found no other entities who offer the comprehensive array of career, high school, college and financial aid planning services needed by THEC, TSAC and the Tennessee school systems. No other vendor offers the total package of needed solutions including: transcript, higher education admission application, career exploration, high school planning, college planning, and financial aid planning resources needed by Tennessee integrated into one common system. XAP also holds extensive knowledge of State Board Rules and Regulations as well as the content/ and curriculum standards required by Tennessee law for school counselors, such institutional knowledge is invaluable to the partnership and fosters the portal's success.

THEC conducted a study of on-line, college access resources including Career Cruising, Connect EDU, Kuder, Inc., My10YearPlan, and Naviance, Inc. Of the six vendors identified, only XAP Corporation meets all business, functional and technical requirements outlined by the state. XAP Corporation is the

Request Tracking #	33201-03310

only vendor found offering career guidance (K-12 and adult), customizable school planning, college access information articles (high school success, college planning, and financial aid), transcript exchange, professional center, and higher education admission application resources in one integrated system.

Additionally, with the exception of one other company, all companies required the school or organization to purchase a license and required passcodes to enter the site. CollegeforTN is openly available and customizable for the general public.

18. Justification – *specifically explain why non-competitive negotiation is in the best interest of the state*

As stated previously, THEC conducted a review of on-line, college access resources and were unable to find another company with the ability to meet all business, functional and technical requirements. It is important to highlight that XAP is the only company THEC found offering career guidance (K- 12 and adult), customizable school planning, transcript exchange, professional center, and higher education admissions application resources all in one integrated system access via a single log on. Upon identifying Tennessee's goals and needs, as described above, and XAP's unique programmatic benefits, staff members secured references from peer states and were advised that XAP is the preferred vendor of states working to make large gains in high school graduation, college enrollment, and degree production.

Agency Head Signature and Date – *MUST be signed by the ACTUAL agency head as detailed on the current Signature Certification. Signature by an authorized signatory is acceptable only in documented exigent circumstances*

2.10.12

RICHARD G. RHODA, EXECUTIVE DIRECTOR, TENNESSEE HIGHER EDUCATION COMMISSION - DATE

OIR Pre-Approval Endorsement Request
E-Mail Transmittal

TO : Jane Chittenden, OIR Procurement & Contract Management Director
Department of Finance & Administration

E-Mail : Jane.Chittenden@tn.gov

FROM : Marcie Mills, Contracts Administration Manager

Tennessee Higher Education Commission (THEC)

E-Mail : Marcie.Mills@tn.gov

DATE : April 5, 2010

RE : Request for OIR Pre-Approval Endorsement

APPLICABLE RFS # 33201-03310

OIR ENDORSEMENT SIGNATURE & DATE :

Mark F. Bugel (jmc)

Chief Information Officer

NOTE: Proposed contract/grant support is applicable to the subject IT service technical merit.

Office for Information Resources (OIR) pre-approval endorsement appears to be required pursuant to professional service contracting regulations pertaining to procurements with information technology as a component of the scope of service. This request seeks to ensure that OIR is aware of and has an opportunity to review the procurement detailed below and in the attached documents.

Please document OIR endorsement of the described procurement (with the appropriate signature above), and return this document via e-mail at your earliest convenience.

1 **SUBJECT PROCUREMENT DOCUMENT TYPE** (mark one) :

- ☐ RFP
- ☐ Competitive Negotiation Request ☐ Alternative Procurement Method Request
- ☒ Non-Competitive Contract Request ☐ Non-Competitive Amendment Request
- ☐ Contract ☐ Contract Amendment ☐ Grant ☐ Grant Amendment

2 **INFORMATION SYSTEMS PLAN (ISP) PROJECT APPLICABLITY :**

☐ Not Applicable to this Request ☒ Applicable – College Access Portal/Transcript Exchange (GU0910) Project Disposition

RESPONSE CONFIRMED BY : O.W. Higley, Assistant Executive Director of Fiscal Affairs, IT

APPLICABLE RFS # 33201-03310

3 CONTRACTING AGENCY CONTACT :

Marcie Mills, Contracts Administration Manager
Telephone # 615.532.3500
Marcie.Mills@tn.gov

O.W. Higley, Assistant Executive Director of Fiscal Affairs, IT
Telephone # 615.532.9846
O.W.Higley@tn.gov

4 SUBJECT INFORMATION TECHNOLOGY SERVICE DESCRIPTION :

Tennessee procured a solution from XAP Corporation to provide a broad avenue of access to Tennessee education opportunities beyond high school. The resulting website www.CollegeforTN.org is designed especially for use in Tennessee and allows the user, which includes students in grades K – 12, to plan their future careers, begin to understand the need for higher education, know which courses to take in middle and high school to be academically prepared for college, prepare for tests, including ACT, SAT, and GRE, and learn how to apply for financial aid. Additionally, postsecondary students, parents, guidance counselors, and college access professionals will have access to a comprehensive suite of career, college, and financial aid planning services in a web-based environment using a single log-on and password.

Functional Requirements: The Contractor shall provide the following functional requirements:

a. Customizable user access permission levels to accommodate multiple roles.

b. Customizable user interface that provides integrates and/or supports social networking;

c. A single integrated portal with no or limited links to subsystems that provides core features such as:

(1) Single sign-on capabilities in a secure online environment requiring the use of a secured user id and password.
(2) Ability to identify, track and record student career interests.
(3) K-12 roadmaps that lead and measure a student's progress through the system's functionality and activities in a logical order culminating with the student arriving at their chosen college or career destination.
(4) A lifelong electronic portfolio to support student's future education and employment goals.
(5) Integrated ACT/SAT/GRE test prep and recording capabilities.
(6) Electronic admissions application capabilities to Tennessee higher education institutions.
(7) Electronic academic transcripts delivery to include high school to high school, high school to Tennessee agencies, high school to college, and college to college.
(8) Electronic assessment prep and delivery.
(9) Student and Adult learner resume development capabilities.
(10) Capabilities to provide or support the delivery of financial aid information on federal and Tennessee grants, scholarships, work study and student loans including the capabilities to provide and/or integrate electronic applications associated with each program.
(11) Capabilities to upload, store, retrieve and update academic and career related documents.

d. The ability to link to external websites and/or return pre-determined student support services and/or program information to the student.

e. On demand training related to the tools, features, and functionality for regional and Tennessee level users and administrators.

Technical Requirements: The Contractor shall provide the following technical requirements:

a. A low cost, interoperable, and commercial off-the-shelf solution that avoids new development, and leverages new or existing technologies.

b. Compliance with the Children's Online Privacy Protection Act (COPPA).

APPLICABLE RFS # 33201-03310

c. Compatibility and integration with the Occupational Employment Statistics Program (OES).

d. Electronically supported administration of assessments and accountability as outlined by the No Child Left Behind (NCLB) Act.

e. Interoperability (easy import, export or integration) with Tennessee student information systems (district and state level), GEAR UP programs, and other College and Career applications.

f. The ability to add and change content, links, and pages to best suit the needs of Tennessee.

g. The ability to incorporate Tennessee based information including employment outlook data to address Tennessee specific needs (i.e. the creation of a College Access Network page or a page dedicated to Tennessee-specific financial aid options).

h. Both standard and ad-hoc reporting on the state, district, and school level with capabilities of offering aggregated or disaggregated data on system usage, student portfolios, career interests individually or by groups, academic progress, pre-determined lesson plans, academic assessments, test and/or exit exam scores.

i. Timely system updates reflecting policy changes at both the federal and state levels.

j. Both on-site and fully hosted software options.

k. 24 x 7 support capabilities.

l. Minimum down-time.

m. The Contractor shall renew the domain name CollegeforTN.org as required.

5 **REQUIRED ATTACHMENT(S) AS APPLICABLE** (copies without signatures acceptable) :

☒ **RFP, Competitive Negotiation Request, Alternative Procurement Method Request, or Non-Competitive Contract/Amendment Request**

☐ **proposed contract/grant or amendment**

☐ **original contract/grant & any prior amendments**

CONTRACT AMENDMENT

Agency Tracking #	Edison ID	Contract #	Amendment #
33201-03310	19758	FA1031822-01	TWO

Contractor Legal Entity Name	Edison Vendor ID
XAP Corporation	00000067443

Amendment Purpose & Effect(s)

This Contract Amendment is to effectuate the term extension provided for in the Contract for the provision of electronic transcript services and CollegeforTN initiative.

Amendment Changes Contract End Date: ☒ YES ☐ NO **End Date:** April 30, 2013

TOTAL Contract Amount INCREASE per this Amendment (zero if N/A): **$971,456.00**

Funding —

FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
FY11		$ 622,774.00	$ 573,682.00		$1,196,456.00
FY12		$ 622,774.00	$ 573,682.00		$1,196,456.00
FY13		$397,774.00	$573,682.00		$ 971,456.00
TOTAL:		**$1,643,322.00**	**$1,721,046.00**		**$3,364,368.00**

American Recovery and Reinvestment Act (ARRA) Funding: ☐ YES ☒ NO

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

Russ Deaton, Associate Executive Director of Fiscal Affairs
615.532.3860

OCR USE

FA1031822-02

Speed Chart (optional)	Account Code (optional)
332010517 332010511	

AMENDMENT TWO
OF CONTRACT FA1031822-01

This Amendment is made and entered by and between the State of Tennessee, Tennessee Higher Education Commission (THEC), hereinafter referred to as the "State" and XAP Corporation, hereinafter referred to as the "Contractor." It is mutually understood and agreed by and between said, undersigned contracting parties that the subject contract is hereby amended as follows:

1. The Preamble section of the Contract is deleted in its entirety and replaced with the following:

   This Contract, by and between the State of Tennessee, Tennessee Higher Education Commission (THEC), hereinafter referred to as the 'State" and XAP Corporation, hereinafter referred to as the "Contractor," is for the provision of electronic transcript services and CollegeforTN initiative, as further defined in the "SCOPE OF SERVICES."

   The Contractor is For-Profit Corporation.
   Contractor Place of Incorporation or Organization Delaware
   Contractor Edison Registration ID: 0000067443

2. Contract section B.1. is deleted in its entirety and replaced with the following:

   B.1. This Contract shall be effective for the period beginning May 1, 2010, and ending on April 30, 2013. The Contractor hereby acknowledges and affirms that the State shall have no obligation for services rendered by the Contractor which were not performed within this specified contract period.

3. Contract section C.1. Maximum Liability is deleted in its entirety and replaced with the following:

   C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed Three Million Three Hundred Sixty-Four Thousand Three Hundred Sixty-Eight Dollars ($3,364,368.00.00). The payment rates in section C.3 shall constitute the entire compensation due the Contractor for all service and Contractor obligations hereunder regardless of the difficulty, materials or equipment required. The payment rates include, but are not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by the Contractor.

   The Contractor is not entitled to be paid the maximum liability for any period under the Contract or any extensions of the Contract for work not requested by the State. The maximum liability represents available funds for payment to the Contractor and does not guarantee payment of any such funds to the Contractor under this Contract unless the State requests work and the Contractor performs said work. In which case, the Contractor shall be paid in accordance with the payment rates detailed in section C.3. The State is under no obligation to request work from the Contractor in any specific dollar amounts or to request any work at all from the Contractor during any period of this Contract.

4. Contract section C.3. Payment Methodology is deleted in its entirety and replaced with the following:

   C.3. Payment Methodology. The Contractor shall be compensated based on the payment rates herein for units of service authorized by the State in a total amount not to exceed the Contract Maximum Liability established in Section C.1.

   a. The Contractor's compensation shall be contingent upon the satisfactory completion of units, milestones, or increments of service defined in Section A.

b. The Contractor shall be compensated for said units, milestones, or increments of service based upon the following payment rates:

Service Description	Amount (per compensable increment)
May 1, 2010 - April 30, 2012	
Career Planning and Test Preparation Tools (A.3.a.)	$81,250.00 per quarter
High School Planning Tools (A.3.b.)	$33,471.75 per quarter
College Planning Tools (A.3.c.)	$84,948.75 per quarter
Financial Aid Planning Tools (A.3.d.)	$33,471.75 per quarter
Life-Long Portfolio and Professional Center (A.3.e. and A.3.g.)	$33,471.75 per quarter
Adult Module (A.3.f)	$0.00 (Included with Contract)
Middle School Module (A.3.h.)	$32,500.00 per quarter

Service Description	Amount (per compensable increment)
May 1, 2012 - April 30, 2013	
Career Planning and Test Preparation Tools (A.3.a.)	$ 33,471.75 per quarter
High School Planning Tools (A.3.b.)	$ 33,471.75 per quarter
College Planning Tools (A.3.c.)	$ 84,948.75 per quarter
Financial Aid Planning Tools (A.3.d.)	$ 33,471.75 per quarter
Life-Long Portfolio Module (A.3.e)	$ 3,750.00 per quarter
Adult Module (A.3.f)	$ 0.00 (Incl with Contract)
Professional Center (A.3.g.) Transcript Services Educator Access to Student Portfolios	 $ 25,000.00 per quarter $ 0.00 (Incl with Contract)
Middle School Module (A.3.h.)	$ 28,750.00 per quarter

c. The Contractor shall not be compensated for travel time to the primary location of service provision.

5. Contract Section C.5. Invoice Requirements is deleted in its entirety and replaced with the following:

C.5. Invoice Requirements. The Contractor shall invoice the State only for completed increments of service and for the amount stipulated in section C.3, above, and present said invoices no more often than quarterly, with all necessary supporting documentation, to:

Tennessee Higher Education Commission
Suite 1900 – Parkway Towers
404 James Robertson Parkway
Nashville, TN 37243

a. Each invoice shall clearly and accurately detail all of the following required information (calculations must be extended and totaled correctly).

(1) Invoice Number (assigned by the Contractor);
(2) Invoice Date;
(3) Contract Number (assigned by the State);
(4) Customer Account Name: THEC College Access Challenge Director;
(5) Customer Account Number (assigned by the Contractor to the above-referenced Customer);
(6) Contractor Name;
(7) Contractor Tennessee Edison Registration ID Number Referenced in Preamble of this Contract;
(8) Contractor Contact for Invoice Questions (name, phone, and/or fax);
(9) Contractor Remittance Address;
(10) Description of Delivered Service; and
(11) Complete Itemization of Charges, which shall detail the following:

i. Service or Milestone Description (including name & title as applicable) of each service invoiced;
ii. Number of Completed Units, Increments, Hours, or Days as applicable, of each service invoiced;
iii. Applicable Payment Rate (as stipulated in Section C.3.) of each service invoiced;
iv. Amount Due by Service; and
v. Total Amount Due for the invoice period.

b. The Contractor understands and agrees that an invoice under this Contract shall:

(1) include only charges for service described in Contract Section A and in accordance with payment terms and conditions set forth in Contract Section C;
(2) only be submitted for completed service and shall not include any charge for future work;
(3) not include sales tax or shipping charges; and
(4) initiate the timeframe for payment (and any discounts) only when the State is in receipt of the invoice, and the invoice meets the minimum requirements of this section C.5.

6. Contract Section C.9. Automatic Deposits is deleted in its entirety and replaced with the following:

C.9. Prerequisite Documentation. The Contractor shall not invoice the State under this Contract until the State has received the following documentation properly completed.

a. The Contractor shall complete, sign, and present to the State an "Authorization Agreement for Automatic Deposit (ACH Credits) Form" provided by the State. By doing so, the Contractor acknowledges and agrees that, once said form is received by the State, all payments to the Contractor, under this or any other contract the Contractor has with the State of Tennessee shall be made by Automated Clearing House (ACH).

b. The Contractor shall complete, sign, and present to the State a "Substitute W-9 Form" provided by the State. The taxpayer identification number detailed by said form must agree with the Contractor's Federal Employer Identification Number or Tennessee Edison Registration ID referenced in this Contract.

7. Contract Section D.1. Required Approvals is deleted in its entirety and replaced with the following:

D.1. Required Approvals. The State is not bound by this Contract until it is signed by the contract parties and approved by appropriate officials in accordance with applicable Tennessee laws and regulations (depending upon the specifics of this contract, said officials may include, but are not limited to, the Commissioner of Finance and Administration, the Commissioner of Human Resources, and the Comptroller of the Treasury).

8. Contract Section D.2. Modification and Amendment is deleted in its entirety and replaced with the following:

D.2. Modification and Amendment. This Contract may be modified only by a written amendment signed by all parties hereto and approved by both the officials who approved the base contract and, depending upon the specifics of the contract as amended, any additional officials required by Tennessee laws and regulations (said officials may include, but are not limited to, the Commissioner of Finance and Administration, the Commissioner of Human Resources, and the Comptroller of the Treasury).

9. Contract Section D.6. Conflicts of Interest is deleted in its entirety and replaced with the following:

D.6. Conflicts of Interest. The Contractor warrants that no part of the total Contract Amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed relative to this Contract.

The Contractor acknowledges, understands, and agrees that this Contract shall be null and void if the Contractor is, or within the past six months has been, an employee of the State of Tennessee or if the Contractor is an entity in which a controlling interest is held by an individual who is, or within the past six months has been, an employee of the State of Tennessee.

10. Contract Section D.7. Nondiscrimination is deleted in its entirety and replaced with the following:

D.7. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of handicap or disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law. The Contractor shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

11. Contract Section D.8. Prohibition of Illegal Immigrants is amended by replacing the citation "Public Acts of 2006, Chapter Number 878, of the state of Tennessee" with the citation "*Tennessee Code Annotated*, Section 12-4-124, *et seq.*"

12. Contract Section E.2. Communications and Contacts is deleted in its entirety and replaced with the following:

E.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by certified, first class mail, return receipt requested and postage prepaid, by overnight courier service with an asset tracking system, or by EMAIL or facsimile transmission with recipient confirmation. Any such communications, regardless of method of transmission, shall be addressed to the respective party at the appropriate mailing address, facsimile number, or EMAIL address as set forth below or to that of such other party or address, as may be hereafter specified by written notice.

The State:

Troy Grant, Director of College Access Challenge Grant
Tennessee Higher Education Commission
Suite 1900, Parkway Towers
404 James Robertson Parkway
Nashville, TN 37243
Email: Troy.Grant@tn.gov
Telephone Number: 615.532.0423
Fax Number: 615.741.2630

All Refunds or other Monetary Returns:

Russ Deaton, Associate Executive Director, Fiscal Affairs
Tennessee Higher Education Commission
Suite 1900, Parkway Towers, 404 James Robertson Parkway
Nashville, TN 37243
Russ.Deaton@tn.gov
Telephone: 615. 615-532-3860
FAX: 615.741.6230

The Contractor:

Peter Knepper, CEO
XAP Cororation
3534 Hayden Ave.
Culver City, CA 90232
pknepper@xap.com
Telephone Number: 310.945.0503
FAX Number: 310.842.9898

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

13. Contract Section E.9. Voluntary Buyout Program is deleted in its entirety and replaced with the following:

E.9. Ownership of Software and Work Products.

a. Definitions.

(1) "Contractor-Owned Software," which shall mean commercially available software the rights to which are owned by Contractor, including but not limited to commercial "off-the-shelf" software which is not developed using State's money or resources.

(2) "Custom-Developed Application Software," which shall mean customized application software developed by Contractor solely for State.

(3) "Rights Transfer Application Software," which shall mean any pre-existing application software owned by Contractor or a third party, provided to State and to which Contractor will grant and assign, or will facilitate the granting and assignment of, all rights, including the source code, to State.

(4) "Third-Party Software," which shall mean software not owned by the State or the Contractor.

(5) "Work Product," which shall mean all deliverables exclusive of hardware, such as software, software source code, documentation, planning, etc., that are created, designed, developed, or documented by the Contractor for the State during the course of the project using State's money or resources, including Custom-Developed Application Software. If the system solution includes Rights Transfer Application Software, the definition of Work Product shall also include such software.

b. Rights and Title to the Software

(1) All right, title and interest in and to the Contractor-Owned Software shall at all times remain with Contractor, subject to any license granted herein.

(2) All right, title and interest in and to the Work Product, and to modifications thereof made by State, including without limitation all copyrights, patents, trade secrets and other intellectual property and other proprietary rights embodied by and arising out of the Work Product, shall belong to State. To the extent such rights do not automatically belong to State, Contractor hereby assigns, transfers, and conveys all right, title and interest in and to the Work Product, including without limitation the copyrights, patents, trade secrets, and other intellectual property rights arising out of or embodied by the Work Product. Contractor shall execute any other documents that State or its counsel deem necessary or desirable to document this transfer and/or allow State to register its claims and rights to such intellectual property rights or enforce them against third parties, and Contractor shall cooperate fully in the foregoing endeavors.

(3) All right, title and interest in and to the Third-Party Software shall at all times remain with the third party, subject to any license granted thereby.

c. Nothing in this Contract shall prohibit the Contractor's use for its own purposes of the general knowledge, skills, experience, ideas, concepts, know-how, and techniques obtained and used during the course of providing the services requested under this Contract.

d. Nothing in the Contract shall prohibit the Contractor from developing for itself, or for others, materials which are similar to and/or competitive with those that are produced under this Contract.

14. Contract Section E.10. Ownership of Software and Work Products is renumbered as Contract Section E.9. as reflected in this Contract Section 13.

Required Approvals. The State is not bound by this Amendment until it is signed by the contract parties and approved by appropriate officials in accordance with applicable Tennessee laws and regulations (depending upon the specifics of this contract, said officials may include, but are not limited to, the Commissioner of Finance and Administration, the Commissioner of Human Resources, and the Comptroller of the Treasury).

Amendment Effective Date. The revisions set forth herein shall be effective May 1, 2012. All other terms and conditions not expressly amended herein shall remain in full force and effect.

IN WITNESS WHEREOF,

XAP CORPORATION:

Peter B. Knepper — 4/25/2012

PETER KNEPPER, CHIEF EXECUTIVE OFFICER — DATE

TENNESSEE HIGHER EDUCATION COMMISSION:

Richard G. Rhoda — 5-1-12

RICHARD G. RHODA, EXECUTIVE DIRECTOR — DATE

GENERAL ASSEMBLY OF THE STATE OF TENNESSEE
FISCAL REVIEW COMMITTEE

320 Sixth Avenue, North – 8th Floor
NASHVILLE, TENNESSEE 37243-0057
615-741-2564

Sen. Bill Ketron, Chairman
Senators
Douglas Henry, Reginald Tate
Brian Kelsey, Ken Yager
Eric Stewart
Randy McNally, *ex officio*
Lt. Governor Ron Ramsey, *ex officio*

Rep. Curtis Johnson, Vice-Chairman
Representatives
Tommie Brown, David Shepard
Jim Coley, Tony Shipley
Charles Curtiss, Curry Todd
Johnny Shaw, Mark White
Charles Sargent, *ex officio*
Speaker Beth Harwell, *ex officio*

MEMORANDUM

TO: The Honorable Mark Emkes, Commissioner
Department of Finance and Administration

FROM: Bill Ketron, Chairman, Fiscal Review Committee
Curtis Johnson, Vice-Chairman, Fiscal Review Committee

BK
CJ

DATE: March 16, 2011

SUBJECT: **Contract Comments**
(Fiscal Review Committee Meeting 3/14/11)

RFS# 332.01-03310 (Edison # 19758)
Department: Tennessee Higher Education Commission (THEC)
Contractor: XAP Corporation
Summary: The vendor currently provides electronic transcript services and support for the College4TN program. The proposed amendment extends the current contract by one year through April 30, 2012, revises the funding source to align with Attorney General Opinion 11-20, and increases the maximum liability by $1,196,456.
Current maximum liability: $1,194,456
Proposed maximum liability: $2,392,912

After review, the Fiscal Review Committee voted to approve the contract amendment.

cc: Dr. Richard Rhoda, Executive Director, THEC
Mr. Robert Barlow, Director, Office of Contracts Review

CONTRACT AMENDMENT

Agency Tracking #	Edison ID	Contract #	Amendment #
33201--03310	19758	FA1031822	ONE

Contractor Legal Entity Name	Edison Vendor ID
XAP Corporation	67443

Amendment Purpose & Effect(s)	FEIN or SSN (optional)
This Contract Amendment is to effectuate the term extension in the Contract for the provision of electronic transcript services and CollegeforTN initiative.	954610552

Amendment Changes Contract End Date: ☒ YES ☐ NO **End Date:** April 30, 2012

Maximum Liability (TOTAL Contract Amount) Increase/Decrease per this Amendment: **$1,196,456.00**

FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
FY2011		$622,774.00	$ 573,682.00		$1,196,456.00
FY2012		$622,774.00	$ 573,682.00		$1,196,456.00
TOTAL:		**$1,245,548.00**	**$1,147,364.00**		**$2,392,912.00**

American Recovery and Reinvestment Act (ARRA) Funding: ☐ YES ☒ NO

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

Russ Deaton

Russ Deaton, Associate Executive Director of Fiscal Affairs

Department Code (optional)	Account Code (optional)
332010513 332010517 332010511	

Secured Document

FA1031822-01

AMENDMENT ONE
OF CONTRACT FA1031822

This Amendment is made and entered by and between the State of Tennessee, Tennessee Higher Education Commission (THEC), hereinafter referred to as the "State" and XAP Corporation, hereinafter referred to as the "Contractor/Grantee." It is mutually understood and agreed by and between said, undersigned contracting parties that the subject contract is hereby amended as follows:

1. Contract section B.1. is deleted in its entirety and replaced with the following:

   B.1. This Contract shall be effective for the period beginning May 1, 2010, and ending on April 30, 2012. The Contractor hereby acknowledges and affirms that the State shall have no obligation for services rendered by the Contractor which were not performed within this specified contract period.

2. Contract section C.1. Maximum Liability is deleted in its entirety and replaced with the following:

   C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed TWO MILLION THREE HUNDRED NINETY-TWO THOUSAND NINE HUNDRED TWELVE DOLLARS ($2,392,912.00). The payment rates in section C.3 shall constitute the entire compensation due the Contractor for all service and Contractor obligations hereunder regardless of the difficulty, materials or equipment required. The payment rates include, but are not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by the Contractor.

   The Contractor is not entitled to be paid the maximum liability for any period under the Contract or any extensions of the Contract for work not requested by the State. The maximum liability represents available funds for payment to the Contractor and does not guarantee payment of any such funds to the Contractor under this Contract unless the State requests work and the Contractor performs said work. In which case, the Contractor shall be paid in accordance with the payment rates detailed in section C.3. The State is under no obligation to request work from the Contractor in any specific dollar amounts or to request any work at all from the Contractor during any period of this Contract.

3. Contract section C.3. Payment Methodology is deleted in its entirety and replaced with the following:

   C.3. Payment Methodology. The Contractor shall be compensated based on the payment rates herein for units of service authorized by the State in a total amount not to exceed the Contract Maximum Liability established in Section C.1.

   a. The Contractor's compensation shall be contingent upon the satisfactory completion of units, milestones, or increments of service defined in Section A.

   b. The Contractor shall be compensated for said units, milestones, or increments of service based upon the following payment rates:

Service Description May1, 2010 - April 30, 2012	**Amount** (per compensable increment)
Career Planning and Test Preparation Tools (A.3.a.)	$81,250.00 per quarter
High School Planning Tools (A.3.b.)	$33,471.75 per quarter
College Planning Tools (A.3.c.)	$84,948.75 per quarter
Financial Aid Planning Tools (A.3.d.)	$33,471.75 per quarter
Life-Long Portfolio and Professional Center (A.3.e. and A.3.g.)	$33,471.75 per quarter
Adult Module (A.3.f)	$0.00 (Included with Contract)
Middle School Module (A.3.h.)	$32,500.00 per quarter

c. The Contractor shall not be compensated for travel time to the primary location of service provision.

The revisions set forth herein shall be effective May 1, 2011. All other terms and conditions not expressly amended herein shall remain in full force and effect.

IN WITNESS WHEREOF,

XAP CORPORATION:

3 March 2011

J. MICHAEL THOMPSON, CEO AND PRESIDENT **DATE**

TENNESSEE HIGHER EDUCATION COMMISSION:

3-9-11

RICHARD G. RHODA, EXECUTIVE DIRECTOR **DATE**

RICHARD G. RHODA
Executive Director

BILL HASLAM
Governor

STATE OF TENNESSEE
TENNESSEE HIGHER EDUCATION COMMISSION
PARKWAY TOWERS, SUITE 1900
NASHVILLE, TENNESSEE 37243-0830
(615) 741-3605
FAX: (615) 741-5555
www.state.tn.us/thec/

MEMORANDUM

TO: Leni Chick, Contract and Audit Coordinator, Fiscal Review Committee

FROM: Will Burns, Associate Executive Director, Legal and Regulatory Affairs

DATE: March 2, 2011

RE: Non-Competitive Contract Amendment Summary
XAP Corporation FA1031822 – Fiscal Analysis

The Tennessee Higher Education Commission (THEC) proposes to submit a non-competitive contract amendment request to effectuate the term extension as currently provided for in the contract for the provision of electronic transcript services and CollegeforTN initiative with XAP Corporation.

Pursuant to the request of the Fiscal Review Committee, THEC is providing the information below.

Actual Expenditures Anticipated in Each Year of the Contract

Background and Objectives: Tennessee lags regional and national averages in the educational attainment level. According to the National Center for Higher Education Management Systems, only six states have a working age population with a lower proportion of college graduates than Tennessee. Currently, only 29.9 percent of Tennessee's adults aged 25-64 hold an Associate's degree or higher, compared to an average of 34.3 percent for Southern Regional Education Board states and 37.2 percent for the nation.

Tennessee currently produces approximately 35,000 college graduates per year. Holding conditions constant, current production indicates that annual degree production will be about 38,000 in 2015. To meet the national average, Tennessee needs to produce a cumulative additional 269,000 degrees (Associates and Bachelors) by 2025. To achieve this goal, Tennessee higher education must produce 44,000 postsecondary degrees per year by 2015 and eventually 59,000 degrees per year by 2025. In the other words, Tennessee needs to increase the number of individuals obtaining degrees by 3.5 percent every year from now until 2025, according to MeeetingtheChallengfromTN.gov/moa/what goal.

In 2005, the Tennessee Department of Education (TDOE), Tennessee Student Assistance Corporation (TSAC), and Tennessee Higher Education commission (THEC) sought a solution that would provide a broad avenue of access to Tennessee educational opportunities beyond high school.

Product: Tennessee procured a solution from XAP Corporation to provide a broad avenue of access to Tennessee education opportunities beyond high school. The resulting website www.CollegeforTN.org is designed especially for use in Tennessee and allows the user, which includes students in grades K- 12, to plan their future careers, begin to understand the need for higher education, know which courses to take in middle and high school to be academically prepared for college, prepare for tests, including ACT, SAT, and GRE, and learn how to apply for *financial* aid. Additionally, postsecondary students, parents, guidance counselors, and college access professionals will have access to a comprehensive suite of career, college, and financial aid planning services in a web-based environment using a single log-on and password.

The Contract term extension is May 1, 2011 through April 30, 2012. Anticipated expenditures include:

Service Description 5/1/11 – 4/30/12	**Amount** (per compensable increment)
Career Planning and Test Preparation Tools Module	$81,250.00 per quarter
High School Planning Tools Module	$33,471.75 per quarter
College Planning Tools Module	$84,948.75 per quarter
Financial Aid Planning Tools Module	$33,471.75 per quarter
Life-Long Portfolio and Professional Center Module	$33,471.75 per quarter
Adult Module	$0.00 (Included with Contract)
Middle School Module	$32,500.00 per quarter
Total	**$1,196,456.00**

Justification for Non-Competitive Amendment

The State found no other entities who offer the comprehensive array of career, high school, college and financial aid planning services needed by THEC, TSAC and the Tennessee school systems. No other vendor offers the total package of needed solutions including: transcript, higher education admission application, career exploration, high school planning, college planning, and financial aid planning resources needed by Tennessee integrated into one common system. XAP also holds extensive knowledge of State Board Rules and Regulations as well as the content/ curriculum standards required by Tennessee law for school counselors, such institutional knowledge is invaluable to the partnership and fosters the portal's success.

Recently, THEC conducted a study of on-line, college access resources including Career Cruising, Connect EDU, Kuder, Inc., My10YearPlan, and Naviance, Inc. Of the six vendors identified, only XAP Corporation meets all business, functional and technical requirements outlined by the state. XAP Corporation is the only vendor found offering career guidance (K -12 and adult), customizable school planning, college access information articles (high school success, college planning, and financial aid), transcript exchange,

professional center, and higher education admission application resources in one integrated system. Additionally, with the exception of one other company, all companies required the school or organization to purchase a license and required passcodes to enter the site. CollegeforTN is openly available and customizable for the general public.

Of the vendors reviewed, ConnectEDU comes closest to meeting the four competencies required by Tennessee. ConnectEDU does offer college profile and application information, transcript exchange capabilities, and career exploration/high school planning tools but does not offer these features in an open web portal format that ensures college access information is accessible to the general public. ConnectEDU's platform focuses exclusively on a portfolio structure where users store information regarding their career and college planning. ConnectEDU's portal structure does not provide space for users to learn, for instance, how financial aid works or what steps are required in the college admissions process. XAP'S product is designed as a web portal where the general public can learn more about how to access higher education while benefiting from the tools and resources that help users make decisions regarding their postsecondary plans, providing both college access information (i.e., high school success content, college planning articles, financial aid planning guides, state-customized content) and an online portfolio comprised of interactive tools (i.e., career assessments, SAT/ACT test prep, college applications, four year course plans).

Additionally, THEC compiled a cost comparison of states currently using XAP Corporation's Transitions product. Using public secondary student enrollment as a metric for comparison, the cost analysis indicates that Tennessee's negotiated contract rate results in an annual per student cost that is in line with other states. Only Georgia, Illinois, and Iowa have an annual per student cost lower than Tennessee's negotiated rate. However, unlike Georgia, Illinois and Iowa, Tennessee's contract with XAP Corporation provides career exploration resources to all elementary students. This significant feature difference accounts for the higher annual cost per student.

Currently, THEC holds a $1.5 million contract with a full service marketing firm to promote college access and success; using CollegeforTN.org is the call to action in every aspect of this public outreach campaign. All campaign outreach materials direct students and their parents to visit CollegeforTN.org with the tagline "Higher Education. Put Your Mind To It." The campaign is in its third year and has seen much success winning several awards on the regional and national level. The most recent initiative is the printing of 50,000 *Paws in Jobland Activity Books* to be distributed to every school serving 2nd grade students with a class set of activities that integrate the Paws in Jobland module on the CollegeforTN TN.org website. Lastly, state personnel, in partnership with XAP, have extensively trained school administrators, school counselors, teachers, higher education personnel, and college access professionals across Tennessee in using the resources of CollegeforTN.org. A change if vendor would result in the need for re-training each of these professionals that would result in a substantial loss of personnel time, state resources and grant funds.

XAP Corporation provided exemplary services for the State of Tennessee for the last several years. The company maintains historical data, experience and background knowledge that all other vendors lack. Over 250,000 students created accounts on CollegeforTN.org. In 2010, there were over 200,000 visits to the webpage, with 2,000,000 page views. A new vendor will result in the loss of the portfolio information for each of those accounts and would result in the loss of all records of admission applications submitted, assessments taken, careers explored, high school planning completed for over 250,000 Tennesseans. Furthermore, several local school districts have or are in the process of incorporating CollegeforTN.org into their classroom curriculum.

Xap Contract Budget Distribution

Service Description	Amount (per quarter)	Amount (per year)	Funding Source
Career Planning and Test Preparation Tools (A.3.a.)	$81,250.00	$325,000.00	CACG
High School Planning Tools (A.3.b.)	$33,471.75	$133,887.00	GU
College Planning Tools (A.3.c.)	$84,948.75	$339,795.00	Lottery
Financial Aid Planning Tools (A.3.d.)	$33,471.75	$133,887.00	Lottery
Professional Center (A.3.g.)			
Transcript Services*	$25,000.00	$100,000.00	Lottery
Educator Access to Student Portfolios	$4,235.87	$16,943.48	CACG
Life-long Portfolio (A.3.e.)	$4,235.88	$16,943.52	GU
Adult Student Module (A.3.f)	$0.00	$0.00	N/A
Middle School Module (A.3.h.)	$32,500.00	$130,000.00	GU
Totals	**$299,114.00**	**$1,196,456.00**	

	Amount (per quarter)	Amount (per year)
Lottery Funds	$143,420.50	$573,682.00
Gear Up (GU)	$70,207.63	$280,830.52
College Access Challenge Grant (CACG)	$85,485.87	$341,943.48
Total	**$299,114.00**	**$1,196,456.00**

*Transcript services include technical assistance for school counselors in uploading transcript data, creation of transcripts using the state transcript template and the ability for educators to send transcripts to both TSAC and higher education institutions. Transcripts are priced at $2.50 per transcript up to 40,000 transcripts. There is no charge for transcripts beyond 40,000 transcripts.

Supplemental Documentation Required for Fiscal Review Committee

*Contact Name:	Will Burns, Associate Executive Director, Legal and Regulatory Affairs	*Contact Phone:	615.741.7571
*Original Contract Number:	FA1031822	*Original RFS Number:	33201-03310
Edison Contract Number: (*if applicable*)	19758	Edison RFS Number: (*if applicable*)	
*Original Contract Begin Date:	May 1, 2010	*Current End Date:	April 30, 2011

Current Request Amendment Number: (*if applicable*)	ONE
Proposed Amendment Effective Date: (*if applicable*)	May 1, 2011
*Department Submitting:	Higher Education
*Division:	Tennessee Higher Education Commission (THEC)
*Date Submitted:	March 2, 2011
*Submitted Within Sixty (60) days:	YES
If not, explain:	NA
*Contract Vendor Name:	XAP Corporation
*Current Maximum Liability:	$1,196,456.00

*Current Contract Allocation by Fiscal Year:
(as Shown on Most Current Fully Executed Contract Summary Sheet)

FY:2011	FY:	FY:	FY:	FY	FY
$ 1,196,456		$	$	$	$

*Current Total Expenditures by Fiscal Year of Contract:
(attach backup documentation from STARS or FDAS report)

FY:2011	FY:	FY:	FY:	FY	FY
$ 897,342	$	$	$	$	$

IF Contract Allocation has been greater than Contract Expenditures, please give the reasons and explain where surplus funds were spent:	NA
IF surplus funds have been carried forward, please give the reasons and provide the authority for the carry forward provision:	NA
IF Contract Expenditures exceeded Contract Allocation, please give the reasons and explain how funding was acquired to pay the overage:	NA

Supplemental Documentation Required for Fiscal Review Committee

*Contract Funding Source/Amount:	State:		Federal:	$622,774.00
Interdepartmental:	$573,682.00		*Other*:	
If "*other*" please define:				

Dates of All Previous Amendments or Revisions: *(if applicable)*	Brief Description of Actions in Previous Amendments or Revisions: *(if applicable)*

Method of Original Award: *(if applicable)*	Non-competitive Contract
*What were the projected costs of the service for the entire term of the contract prior to contract award?	NA

Supplemental Documentation Required for Fiscal Review Committee

For all new non-competitive contracts and any contract amendment that changes Sections A or C.3. of the original or previously amended contract document, provide estimates based on information provided the Department by the vendor for determination of contract maximum liability. Add rows as necessary to provide all information requested.

If it is determined that the question is not applicable to your contract document attach detailed explanation as to why that determination was made.

Planned expenditures by fiscal year by deliverable. Add rows as necessary to indicate all estimated contract expenditures.

Deliverable description:	FY: 2011	FY:2012	FY:	FY:
Career Planning and Test Preparation Tools Module	$81,250.00 per qtr	$81,250.00 per qtr		
High School Planning Tools Module	$33,471.75 per qtr	$33,471.75 per qtr		
College Planning Tools Module	$84,948.75 per qtr	$84,948.75 per qtr		
Financial Aid Planning Tools Module	$33,471.75 per qtr	$33,471.75 per qtr		
Life-Long Portfolio and Professional Center Module	$33,471.75 per qtr	$33,471.75 per qtr		
Adult Module	$0.00 (Included with Contract)	$0.00 (Included with Contract)		
Middle School Module	$32,500.00 per qtr	$32,500.00 per qtr		

Proposed savings to be realized per fiscal year by entering into this contract. If amendment to an existing contract, please indicate the proposed savings to be realized by the amendment. Add rows as necessary to define all potential savings per deliverable.

Deliverable description:	FY:	FY:	FY:	FY:	FY:

Comparison of cost per fiscal year of obtaining this service through the proposed contract or amendment vs. other options. List other options available (including other vendors), cost of other options, and source of information for comparison of other options (e.g. catalog, Web site). Add rows as necessary to indicate price differentials between contract deliverables.

Proposed Vendor Cost: (name of vendor)	FY:	FY:	FY:	FY:	FY:
Other Vendor Cost: (name	FY:	FY:	FY:	FY:	FY:

of vendor)					
Other Vendor Cost: (name of vendor)	FY:	FY:	FY:	FY:	FY:

Report ID: APY2000

PeopleSoft Accounts Payable

DETAILED PAYMENT HISTORY BY VENDOR

From: Jul/01/2010 To: Mar/03/2011

Run Date 3/2/2011
Run Time 10:30:38 AM

emit Vendor: **SHARE 0000067443**

ayment Currency: **USD**

Bank Account: 00001 1000

ayment Ref	Date	Handling	Status	Remit to	Pay Cycle	Seq	Payment Amount	Document Sequence
)00590581	Nov/12/2010	RG	Paid	Xap Corporation 3534 Hayden Ave Culver City 98 CA 90232 United States	ACH	974	81,250.00 USD	

Unit	Voucher ID	Invoice ID	Invoice Date	Discount Taken	Paid Amount
33201	00001249	XAP July 10079	Nov/01/2010	0.00 USD	81,250.00USD

)00611279	Dec/01/2010	RG	Paid	Xap Corporation 3534 Hayden Ave Culver City 98 CA 90232 United States	ACH	999	81,250.00 USD	

Unit	Voucher ID	Invoice ID	Invoice Date	Discount Taken	Paid Amount
33201	00001250	XAP Aug 10197	Nov/01/2010	0.00 USD	81,250.00USD

)00638209	Dec/21/2010	RG	Paid	Xap Corporation 3534 Hayden Ave Culver City 98 CA 90232 United States	ACH	1,033	435,728.00 USD	

Unit	Voucher ID	Invoice ID	Invoice Date	Discount Taken	Paid Amount
33201	00001357	10132	Nov/01/2010	0.00 USD	217,864.00USD
33201	00001361	10361	Nov/01/2010	0.00 USD	217,864.00USD

DETAILED PAYMENT HISTORY BY VENDOR

From: Jul/01/2010 To: Mar/03/2011

emit Vendor: **SHARE 0000067443**

ayment Currency: **USD**

Bank Account: 00001 1000

ayment Ref	Date	Handling	Status	Remit to	Pay Cycle	Seq	Payment Amount	Document Sequence
000725413	Mar/03/2011	RG	Paid	Xap Corporation 3534 Hayden Ave Culver City 98 CA 90232 United States	ACH	1,152	299,114.00 USD	

Unit	Voucher ID	Invoice ID	Invoice Date	Discount Taken	Paid Amount
33201	00001498	10417	Feb/01/2011	0.00 USD	217,864.00USD
33201	00001507	10418	Feb/01/2011	0.00 USD	81,250.00USD

Total for EFT Payments	**897,342.00 USD**
Total for Bank Account:	**897,342.00 USD**
Total For Currency	**897,342.00 USD**

End of Report

Non-Competitive Amendment Request

NOT required for a contract with a federal, Tennessee, or Tennessee local government entity or a grant.
Route a completed request, as one file in PDF format, via e-mail attachment sent to: Agsprs.Agsprs@state.tn.us

APPROVED
COMMISSIONER OF FINANCE & ADMINISTRATION

Request Tracking #	33201-03310
Procuring Agency	Tennessee Higher Education Commission (THEC)
Contractor	XAP Corporation
Contract #	FA1031822
Proposed Amendment #	ONE
Edison ID #	197581

Contract Begin Date	**May 01, 2010**
Current Contract End Date *– with ALL options to extend exercised*	**April 30, 2015**
Proposed Contract End Date *– with ALL options to extend exercised*	**April 30, 2015**
Current Maximum Contract Cost *– with ALL options to extend exercised*	**$ 5,982,280.00**
Proposed Maximum Contract Cost *– with ALL options to extend exercised*	**$ 5,982,280.00**
Office for Information Resources Endorsement *– information technology service (N/A to THDA)*	☐ Not Applicable ☒ Attached
eHealth Initiative Support *– health-related professional, pharmaceutical, laboratory, or imaging service*	☒ Not Applicable ☐ Attached
Human Resources Support *– state employee training service*	☒ Not Applicable ☐ Attached

Explanation Need for the Proposed Amendment

In 2010, THEC submitted a five-year Contract with XAP Corporation for the provision of electronic transcript services and CollegeforTN initiative. Due to concerns expressed by the Comptroller's office regarding funding, THEC was asked to prepare a one-year contract with provision B.2. Term Extension, so that these services would receive an annual review. As the

Request Tracking #	33201-03310

Contract expires April 30, 2011, THEC is submitting the Amendment accordingly.

Name & Address of the Contractor's Principal Owner(s) – *NOT required for a TN state education institution*

XAP Corporation
3534 Hayden Ave.
Culver City, CA
90232

Evidence Contractor's Experience & Length Of Experience Providing the Service

XAP is a trusted and proven partner to numerous organizations including university and college systems, state agencies (e.g., College Foundation of North Carolina – see www.cfnc.org, Florida Department of Education, Mississippi Department of Education, Oklahoma State Regents for Higher Education), regional education compacts (e.g., Southern Regional Education Board- see www.electroniccampus.org), the California State University System- see www.csumentor.edu and California Community College System – see www.cccapply.org), and the U.S. Department of Education (see www.studentaid.ed.gov). For these organizations and many others, XAP has designed, developed and implemented technology solutions aligned with the partners' stated objectives, such as improving postsecondary-attending rates, increasing awareness of postsecondary opportunities, and facilitating online admissions applications and electronic student record exchange.

Today, XAP continues to be the leader in college success portals, helping serve over 40 million students and their families to build aspirations and increase opportunities.

* 25+ years of vendor experience providing career planning resources across an international landscape to students and adults
* 12+ years of vendor experience delivering Internet-based college planning resources across a national landscape
* Experience in providing integrated college access systems in Colorado, Georgia, North Carolina, Rhode Island, and 25 other states, Southern Regional Education Board and US Department of Education

Efforts to Identify Reasonable, Competitive, Procurement Alternatives

THEC conducted a study of on-line, college access resources including Career Cruising, Connect EDU, Kuder, Inc., My10YearPlan, and Naviance, Inc. Of the six vendors identified, only XAP Corporation meets all business, functional and technical requirements outlined by the state. XAP Corporation is the only vendor found offering career guidance (K -12 and adult), customizable school planning, college access information articles (high school success, college planning, and financial aid), transcript exchange, professional center, and higher education admission application resources in one integrated system. Additionally, with the exception of one other company, all companies required the school or organization to purchase a license and required passcodes to enter the site. CollegeforTN is openly available and customizable for the general public.

Of the vendors reviewed, ConnectEDU comes closest to meeting the four competencies required by Tennessee. ConnectEDU does offer college profile and application information, transcript exchange capabilities, and career exploration/high school planning tools but does not offer these features in an open web portal format that ensures college access information is accessible to the general public. ConnectEDU's platform focuses exclusively on a portfolio structure where users store information regarding their career and college planning. ConnectEDU's portal structure does not provide space for users to learn, for instance, how financial aid works or what steps are required in the college admissions process. XAP'S product is designed as a web portal where the general public can learn more about how to access higher education while benefiting from the tools and resources that help users make decisions regarding their postsecondary plans, providing both college access information (i.e., high school success

Request Tracking #	33201-03310

content, college planning articles, financial aid planning guides, state-customized content) and an online portfolio comprised of interactive tools (i.e., career assessments, SAT/ACT test prep, college applications, four year course plans).

Additionally, THEC compiled a cost comparison of states currently using XAP Corporation's Transitions product. Using public secondary student enrollment as a metric for comparison, the cost analysis indicates that Tennessee's negotiated contract rate results in an annual per student cost that is in line with other states. Only Georgia, Illinois, and Iowa have an annual per student cost lower than Tennessee's negotiated rate. However, unlike Georgia, Illinois and Iowa, Tennessee's contract with XAP Corporation provides career exploration resources to all elementary students. This significant feature difference accounts for the higher annual cost per student.

Justification – *specifically explain why non-competitive negotiation is in the best interest of the state*

As stated previously, THEC conducted a review of on-line, college access resources and were unable to find another company with the ability to meet all business, functional and technical requirements. It is important to highlight, XAP is the only company THEC found offering career guidance (K- 12 and adult), customizable school planning, transcript exchange, professional center, and higher education admissions application resources all in one integrated system access via a single log on. Upon identifying Tennessee's goals and needs, as described above, and XAP'S unique programmatic benefits, staff members secured references from peer states and were advised that XAP is the preferred vendor of states working to make large gains in high school graduation, college enrollment, and degree production.

Agency Head Signature and Date – *MUST be signed by the ACTUAL agency head as detailed on the current Signature Certification. Signature by an authorized signatory is acceptable only in documented exigent circumstances*

3.1.11

RICHARD G. RHODA, EXECUTIVE DIRECTOR **DATE**

OIR Pre-Approval Endorsement Request
E-Mail Transmittal

TO : Jane Chittenden, OIR Procurement & Contract Management Director
Department of Finance & Administration

E-Mail : Jane.Chittenden@tn.gov

FROM : Marcie Mills, Contracts Administration Manager

Tennessee Higher Education Commission (THEC)

E-Mail : Marcie.Mills@tn.gov

DATE : April 5, 2010

RE : Request for OIR Pre-Approval Endorsement

APPLICABLE RFS # 33201-03310

OIR ENDORSEMENT SIGNATURE & DATE :

Mark F. Bengel (jmc)

Chief Information Officer

NOTE: Proposed contract/grant support is applicable to the subject IT service technical merit.

Office for Information Resources (OIR) pre-approval endorsement appears to be required pursuant to professional service contracting regulations pertaining to procurements with information technology as a component of the scope of service. This request seeks to ensure that OIR is aware of and has an opportunity to review the procurement detailed below and in the attached documents.

Please document OIR endorsement of the described procurement (with the appropriate signature above), and return this document via e-mail at your earliest convenience.

1 **SUBJECT PROCUREMENT DOCUMENT TYPE** (mark one) :

- ☐ RFP
- ☐ Competitive Negotiation Request ☐ Alternative Procurement Method Request
- ☒ Non-Competitive Contract Request ☐ Non-Competitive Amendment Request
- ☐ Contract ☐ Contract Amendment ☐ Grant ☐ Grant Amendment

2 **INFORMATION SYSTEMS PLAN (ISP) PROJECT APPLICABLITY :**

☐ Not Applicable to this Request ☒ Applicable – College Access Portal/Transcript Exchange (GU0910) Project Disposition

RESPONSE CONFIRMED BY : O.W. Higley, Assistant Executive Director of Fiscal Affairs, IT

APPLICABLE RFS # 33201-03310

3 **CONTRACTING AGENCY CONTACT :**

Marcie Mills, Contracts Administration Manager
Telephone # 615.532.3500
Marcie.Mills@tn.gov

O.W. Higley, Assistant Executive Director of Fiscal Affairs, IT
Telephone # 615.532.9846
O.W.Higley@tn.gov

4 **SUBJECT INFORMATION TECHNOLOGY SERVICE DESCRIPTION :**

Tennessee procured a solution from XAP Corporation to provide a broad avenue of access to Tennessee education opportunities beyond high school. The resulting website www.CollegeforTN.org is designed especially for use in Tennessee and allows the user, which includes students in grades K – 12, to plan their future careers, begin to understand the need for higher education, know which courses to take in middle and high school to be academically prepared for college, prepare for tests, including ACT, SAT, and GRE, and learn how to apply for financial aid. Additionally, postsecondary students, parents, guidance counselors, and college access professionals will have access to a comprehensive suite of career, college, and financial aid planning services in a web-based environment using a single log-on and password.

Functional Requirements: The Contractor shall provide the following functional requirements:

a. Customizable user access permission levels to accommodate multiple roles.

b. Customizable user interface that provides integrates and/or supports social networking;

c. A single integrated portal with no or limited links to subsystems that provides core features such as:

(1) Single sign-on capabilities in a secure online environment requiring the use of a secured user id and password.
(2) Ability to identify, track and record student career interests.
(3) K-12 roadmaps that lead and measure a student's progress through the system's functionality and activities in a logical order culminating with the student arriving at their chosen college or career destination.
(4) A lifelong electronic portfolio to support student's future education and employment goals.
(5) Integrated ACT/SAT/GRE test prep and recording capabilities.
(6) Electronic admissions application capabilities to Tennessee higher education institutions.
(7) Electronic academic transcripts delivery to include high school to high school, high school to Tennessee agencies, high school to college, and college to college.
(8) Electronic assessment prep and delivery.
(9) Student and Adult learner resume development capabilities.
(10) Capabilities to provide or support the delivery of financial aid information on federal and Tennessee grants, scholarships, work study and student loans including the capabilities to provide and/or integrate electronic applications associated with each program.
(11) Capabilities to upload, store, retrieve and update academic and career related documents.

d. The ability to link to external websites and/or return pre-determined student support services and/or program information to the student.

e. On demand training related to the tools, features, and functionality for regional and Tennessee level users and administrators.

Technical Requirements: The Contractor shall provide the following technical requirements:

a. A low cost, interoperable, and commercial off-the-shelf solution that avoids new development, and leverages new or existing technologies.

b. Compliance with the Children's Online Privacy Protection Act (COPPA).

APPLICABLE RFS # 33201-03310	
c.	Compatibility and integration with the Occupational Employment Statistics Program (OES).
d.	Electronically supported administration of assessments and accountability as outlined by the No Child Left Behind (NCLB) Act.
e.	Interoperability (easy import, export or integration) with Tennessee student information systems (district and state level), GEAR UP programs, and other College and Career applications.
f.	The ability to add and change content, links, and pages to best suit the needs of Tennessee.
g.	The ability to incorporate Tennessee based information including employment outlook data to address Tennessee specific needs (i.e. the creation of a College Access Network page or a page dedicated to Tennessee-specific financial aid options).
h.	Both standard and ad-hoc reporting on the state, district, and school level with capabilities of offering aggregated or disaggregated data on system usage, student portfolios, career interests individually or by groups, academic progress, pre-determined lesson plans, academic assessments, test and/or exit exam scores.
i.	Timely system updates reflecting policy changes at both the federal and state levels.
j.	Both on-site and fully hosted software options.
k.	24 x 7 support capabilities.
l.	Minimum down-time.
m.	The Contractor shall renew the domain name CollegeforTN.org as required.

5 **REQUIRED ATTACHMENT(S) AS APPLICABLE** (copies without signatures acceptable) :

- ☒ **RFP, Competitive Negotiation Request, Alternative Procurement Method Request, or Non-Competitive Contract/Amendment Request**
- ☐ **proposed contract/grant or amendment**
- ☐ **original contract/grant & any prior amendments**

GENERAL ASSEMBLY OF THE STATE OF TENNESSEE
FISCAL REVIEW COMMITTEE

320 Sixth Avenue, North – 8th Floor
NASHVILLE, TENNESSEE 37243-0057
615-741-2564

Sen. Bill Ketron, Chairman
Senators
Douglas Henry — Reginald Tate
Doug Jackson — Ken Yager
Brian Kelsey
Randy McNally, *ex officio*
Lt. Governor Ron Ramsey, *ex officio*

Rep. Charles Curtiss, Vice-Chairman
Representatives
Harry Brooks — Donna Rowland
Curtis Johnson — Tony Shipley
Steve McManus — Curry Todd
Mary Pruitt — Eddie Yokley
Craig Fitzhugh, *ex officio*
Speaker Kent Williams, *ex officio*

MEMORANDUM

TO: The Honorable Dave Goetz, Commissioner
Department of Finance and Administration

FROM: Bill Ketron, Chairman, Fiscal Review Committee BK
Charles Curtiss, Vice-Chairman, Fiscal Review Committee CC

DATE: April 28, 2010

SUBJECT: **Contract Comments**
(Fiscal Review Committee Meeting 4/26/10)

RFS# 332.01-03310
Department: Tennessee Higher Education Commission (THEC)
Contractor: XAP Corporation
Summary: The proposed five-year contract is for the provision of electronic transcript services and support for the College4TN.org program and Web site. The proposed contract has a term beginning May 1, 2010, and ending April 30, 2015.
Maximum liability: $5,982,280

After review, the Fiscal Review Committee voted to recommend approval of the contract.

cc: Dr. Richard Rhoda, Executive Director
Mr. Robert Barlow, Director, Office of Contracts Review

STATE OF TENNESSEE

Office of the Attorney General

ROBERT E. COOPER, JR.
ATTORNEY GENERAL AND REPORTER

CORDELL HULL AND JOHN SEVIER STATE
OFFICE BUILDINGS

MAILING ADDRESS
P.O. BOX 20207
NASHVILLE, TN 37202

LUCY HONEY HAYNES
CHIEF DEPUTY ATTORNEY GENERAL

LAWRENCE HARRINGTON
CHIEF POLICY DEPUTY

MICHAEL E. MOORE
SOLICITOR GENERAL

TELEPHONE (615) 741-3491
FACSIMILE (615) 741-2009

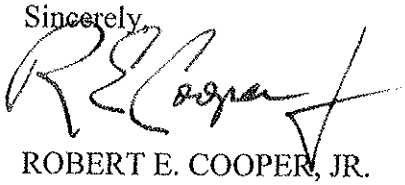
March 4, 2011

The Honorable James W. White
Executive Director, Fiscal Review Committee
320 Sixth Avenue, North 8th Floor
Nashville, Tennessee 37243-0057

Dear Mr. White:

In response to your request, attached is opinion number 11-20. If you have further questions or comments, please contact this Office.

Sincerely,



ROBERT E. COOPER, JR.
Attorney General and Reporter

Enclosure

STATE OF TENNESSEE
OFFICE OF THE
ATTORNEY GENERAL
PO BOX 20207
NASHVILLE, TENNESSEE 37202

March 4, 2011

Opinion No. 11-20

Use of Net Lottery Proceeds

QUESTION

Has the General Assembly appropriated net lottery proceeds for the purposes authorized by Article XI, Section 5, of the Tennessee Constitution?

OPINION

The following principles apply to any expenditure of net lottery proceeds. The expenditure must supplement, rather than supplant, available non-lottery funds. Net lottery proceeds must first be used to fund financial assistance programs for students of post-secondary educational institutions. Remaining net lottery proceeds may be used for the other purposes listed in Article XI, Section 5.

Based on the information provided with this request, net lottery proceeds have been appropriated for a variety of purposes as follows:

1. THEC and TSAC Expenditures Related to Scholarship Programs

a. i. Clearly, scholarships awarded under Tenn. Code Ann. §§ 49-4-901, *et seq.*, "provide financial assistance to citizens of this state to enable such citizens to attend post-secondary educational institutions located within this state," within the meaning of Article XI, Section 5, of the Tennessee Constitution. It is the opinion of this Office, therefore, that net lottery proceeds may be expended directly for these scholarships.

ii. Research indicates the General Assembly has also appropriated earnings from the lottery-for-education account in the State Treasury to supplement the Tennessee Student Assistance Award Program under Tenn. Code Ann. §§ 49-4-301, *et seq.* It is not clear that these earnings are "net proceeds of the lottery's revenues" subject to the limitations in Article XI, Section 5, of the Tennessee Constitution. In any case, these awards also "provide financial assistance to citizens of this state to enable such citizens to attend post-secondary educational institutions located within this state," within the meaning of Article XI, Section 5. It is the opinion of this Office, therefore, that earnings from the lottery-for-education account may be expended directly for awards under this program.

b. Money spent to purchase laptops for students eligible for dual enrollment grants "provide[s] financial assistance to citizens of this state to enable such citizens to attend post-secondary educational institutions located within this state," within the meaning of Article XI, Section 5, of the Tennessee Constitution. It is the opinion of this Office, therefore, that net lottery proceeds may be expended for this purpose.

c. It is the opinion of this Office that net lottery proceeds may be used to pay administrative expenses incurred by TSAC and THEC that are reasonably necessary for those agencies effectively to manage the lottery scholarship program.

d. Contract with XAP Corporation

Based on the information supplied, some of the services provided under a contract between THEC and XAP Corporation appear to be reasonably necessary to manage the lottery scholarship program. It is the opinion of this Office, therefore, that net lottery proceeds may be used for the costs of the following components described under Section A.3 of the contract:

A. College Planning Tools (A.3.c.) to the extent they are used to provide information about Tennessee higher education institutions to students and to enable students to apply for admission to these institutions;

B. Financial Aid Planning Tools (A.3.d.);

C. Services through the Adult Student Module (A.3.f.) that enable students to apply to Tennessee higher education institutions and to obtain lottery scholarships and other financial aid to attend these institutions; and

D. Services provided through the Professional Center (A.3.g.) that enable educators to send student transcripts to Tennessee higher education institutions and to TSAC for lottery scholarship GPA verification.

But the costs of the Career Planning Tools (A.3.a.), High School Planning Tools (A.3.b.), Life-long Portfolio (A.3.e.), Adult Student Module (A.3.f.) (to the extent not providing college and financial aid planning), Professional Center (A.3.g.) (for services besides the transcript transmission services noted above), and Middle School Module (A.3.h.) do not appear to be reasonably necessary to manage the lottery scholarship program. For this reason, it is the opinion of this Office that they may not be funded from net lottery proceeds. Further, these expenses are not for the purpose of capital outlay projects, early learning programs, or after school programs within the meaning of Article XI, Section 5, of the Tennessee Constitution and as currently authorized by statute through Tenn. Code Ann. §§ 49-6-701, *et seq.* (after school programs); Tenn. Code Ann. §§ 49-6-101, *et seq.* (pre-kindergarten programs); and Tenn. Code Ann. § 49-4-940(c) (energy efficient schools fund).

e. Reasonable expenses related to administering lottery scholarship day are part of the costs to "provide financial assistance to citizens of this state to enable such citizens to attend

post-secondary educational institutions located within this state," within the meaning of Article XI, Section 5, of the Tennessee Constitution. It is the opinion of this Office, therefore, that net lottery proceeds may be used for this purpose.

2. a. Early Learning Programs

i. It is the opinion of this Office that funds spent on early learning programs in accordance with Tenn. Code Ann. §§ 49-6-101, *et seq.*, comply with the restrictions on net proceeds of the lottery's revenues under Article XI, Section 5, of the Tennessee Constitution.

ii. Expenses to conduct the pre-K longitudinal study are administrative expenses that are reasonably necessary to administer the pre-kindergarten programs authorized by law. It is the opinion of this Office, therefore, that net lottery proceeds may be used to pay these expenses.

b. After School Programs

It is the opinion of this Office that funds spent on after school programs in accordance with Tenn. Code Ann. §§ 49-6-701, *et seq.*, comply with the restrictions on net proceeds of the lottery's revenues under Article XI, Section 5, of the Tennessee Constitution.

3. It is the opinion of this Office that the General Assembly may appropriate net lottery proceeds available after allocations for lottery scholarships to fund projects under the Energy Efficient Schools Initiative of 2008, Tenn. Code Ann. §§ 49-17-101, *et seq.* These proceeds may also fund administrative expenses reasonably necessary to administer this program.

ANALYSIS

Article XI, Section 5, of the Tennessee Constitution, provides in relevant part:

> The legislature shall have no power to authorize lotteries for any purpose, and shall pass laws to prohibit the sale of lottery tickets in this state, except that the legislature may authorize a state lottery *if the net proceeds of the lottery's revenues are allocated to provide financial assistance to citizens of this state to enable such citizens to attend post-secondary educational institutions located within this state.* The excess after such allocations from such net proceeds from the lottery would be appropriated to:
>
> (1) Capital outlay projects for K-12 educational facilities; and
>
> (2) Early learning programs and after school programs.
>
> Such appropriation of funds to support improvements and enhancements for educational programs and purposes and such net proceeds shall be used to supplement, not supplant, non-lottery educational resources for educational programs and purposes.

(emphasis added). This language creates a clear priority in favor of the financial assistance program for post-secondary education students. Op. Tenn. Att'y Gen. 03-015 (February 10, 2003). Thus, the term "excess" as used in Article XI, Section 5, refers to any net proceeds of the state lottery remaining after funding the financial assistance program established by the General Assembly for Tennessee citizens to attend post-secondary institutions. *Id.* The Constitution, therefore, provides that net lottery proceeds must be used for one of three different purposes: first, "to provide financial assistance to citizens of this state to enable such citizens to attend post-secondary educational institutions located within this state[;]" second, for "[c]apital outlay projects for K-12 educational facilities;" and third, for "[e]arly learning programs and after school programs." Further, net lottery proceeds must be used to supplement, not supplant, non-lottery educational resources for education programs and purposes.

Disposition of lottery revenue is governed by Tenn. Code Ann. § 4-51-111. Under subsection (a)(2) of this statute, the Tennessee Education Lottery Corporation must pay its operating expenses from its lottery proceeds. Under Tenn. Code Ann. § 4-51-111(b), the Corporation must transfer net lottery proceeds to a lottery-for-education account within the State Treasury. The same statute establishes several reserve and subaccounts to be maintained within the lottery-for-education account.

This opinion relies on documents accompanying the request. These documents include extensive information about education programs and expenses funded with net lottery proceeds. The following is a summary of each document:

1. A spreadsheet comparing appropriation requirements and state revenues for fiscal years 2003-2004 through 2013-2014. The document provides details about "Appropriation Requirements" that include the following:

Higher Education Scholarships Base
TSAA Need-Based Scholarships
Pre-Kindergarten Program
Tennessee Higher Education Commission
Tennessee Student Assistance Corporation
Education: E-Transcripts for Tennessee Higher Education Commission
Education: Lottery Scholarship Day
Comptroller: Pre-K Longitudinal Study

2. A 2009-2010 summary report for the Tennessee Education Lottery Scholarship Program. This document details amounts awarded under the following: Hope Foster Care Grant; Dual Enrollment Grant; Math and Science Teachers Program; Helping Heroes Grant; and Rural Health Loan Forgiveness. The same document reflects awards by educational institution.

3. The Tennessee Education Lottery Scholarship Program Annual Report, (the "Annual Report"), reflecting outcomes through Fall 2009. This document provides extensive narrative information about the program.

4. A list of lottery expenditures by the Tennessee Higher Education Commission ("THEC") for fiscal year 2009. Items on this list are the following: Salaries and Benefits; Operational Expenses; and "Laptop Project," required by 2008 Tenn. Pub. Acts ch. 1142.

5. A more detailed list of THEC administrative expenses, broken down into salaries and employee benefits; travel expenses; and printing, copying, communication, and shipping expenses. The document also lists data processing, office supplies, rental, and billing services.

6. A narrative description of activities of THEC lottery-related personnel.

7. and 8. Details of administrative expenditures from lottery funds by the Tennessee Student Assistance Corporation ("TSAC"). These include salaries, employee benefits, travel, rental, communication, copying, and printing charges.

The fundamental purpose in construing a constitutional provision is to ascertain and give effect to the intent and purpose of the people who adopted it. *Cleveland Surgery Center, L.P. v. Bradley County Memorial Hospital,* 30 S.W.3d 278, 281 (Tenn. 2000). Thus, when construing a constitutional provision, courts must give its terms their ordinary and inherent meaning. *Barrett v. Tennessee Occupational Safety and Review Commission,* 284 S.W.3d 784, 787 (Tenn. 2009).

Many of the expenditures listed in the material are explicitly authorized by state statutes. The Tennessee Supreme Court recently acknowledged that a construction of the Constitution adopted by the legislative department and long accepted and acquiesced in by the people is entitled to great weight, and in the absence of some showing of palpable error, is to be accepted as a correct interpretation. *American Civil Liberties Union of Tennessee v. Darnell,* 195 S.W.3d 612, 627, n. 12 (Tenn. 2006) (quoting *LaFever v. Ware,* 211 Tenn. 393, 365 S.W.2d 44, 47 (1963)).

1. HOPE SCHOLARSHIP AND OTHER SCHOLARSHIP PROGRAM EXPENDITURES

Most of the net lottery proceeds have been expended to support the HOPE Scholarship Program and other scholarship programs. These programs operate under Tenn. Code Ann. §§ 49-4-901, *et seq.* They are administered by TSAC, and THEC is charged with evaluating them. Tenn. Code Ann. § 49-4-903. The following discussion will consider the different expenditures listed in the materials provided to determine whether they fall within the first purpose for which net lottery proceeds may be used, which is "to provide financial assistance to citizens of this state to enable such citizens to attend post-secondary educational institutions located within this state."

a. Grant Awards

i. Scholarship Programs under Tenn. Code Ann. §§ 49-4-101, *et seq.*

The Annual Report summarizes the Tennessee Education Lottery Scholarship Program as follows:

> The Tennessee Education Lottery began operations on January 20, 2004. Lottery proceeds fund scholarships for Tennessee students attending eligible public or private colleges and universities across the state. Initial qualification and renewal criteria for the program were set in 2003. The legislature adjusted the qualification criteria in 2005 and the renewal criteria in 2008. Additionally, the legislature added a Non-traditional Student Grant and Dual Enrollment Grant in 2005 and several smaller provisions in 2006 and 2008.
>
> Pursuant to Public Chapter 1142, which was signed into law in July 2008, the most significant policy changes to the program since inception were implemented in Fall 2008. One of the reforms was a provisional method for maintaining the award after the student attempted 72 credit hours. Additionally, the law approved an expansion of the Non-traditional Student Grant. If a student is age 25 or over, has an adjusted gross income of $36,000 or less, and has never attended or has been away from college for two years, he or she can become eligible for a Non-traditional Student Grant by completing 12 hours of collegiate coursework with a minimum 2.75 cumulative GPA.
>
> In addition to changes in the scholarship programs, the state has also made lottery-funded grants available to veterans of the Global War on Terror, students pursuing degrees in math and science education, and students who pursue medical education with the intention of serving a rural health shortage area. Also in 2008-09, the state used a combination of lottery reserve earnings and other non-recurring revenues to provide $10 million so that 5,000 additional students could receive Tennessee Student Assistance Awards (TSAA), which provide grants to financially needy undergraduate students who are residents of Tennessee.

Annual Report at 1-2.

Statutes governing eligibility for financial aid under various programs funded with net lottery proceeds appear at Tenn. Code Ann. §§ 49-4-901, *et seq.* Clearly, scholarships under the program "provide financial assistance to citizens of this state to enable such citizens to attend post-secondary educational institutions located within this state," within the meaning of Article XI, Section 5, of the Tennessee Constitution. Thus, net lottery proceeds may be expended directly for these scholarships.

ii. Tennessee Student Assistance Awards under Tenn. Code Ann. §§ 49-4-301, *et seq.*

The Annual Report indicates that the State used a "combination of lottery reserve earnings and other non-recurring revenues" to help fund Tennessee Student Assistance Awards. *Id.* at 2. This award program is governed by Tenn. Code Ann. §§ 49-4-301, *et seq.* The 2008 Appropriations Act reflects that the General Assembly appropriated $6,800,000 from "interest earnings attributable to the Lottery for Education Account" to supplement these awards. 2008 Tenn. Pub. Acts ch. 1203, Item 3, at 109. This appropriation appears to refer to interest earned on net lottery proceeds after the Tennessee Lottery Corporation transferred those proceeds to the lottery-for-education account under Tenn. Code Ann. § 4-51-111. This money does not appear to fall within the term "net proceeds of the lottery's revenues" as used in Article XI, Section 5, of the Tennessee Constitution. Op. Tenn. Att'y Gen. 03-066 (May 22, 2003) (the term "net proceeds of the lottery's revenues" means the funds remaining from the gross proceeds from the state lottery after all expenses and losses incurred in realizing them are deducted). In any case, awards under this program also "provide financial assistance to citizens of this state to enable such citizens to attend post-secondary educational institutions located within this state," within the meaning of Article XI, Section 5, of the Tennessee Constitution. Thus, earnings from the lottery-for-education account may be expended directly for these Tennessee Student Assistance Awards under Tenn. Code Ann. §§ 49-4-301, *et seq.*

b. Purchase of Laptops

The materials indicate that THEC spent $156,600 in net lottery proceeds in Fiscal Year 2009 to purchase laptops. This purchase was authorized by 2008 Tenn. Pub. Acts ch. 1142, § 26, now codified at Tenn. Code Ann. § 49-4-930(f). This section creates a pilot program to assist high school juniors and seniors eligible for dual enrollment grants to enroll in dual enrollment courses that require a computer to facilitate the offering of such course or as necessary equipment for such course. Tenn. Code Ann. § 49-4-930(f)(1). The term "dual enrollment grant"

> means a grant for study at an eligible postsecondary institution that is funded from net proceeds of the state lottery and awarded to students who are attending high school and who are also enrolled in college courses at eligible postsecondary institutions for which they will receive college credit.

Tenn. Code Ann. § 49-4-902(9). The pilot program was to provide laptop computers for one hundred students in each grand division of the state, the cost not to exceed five hundred dollars each. Tenn. Code Ann. § 49-4-930(f)(2) and (3). Money spent for this purpose "provide[s] financial assistance to citizens of this state to enable such citizens to attend post-secondary educational institutions located within this state," within the meaning of Article XI, Section 5, of the Tennessee Constitution. For this reason, expenditures to purchase laptops under this program are authorized under Article XI, Section 5, of the Tennessee Constitution, as long as they supplement rather than supplant other funds.

c. General Administrative Expenditures by THEC and TSAC

The materials provided indicate that net lottery proceeds are used to cover administrative expenses of TSAC and THEC related to administering the lottery scholarship programs. These expenses include salaries and employee benefits, travel expenses, and printing, copying, communication, and shipping expenses, as well as data processing, office supplies, rental, and billing services.

TSAC is responsible for administering lottery scholarship and grant programs. Its duties include determining eligibility of students and distributing funds appropriated by the General Assembly for scholarships and grants awarded under the program. Tenn. Code Ann. § 49-4-903(a). THEC is required to provide assistance to the legislature and TSAC by researching and analyzing data concerning these programs, including, but not limited to, student success and scholarship retention rates. Tenn. Code Ann. § 49-4-903(b). The statute was recently amended to require further information in THEC's annual report under this statute. 2010 Tenn. Pub. Acts ch. 839.

Statutes governing the lottery scholarship programs explicitly authorize administrative expenses to be paid from the lottery-for-education account:

> Costs incurred by TSAC and THEC *in administering the educational programs created under this part* that provide *financial assistance* to enable citizens of this state to attend postsecondary educational institutions shall be funded from the lottery for education account *as part of the programs.*

Tenn. Code Ann. § 49-4-924(e) (emphasis added). Thus, the General Assembly has determined that TSAC and THEC costs to administer programs funded with net lottery proceeds are properly "allocated to provide financial assistance to citizens of this state to enable such citizens to attend post-secondary educational institutions located within this state," as required under Article XI, Section 5, of the Tennessee Constitution. As discussed above, this determination is entitled to judicial deference. Further, the Constitution requires that net lottery proceeds be allocated to "provide" financial assistance. Logically, the cost of administering the financial assistance programs is part of the cost of providing this assistance. The Oregon Attorney General reached a similar conclusion in 1991. Op. Or. Att'y Gen. OP-6373, 1991 WL 543950 (April 9, 1991). The Oregon constitutional provision construed in that opinion provided in relevant part that, "[a]ll proceeds from the State Lottery . . . shall be used for the purpose of creating jobs and furthering economic development in Oregon." Or. Const. Art. XV, Section 4(3). The Attorney General concluded that this provision permitted lottery funds to be used for administrative expenses of a lottery-funded program, so long as the program itself was a permissible use of lottery funds. The opinion notes:

> As a practical matter, any program to create jobs and promote economic development needs administrative support in order to operate. For instance, such a program requires staff, which in turn needs office space and supplies. Costs for such administrative support are an integral part of the program expenses. We

> conclude, therefore, that lottery funds may be used to pay administrative expenses which are reasonably necessary for a state agency effectively to manage a program that creates jobs and promotes economic development.

Op. Or. Att'y Gen. OP-6373, 1991 WL 543950 at *3 (April 9, 1991). Similarly, any program to provide financial assistance to Tennessee citizens to enable them to attend Tennessee post-secondary educational institutions needs administrative support in order to operate. Thus, net lottery proceeds may be used to pay administrative expenses incurred by TSAC and THEC that are reasonably necessary for those agencies effectively to manage lottery scholarship programs. The funds must supplement and not supplant available non-lottery funds.

d. "Electronic Transcripts" — Contract between THEC and XAP Corporation

Material received with the request reflects an appropriation entitled "E-Transcripts for THEC." The spreadsheet anticipates appropriations of $808,100 each year through fiscal year 2013-2014. This item refers to a contract between THEC and XAP Corporation. This Office previously reviewed an amendment to a contract between the same parties to determine whether lottery funds could legally be spent to pay for services provided under the amendment. Op. Tenn. Att'y Gen. 06-111 (July 13, 2006). A memorandum from THEC to the Fiscal Review Committee dated April 1, 2010, summarizes the contract with XAP as follows:

> Tennessee procured a solution from XAP Corporation to provide a broad avenue of access to Tennessee education opportunities beyond high school. The resulting website www.CollegeforTN.org is designed especially for use in Tennessee and allows the user, which includes students in grades K – 12, to plan their future careers, begin to understand the need for higher education, know which courses to take in middle and high school to be academically prepared for college, prepare for tests, including ACT, SAT, and GRE, and learn how to apply for financial aid. Additionally, postsecondary students, parents, guidance counselors, and college access professionals will have access to a comprehensive suite of career, college, and financial aid planning services in a web-based environment using a single log-on and password.

The same paragraph appears in Section A.2., page 1, of the contract beginning May 1, 2010. Services provided under the contract are described in greater detail under Section A.3., a.-g. on pages 2 and 3 of the contract:

> a. Career planning and test preparations tools which will provide a comprehensive career exploration and standardized test preparation experience for all Tennessee citizens. Career assessments will include an Interest Profile, Career Cluster Survey, Basic Skills Survey, Transferable Skill checklist, Career Key and Work Values Sorter. Career exploration resources will also include career search and matching functionality organized around the career clusters as determined by the U.S. Department of Labor and will be tailored to reflect Tennessee's Department of Education career cluster customizations. Elementary School

students will have access to age appropriate career exploration tools in the module Paws in Jobland. The career exploration resources found on the web portal will change in content and form dependent on the age of the user ensuring that all users have a career exploration experience customized to their needs and age level. The web portal will also provide standardized test preparation tools for the ACT, SAT and GRE.

b. High School planning tools which include a planning timeline and a personalized plan of study, outlining what students and parents should be doing throughout a student's high school career to effectively plan for college. The personalized plan of study will allow students to make high school course plans. The plans of study will be populated with all courses listed as approved by the Tennessee Department of Education and will be organized in accordance with Tennessee course and graduation standards. Local districts and schools will have the ability to customize course offerings, course sequences, and options for the personalized plan of study of students that attend their particular school or district.

c. College planning tools which offer resources allowing students to explore postsecondary education options. Web portal users will be able to browse higher education institutions, view program and major profiles and access college preparation content. The State will have the capability to customize and add college planning content as it sees fit. The web portal will provide online applications for admissions to all Tennessee higher education institutions. Additionally, the web portal will provide electronic transcript services for high school, high school equivalent and college transcripts.

d. Financial Aid planning tools which include a set of comprehensive financial aid resources including financial aid calculators, an Expect Family Contribution (EFC) calculator, user-personalized financial planning tool and scholarship search tools. The State will have the ability to customize and supplement the financial aid and financial literacy information provided. The portal will also provide the ability of users to transfer information found in user profiles directly to the Free Application for Federal Student Aid (FAFSA) form.

e. Life-long Portfolio which provide[s] users with a personal web-based portfolio that will house all career, high school, college, and financial aid planning activity outcomes. Users will be able to manage items such as careers, postsecondary institutions, and academic programs of interest. The portfolio provides resources including email, calendar, and the capability of communicating with school personnel.

f. Adult Student Module which provides career planning, college planning, financial aid planning, life-long portfolio and professional center tools tailored to the adult student. Workforce development and career centers will have access to the Professional Center to better aid in facilitating resources to adults. The adult

portions of the website will be customizable both in appearance and content to better reflect the needs of Tennessee.

g. Professional Center which gives designated school, university, and workforce center personnel access to the accounts of all individuals associated with their respective programs. Professional center users will have the ability to segment individuals in a variety of ways (i.e. grade level, last name, career interests, etc.) to maximize use. Professional center users will be able to track web portal user's progress in completing site activities including assessment, college applications, and high school plans. Messages and event notices can be sent to individual portal user accounts. School personnel can upload and send transcripts through the Professional Center. User-friendly reports are available in the Professional Center to track, engage and keep portal users accountable. Sample reports include a list of students who are interested in majoring in Biology, which users have applied to college, or a list of students who have not yet completed a personalized plan of study. The Professional Center provides tools to more efficiently manage portal user's career, high school, college and financial aid planning. Additionally, school district and state level educators will have the capability of obtaining aggregate and disaggregate data regarding student usage and outcomes.

h. Middle School Module which provides career planning, college planning, financial aid planning, life-long portfolio and professional center tools tailored to the middle school student. All Tennessee middle schools will have access to the Professional Center to better aid in facilitating resources to middle school students. The student portions of the website will be customizable in appearance and content to better reflect the needs of Tennessee.

None of these services can be interpreted as direct financial assistance to enable Tennessee citizens to attend post-secondary educational institutions located in Tennessee within the meaning of Article XI, Section 5, of the Tennessee Constitution.

The cost of some of the services described under this contract is, arguably, an administrative expense that is reasonably necessary to manage the lottery scholarship programs. The College Planning Tools (A.3.c.) provide information to students about Tennessee higher education institutions and enable students to apply for admission. Since lottery scholarships are available to attend only these institutions, it can be argued that expenditures for these services are reasonably necessary to manage the lottery scholarship programs. For this reason, expenditures for the College Planning Tools component may be funded from net lottery proceeds to the extent they are used to provide information about Tennessee higher education institutions to students and to enable students to apply for admission to these institutions.

Further, we think it can be argued that Financial Aid Planning Tools (A.3.d.) represent an expense that is reasonably necessary to manage the lottery scholarship programs. Services under this component will enable students effectively to use lottery scholarship funds to attend Tennessee higher education institutions. Expenditures for the Financial Aid Planning Tools

component, therefore, may be funded from net lottery proceeds. The same argument can be made concerning the Adult Student Module (A.3.f.), but only to the extent the module provides college planning and financial aid planning.

The Professional Center described at A.3.g. of the contract provides a means to assemble data regarding students whose information is on the program. Staff members at THEC indicate that educators use this service to send official high school transcripts to TSAC for lottery scholarship GPA verification. Verification of student GPAs for lottery scholarship eligibility requires three steps. First, educators upload grade data from their own student information system to the Professional Center. Second, the Professional Center service automatically organizes this data into individual student transcripts. Third, educators use the Professional Center to send student transcripts to higher education institutions for admissions purposes and to TSAC for lottery scholarship GPA verification. For this reason, expenditures for the Professional Center that enable educators to send student transcripts to Tennessee higher education institutions and to TSAC for lottery scholarship GPA verification may be funded from net lottery proceeds.

Expenditures for the following services, however, are not closely enough linked to administering the lottery scholarship program to allow them to be funded from net lottery proceeds under Article XI, Section 5, of the Tennessee Constitution:

Career Planning Tools (A.3.a.);

High School Planning Tools (A.3.b.);

Life-long Portfolio (A.3.e.);

Adult Student Module (A.3.f.) (to the extent not providing college and financial aid planning);

Professional Center (A.3.g.) (expenditures for services besides the electronic transmission services enabling educators to send student transcripts to Tennessee higher education institutions and to TSAC for lottery scholarship GPA verification); and

Middle School Module (A.3.h.).

It can certainly be argued that each of these programs is intended to help students plan their careers and meet the general academic qualifications necessary to receive a lottery scholarship. But they are not administrative expenses directly related to "provid[ing] financial assistance to citizens of this state to enable such citizens to attend post-secondary educational institutions located within this state" within the meaning of Article XI, Section 5, of the Tennessee Constitution. These services do not directly assist students to participate in the lottery scholarship programs, and they do not assist any state agency to administer these programs. Further, these expenses do not appear to be for the purpose of capital outlay projects, early learning programs, or after school programs within the meaning of Article XI, Section 5, of the

Tennessee Constitution and as currently authorized by statute through Tenn. Code Ann. §§ 49-6-701, *et seq.* (after school programs); Tenn. Code Ann. §§ 49-6-101, *et seq.* (pre-kindergarten programs); and Tenn. Code Ann. § 49-4-940(c) (energy efficient schools fund).

e. Lottery Scholarship Day

Under Tenn. Code Ann. § 49-4-932, TSAC is authorized to conduct a lottery scholarship day each school year to inform high school students and their parents of financial assistance available from net lottery proceeds for attendance at eligible postsecondary institutions. THEC and the state university systems are to provide assistance to TSAC in planning and conducting the event. TSAC is required to enlist the assistance of the Tennessee Department of Education, local education agencies, and local schools in informing students on its lottery scholarship day of scholarship eligibility requirements. Tenn. Code Ann. § 49-4-932(b). Subsection (j) of the statute provides:

> The administrative costs incurred by the department of education and TSAC in administering the programs established by this section, which provides information to students about lottery scholarships consistent with Tenn. Const. art. XI, § 5 shall be funded from the lottery for education account created by § 4-51-111.

Tenn. Code Ann. § 49-4-932(j). Thus, the General Assembly has explicitly authorized net lottery proceeds to be used to pay administrative costs of TSAC and the Department of Education in advertising and administering lottery scholarship day. This legislative determination that these expenses are properly allocated to provide financial assistance to Tennessee citizens to attend Tennessee post-secondary institutions is entitled to judicial deference. The purpose of lottery scholarship day is to inform Tennessee high school students of the availability of financial assistance under the lottery scholarship programs. This represents a reasonably necessary administrative expense of operating these programs. For this reason, reasonable expenses related to administering lottery scholarship day are part of the costs to "provide financial assistance to citizens of this state to enable such citizens to attend post-secondary educational institutions located within this state," within the meaning of Article XI, Section 5, of the Tennessee Constitution.

2. PRE-KINDERGARTEN AND AFTER SCHOOL PROGRAMS

a. Pre-Kindergarten Program

i. The General Assembly has also authorized lottery funds to be used for preschool programs, Tenn. Code Ann. §§ 49-6-101, *et seq.* Appropriations for programs authorized under this statutory scheme from excess net lottery proceeds may not exceed twenty-five million dollars in any fiscal year. Tenn. Code Ann. § 49-6-110. Under Tenn. Code Ann. § 49-4-901, net lottery proceeds in excess of those allocated to provide financial assistance to Tennessee citizens to enable them to attend postsecondary institutions must be allocated first to early learning programs. Under Tenn. Code Ann. § 49-6-105, local educational authorities may apply to the

Department of Education for funding and approval of one or more pre-kindergarten programs. Programs operated under these statutes are to serve at-risk children four years of age or less, but any child may enroll in a program when an insufficient number of at-risk children are enrolled to fill a specific classroom. Tenn. Code Ann. § 49-6-104(a). Section (b) of Tenn. Code Ann. § 49-6-104 lists further requirements that these programs must meet. Funds for the program may not supplant any other state or local funds for pre-kindergarten programs. Tenn. Code Ann. § 49-6-107(e). Thus, funds spent on early learning programs in accordance with Tenn. Code Ann. §§ 49-6-101, *et seq.*, comply with the restrictions on net proceeds of the lottery's revenues under Article XI, Section 5, of the Tennessee Constitution.

ii. Pre-K Longitudinal Study Reports

Materials provided with the request include a separate expenditure for pre-K longitudinal study reports. This term appears to refer to the study authorized under Tenn. Code Ann. § 49-6-109. Under this statute, the Office of Education Accountability must coordinate a study of the effectiveness of the authorized pre-kindergarten programs. Expenses to conduct this study are administrative expenses that are reasonably necessary to administer the pre-kindergarten programs authorized by law. For this reason, net lottery proceeds may be used to pay these expenses.

b. After School Programs

Under Article XI, Section 5, the General Assembly may also allocate net lottery proceeds for early learning programs and after school programs. These programs must be funded from excess net lottery proceeds remaining after the lottery scholarship programs have been funded. Op. Tenn. Att'y Gen. 03-015 (February 10, 2003). The General Assembly has authorized lottery funds to be used for after school programs. Tenn. Code Ann. §§ 49-6-701, *et seq.* Under this statutory scheme, the Department of Education is authorized to establish, administer, and monitor a system of competitive grants and technical assistance for eligible organizations providing after school educational programs consistent with Article XI, Section 5, of the Tennessee Constitution. Tenn. Code Ann. § 49-6-701(a). Grants under the program must supplement and not supplant non-lottery educational resources for after school educational programs and purposes. *Id.*

Funding for this grant program comes from the lottery-for-education after school programs grant fund, referred to as the "LEAP" grant fund, in the State Treasury. Tenn. Code Ann. § 49-6-701(b)--(d). Costs incurred by the Department of Education in administering the grant program are also funded from the LEAP fund. Tenn. Code Ann. § 49-6-706. The General Assembly is authorized to appropriate moneys to the LEAP fund from the after school account established under Tenn. Code Ann. § 4-51-111(f). Moneys may be transferred to the LEAP fund in any fiscal year in which the scholarship programs have been funded. Tenn. Code Ann. § 49-6-701(c). The after school account is a special account in the State Treasury that also contains unclaimed lottery prize money deposited at the end of each fiscal year. Tenn. Code Ann. § 4-51-111(f); Tenn. Code Ann. § 4-51-123(h). Under subsection (h) of Tenn. Code Ann. § 4-51-123, unclaimed prize money does not constitute "net lottery proceeds" and is not to be distributed as

lottery proceeds for the purposes of Tenn. Code Ann. § 4-51-111(a). This money, however, is still "net proceeds of the lottery's revenues" subject to the spending limitations of Article XI, Section 5. Op. Tenn. Att'y Gen. 03-066 (May 22, 2003). Grants and technical assistance under Tenn. Code Ann. §§ 49-6-701, *et seq.*, must supplement and not supplant non-lottery educational resources for after school educational programs and purposes. Tenn. Code Ann. § 49-6-701(a).

The statutes creating the after school grant program comply with the spending limitations under Article XI, Section 5, of the Tennessee Constitution. Funds may be transferred to the LEAP account only when the scholarship programs have been funded. The funds must supplement, not supplant, non-lottery educational resources for after school educational programs and purposes. Thus, funds spent on after school programs in accordance with Tenn. Code Ann. §§ 49-6-701, *et seq.*, comply with the restrictions on net proceeds of the lottery's revenues under Article XI, Section 5, of the Tennessee Constitution.

3. Energy Efficient Schools Program

Tenn. Code Ann. § 49-4-940(c) provides:

> If for fiscal year 2008-2009 the board determines that earnings on the lottery for education account will be sufficient to meet the funding requirements for scholarships that fiscal year, the board is authorized to transfer an amount not to exceed ten million dollars ($10,000,000) from the lottery for education account to the energy efficient schools fund, if the fund is created by law.

The Energy Efficient Schools Initiative was created under Tenn. Code Ann. §§ 49-17-101, *et seq.* The General Assembly recently deleted Tenn. Code Ann. § 49-17-107, which provided that the Energy Efficient Schools Council created under the act would terminate on June 30, 2010. 2010 Tenn. Pub. Acts ch. 1066. The Council is authorized to award grants or loans to kindergarten through grade twelve school systems for qualifying capital outlay projects. Projects funded under the act must satisfy the Council's guidelines for improving energy efficiency and must also comply with the requirements of Article XI, Section 5, of the Tennessee Constitution. Tenn. Code Ann. § 49-17-102(5). Article XI, Section 5, of the Tennessee Constitution expressly provides that excess net proceeds of the lottery after allocations to the scholarship programs may be appropriated for capital outlay projects for K-12 educational facilities. The General Assembly, therefore, may appropriate net lottery proceeds available after allocations for lottery scholarships to fund projects under the Energy Efficient Schools Initiative of 2003, Tenn. Code Ann. §§ 49-17-101, *et seq.* These proceeds may also fund administrative expenses reasonably necessary to administer this program.

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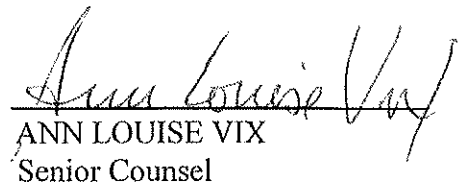
CHARLES L. LEWIS
Deputy Attorney General



ANN LOUISE VIX
Senior Counsel

Requested by:

Honorable James W. White
Executive Director, Fiscal Review Committee
320 Sixth Avenue North, 8th Floor
Nashville, Tennessee 37243-0057

GENERAL ASSEMBLY OF THE STATE OF TENNESSEE
FISCAL REVIEW COMMITTEE

320 Sixth Avenue, North – 8th Floor
NASHVILLE, TENNESSEE 37243-0057
615-741-2564

Sen. Bill Ketron, Chairman
Senators
Douglas Henry, Reginald Tate
Doug Jackson, Ken Yager
Brian Kelsey
Randy McNally, *ex officio*
Lt. Governor Ron Ramsey, *ex officio*

Rep. Charles Curtiss, Vice-Chairman
Representatives
Harry Brooks, Donna Rowland
Curtis Johnson, Tony Shipley
Steve McManus, Curry Todd
Mary Pruitt, Eddie Yokley
Craig Fitzhugh, *ex officio*
Speaker Kent Williams, *ex officio*

MEMORANDUM

TO: The Honorable Dave Goetz, Commissioner
Department of Finance and Administration

FROM: Bill Ketron, Chairman, Fiscal Review Committee BK
Charles Curtiss, Vice-Chairman, Fiscal Review Committee CC

DATE: April 19, 2010

SUBJECT: **Contract Comments**
(Fiscal Review Committee Meeting 4/12/10)

RFS# 332.01-03310
Department: Tennessee Higher Education Commission
Contractor: XAP Corporation
Summary: The proposed five-year contract is for the provision of electronic transcript services and support for the College4Tn.org program and Web site. The proposed contract has a term beginning May 1, 2010, and ending April 30, 2015.
Maximum liability: $5,982,280

After discussion, the Fiscal Review Committee voted to postpone consideration of this contract until the next committee meeting to obtain an opinion from the Attorney General concerning the proposed funding mechanism.

cc: Dr. Richard Rhoda, Executive Director
Mr. Robert Barlow, Director, Office of Contracts Review

RICHARD G. RHODA
Executive Director

PHIL BREDESEN
Governor

STATE OF TENNESSEE
HIGHER EDUCATION COMMISSION
PARKWAY TOWERS, SUITE 1900
NASHVILLE, TENNESSEE 37243-0830
(615) 741-3605
FAX: (615) 741-6230
www.state.tn.us/thec/

RECEIVED
APR 05 2010
FISCAL REVIEW

MEMORANDUM

TO: Leni Chick, Fiscal Review Committee

FROM: Will Burns, Associate Executive Director, Legal and Regulatory Affairs

DATE: April 1, 2010

SUBJECT: Non-Competitive Contract Summary
XAP Corporation – Fiscal Analysis

The Tennessee Higher Education Commission (THEC) proposes to submit a non-competitive contract request for the provision of electronic transcript services and CollegeforTN initiative with XAP Corporation.

Pursuant to the request of the Fiscal Review Committee, THEC is providing the information below.

Actual Expenditures Anticipated in Each Year of the Contract

Background and Objectives: Tennessee lags regional and national averages in the educational attainment level. According to the National Center for Higher Education Management Systems, only six states have a working age population with a lower proportion of college graduates than Tennessee. Currently, only 29.9 percent of Tennessee's adults aged 25-64 hold an Associate's degree or higher, compared to an average of 34.3 percent for Southern Regional Education Board states and 37.2 percent for the nation.

Tennessee currently produces approximately 35,000 college graduates per year. Holding conditions constant, current production indicates that annual degree production will be about 38,000 in 2015. To meet the national average, Tennessee needs to produce a cumulative additional 269,000 degrees (Associates and Bachelors) by 2025. To achieve this goal, Tennessee higher education must produce 44,000 postsecondary degrees per year by 2015 and eventually 59,000 degrees per year by 2025. In the other words, Tennessee needs to increase the number of individuals obtaining degrees by 3.5 percent

every year from now until 2025, according to www.MeetingtheChallengefromtn.gov/moa/what_goal.

In 2005, the Tennessee Department of Education (TDOE), Tennessee Student Assistance Corporation (TSAC), and Tennessee Higher Education commission (THEC) sought a solution that would provide a broad avenue of access to Tennessee educational opportunities beyond high school.

Product: Tennessee procured a solution from XAP Corporation to provide a broad avenue of access to Tennessee education opportunities beyond high school. The resulting website www.CollegeforTN.org is designed especially for use in Tennessee and allows the user, which includes students in grades K – 12, to plan their future careers, begin to understand the need for higher education, know which courses to take in middle and high school to be academically prepared for college, prepare for tests, including ACT, SAT, and GRE, and learn how to apply for financial aid. Additionally, postsecondary students, parents, guidance counselors, and college access professionals will have access to a comprehensive suite of career, college, and financial aid planning services in a web-based environment using a single log-on and password.

The Contract term is May 1, 2010 through April 28, 2015 for a total contract value of $5,982,280.00. Anticipated expenditures include:

Deliverable description:	FY: 2010	FY: 2011	FY: 2012	FY: 2013	FY:2014-15
Transitions Premium Module for High School Students	$700,551.00	$700,551.00	$700,551.00	$700,551.00	$700,551.00
Middle School Module	$ 130,000.00	$ 130,000.00	$ 130,000.00	$ 130,000.00	$ 130,000.00
Paws in Jobland Module (Elementary School Level)	$ 160,000.00	$ 160,000.00	$ 160,000.00	$ 160,000.00	$ 160,000.00
Applications and Transcripts	$ 205,905.00	$ 205,905.00	$ 205,905.00	$ 205,905.00	$ 205,905.00
Adult Module – Adult Leaner/Job Seeker	$ 0.00 (included with 5-year contract)	$ 0.00 (included with 5-year contract)	$ 0.00 (included with 5-year contract)	$ 0.00 (included with 5-year contract)	$ 0.00 (included with 5-year contract)

Justification for Non-Competitive Contract:

The State found no other entities who offer the comprehensive array of career, high school, college and financial aid planning services needed by THEC, TSAC and the Tennessee school systems. No other vendor offers the total package of needed solutions including: transcript, higher education admission application, career exploration, high school planning, college planning, and financial aid planning resources needed by Tennessee integrated into one common system. XAP also holds extensive knowledge of State Board Rules and Regulations as well as the content/curriculum standards required by Tennessee law for school counselors, such institutional knowledge is invaluable to the partnership and fosters the portal's success.

XAP Corporation provided exemplary services for the State of Tennessee for several years; the company maintains historical data, experience and background knowledge which all other vendors lack. Over 200,000 students created accounts on CollegeforTN.org. A new vendor will result in the loss of the portfolio information for each of those accounts. Portfolio deletion would result in the loss of all records of admission applications submitted, assessments taken, careers explored, high school planning completed for over 200,000 Tennesseans. Furthermore, several local school districts have or are in the process of incorporating CollegeforTN.org into their classroom curriculum.

Currently, THEC holds a $1.5 million contract with a full service marketing firm to promote college access and success; visiting and using CollegeforTN.org is the call to action in every aspect of this public outreach campaign. All campaign outreach materials direct students and their parents to visit CollegeforTN.org with the tagline "Higher Education. Put Your Mind To It." The campaign is in its second year and has seen much success winning several awards on the regional and national level. As of November 1, the campaign has seen almost $900,000 of media time, purchased and in-kind, used to promote CollegeforTN.org.

And lastly, state personnel in partnership with XAP have extensively trained school administrators, school counselors, teachers, higher education personnel, and college access professionals across Tennessee in using the resources of CollegeforTN.org. A change if vendor would result in the need for re-training each of these professionals which would result in a substantial loss of personnel time, state resources and grant funds.

Explanation provided if not submitted prior to sixty days of start date of Contract:

These services were originally contracted through the Tennessee Department of Education (TDOE), but administered by THEC and funded by TSAC's lottery account, and it was not determined until towards the end of the contract was due that for practical matters, THEC should be the holder of the contract. Due to other business/contract/legislative matters with either earlier start dates, or requested submission dates, this contract was addressed at the earliest time possible, and do request the committee's indulgence for allowing only a thirty day advance.

Supplemental Documentation Required for Fiscal Review Committee

*Contact Name:	Will Burns, Associate Executive Director, Legal and Regulatory Affairs	*Contact Phone:	615-741-3605
*Original Contract Number:		*Original RFS Number:	
Edison Contract Number: *(if applicable)*	19758	Edison RFS Number: *(if applicable)*	33201-03310
*Original Contract Begin Date:	May 1, 2010	*Current End Date:	April 30, 2015
Current Request Amendment Number: *(if applicable)*		NA	
Proposed Amendment Effective Date: *(if applicable)*		NA	
*Department Submitting:		Higher Education	
*Division:		Tennessee Higher Education Commission (THEC)	
*Date Submitted:		April 5, 2010	
*Submitted Within Sixty (60) days:		No	
If not, explain:		These services were originally contracted through the Tennessee Department of Education (TDOE), but administered by THEC and funded by TSAC's lottery account, and it was not determined until towards the end of the contract was due that for practical matters, THEC should be the holder of the contract. Due to other business/contract/legislative matters with either earlier start dates, or requested submission dates, this contract was addressed at the earliest time possible, and do request the committee's indulgence for allowing only a thirty day advance.	
*Contract Vendor Name:		XAP Corporation	
*Current Maximum Liability:		$1,196,456.00	

*Current Contract Allocation by Fiscal Year:
(as Shown on Most Current Fully Executed Contract Summary Sheet)

FY: 2010	FY: 2011	FY: 2012	FY: 2013	FY 2014-15	FY
$1,196,456	$1,196,456	$1,196,456	$1,196,456	$1,196,456	$

*Current Total Expenditures by Fiscal Year of Contract:
(attach backup documentation from STARS or FDAS report)

FY:	FY:	FY:	FY:	FY	FY
$	$	$	$	$	$

Supplemental Documentation Required for Fiscal Review Committee

IF Contract Allocation has been greater than Contract Expenditures, please give the reasons and explain where surplus funds were spent:	NA
IF surplus funds have been carried forward, please give the reasons and provide the authority for the carry forward provision:	NA
IF Contract Expenditures exceeded Contract Allocation, please give the reasons and explain how funding was acquired to pay the overage:	NA

*Contract Funding Source/Amount:	State:		Federal:	
Interdepartmental:	$5,982,280		*Other*:	
If "*other*" please define:				

Dates of All Previous Amendments or Revisions: (*if applicable*)	Brief Description of Actions in Previous Amendments or Revisions: (*if applicable*)

Method of Original Award: (*if applicable*)	
*What were the projected costs of the service for the entire term of the contract prior to contract award?	

Supplemental Documentation Required for Fiscal Review Committee

For all new non-competitive contracts and any contract amendment that changes Sections A or C.3. of the original or previously amended contract document, provide estimates based on information provided the Department by the vendor for determination of contract maximum liability. Add rows as necessary to provide all information requested.

If it is determined that the question is not applicable to your contract document attach detailed explanation as to why that determination was made.

Planned expenditures by fiscal year by deliverable. Add rows as necessary to indicate all estimated contract expenditures.

Deliverable description:	FY: 2010	FY: 2011	FY: 2012	FY: 2013	FY:2014-15
Transitions Premium Module for High School Students	$700,551.00	$700,551.00	$700,551.00	$700,551.00	$700,551.00
Middle School Module	$ 130,000.00	$ 130,000.00	$ 130,000.00	$ 130,000.00	$ 130,000.00
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Adult Module – Adult Leaner/Job Seeker	$ 0.00 (included with 5-year contract)	$ 0.00 (included with 5-year contract)	$ 0.00 (included with 5-year contract)	$ 0.00 (included with 5-year contract)	$ 0.00 (included with 5-year contract)

* No annual increase with a 5 yr agreement or 6% annual increase on a renewal of less than 5 years.

Current	2010	2011	2012	2013	2014	Total
Annual Premium	1,196,456	1,268,243	1,344,338	1,424,998	1,510,498	6,744,53
Annual No Escalator	1,196,456	1,196,456	1,196,456	1,196,456	1,196,456	5,982,28
Savings		**71,787**	**147,882**	**228,542**	**314,042**	**762,25**

Comparison of cost per fiscal year of obtaining this service through the proposed contract or amendment vs. other options. List other options available (including other vendors), cost of other options, and source of information for comparison of other options (e.g. catalog, Web site). Add rows as necessary to indicate price differentials

Supplemental Documentation Required for Fiscal Review Committee

between contract deliverables.					
Proposed Vendor Cost: (name of vendor)	FY: 2010	FY: 2011	FY: 2012	FY: 2013	FY:2014-15
Other Vendor Cost: (name of vendor)	FY:	FY:	FY:	FY:	FY:
Other Vendor Cost: (name of vendor)	FY:	FY:	FY:	FY:	FY:

*This pricing represents a significant savings based on:
All public and private high schools and all combined K – 12 schools which include 9 – 12 grades.
Total schools with grades 9 – 12 603 schools
Includes 452 public schools, 51 private and catholic high schools

All public and private middle schools and all combined K – 12 schools which include 6 – 8 grades.
Total schools with grades 6 – 8 547 schools
Includes 368 public schools, 179 private and catholic high schools

Paws in Jobland includes all public and private elementary and middle schools and all combined K – 12 schools which include grades 1 – 5.
Total schools with grades 1 – 5 1,433 schools
(Less than $385 per K-12 school)

A total of 945,684 secondary students and 224,600, postsecondary students - totaling 1,170,284 able to create accounts and/or access resources in CollegeforTN (career and education exploration for all students (approximately $1.00 per student). Plus, all TN residents have access to CollegeforTN.
Average cost for processing college applications, $5 - $10
Average cost for sending and receiving transcripts, more than $15
Estimated $6.70 per paper-based transcript processed (DOE/NCES study on cost per transcript to secondary/postsecondary schools), with an average of 6 transcripts per student being requested. Postsecondary institutions calculate processing costs over $9 per incoming high school transcript.

Supplemental Documentation Required for Fiscal Review Committee

**Based on 2008 applications and transcripts sent and received in TN, less than $ 1.55 per document.

NON-COMPETITIVE CONTRACT REQUEST

This request is NOT required for a contract with a federal, Tennessee, or Tennessee local government entity or a grant.

APPROVED
COMMISSIONER OF FINANCE & ADMINISTRATION

AGENCY REQUEST TRACKING # 33201-03310		
1	**PROCURING AGENCY**	Tennessee Higher Education Commission (THEC)
2	**SERVICE**	Provision of electronic transcript services and CollegeforTN initiative.
3	**APPROVAL CRITERIA** (select one)	☒ **non-competitive negotiation is in the best interest of the state** ☐ **only one uniquely qualified service provider able to provide the service**
4	**PROPOSED CONTRACTOR**	XAP CORPORATION
5	**CONTRACT BEGIN DATE** (attach explanation if < 60 days after F&A receipt)	May 1, 2010
6	**CONTRACT END DATE** (with ALL options to extend exercised)	April 30, 2015
7	**MAXIMUM CONTRACT COST** (with ALL options to extend exercised)	$5,982,280.00

8 **SERVICE DESCRIPTION**

To provide a broad avenue of access to Tennessee education opportunities beyond high school. The resulting website www.CollegeforTN.org is designed especially for use in Tennessee and allows the user, which includes students in grades K – 12, to plan their future careers, begin to understand the need for higher education, know which courses to take in middle and high school to be academically prepared for college, prepare for tests, including ACT, SAT, and GRE, and learn how to apply for financial aid. Additionally, postsecondary students, parents, guidance counselors, and college access professionals will have access to a comprehensive suite of career, college, and financial aid planning services in a web-based environment using a single log-on and password.

9 **EXPLANATION OF NEED FOR OR REQUIREMENT PLACED ON THE STATE TO ACQUIRE THE SERVICE**

Tennessee lags regional and national averages in the educational attainment level. According to the National Center for Higher Education Management Systems, only six states have a working age population with a lower proportion of college graduates than Tennessee. Currently, only 29.9 percent of Tennessee's adults aged 25-64 hold an Associate's degree or higher, compared to an average of 34.3 percent for Southern Regional Education Board states and 37.2 percent for the nation.

Tennessee currently produces approximately 35,000 college graduates per year. Holding conditions constant, current production indicates that annual degree production will be about 38,000 in 2015. To meet the national average, Tennessee needs to produce a cumulative additional 269,000 degrees (Associates and Bachelors) by 2025.

Meeting this ambitious goal can only be achieved by increasing productivity with students currently enrolled as well as reaching out and preparing populations underserved by Tennessee public higher education. One of the greatest challenges facing Tennessee is the scarcity of low-income and first generation students entering and completing postsecondary. Statistics focused on the benefits of postsecondary education such as an increase in lifetime earnings

AGENCY REQUEST TRACKING # 33201-03310

with increased education, the percentage of new jobs requiring a postsecondary degree, and the need for a more educated workforce are well known among the business, education and policy communities. Yet, this message has not been effectively communicated to all Tennesseans nor is it engrained Tennessee school and familial culture. College access programs and professionals work with under-served, low-income and first-generation college students to address this gap in knowledge. While such efforts are not new, the college enrollment process is growing increasingly complex, the paperwork more cumbersome, the entrance credentials more rigorous and the need to succeed more essential. College access and success efforts are now more important than ever to help students plan, apply, pay for, and complete college.

One of the primary goals of the web portal initiative includes the design and implementation of a robust college access web-based planning portal. The web portal system will enable students as early kindergarten to plan their future careers, begin to understand the need for higher education, take courses in middle and high school to be academically prepared for college, and learn how to apply for admission and financial aid. The web portal will have Tennessee specific resources designed to aid in the postsecondary success of all Tennesseans.

10 **HAS THE PROCURING AGENCY EVER BOUGHT THE SERVICE BEFORE ?** ☐ **YES** or ☒ **NO**

IF SO, WHAT PROCUREMENT METHOD WAS USED ?

11 **NAME & ADDRESS OF THE CONTRACTOR'S PRINCIPAL OWNER(S)** (NOT required for a TN state education institution)
XAP Corporation
3534 Hayden Ave.
Culver City, CA
90232

12 **EVIDENCE OF THE CONTRACTOR'S EXPERIENCE & LENGTH OF EXPERIENCE PROVIDING THE SERVICE**

XAP is a trusted and proven partner to numerous organizations including university and college systems, state agencies (e.g., College Foundation of North Carolina – see www.cfnc.org, Florida Department of Education, Mississippi Department of Education, Oklahoma State Regents for Higher Education), regional education compacts (e.g., Southern Regional Education Board – see www.electroniccampus.org), the California State University System – see www.csumentor.edu and California Community College System – see www.cccapply.org), and the U.S. Department of Education (see www.studentaid.ed.gov). For these organizations and many others, XAP has designed, developed and implemented technology solutions aligned with the partners' stated objectives, such as improving postsecondary-going rates, increasing awareness of postsecondary opportunities, and facilitating online admissions applications and electronic student record exchange.

Today, Xap continues to be the leader in college success portals, helping serve over 40 million students and their families to build aspirations and increase opportunities.

- 25+ years of vendor experience providing career planning resources across an international landscape to students and adults
- 12+ years of vendor experience delivering Internet-based college planning resources across a national landscape
- Experience in providing integrated college access systems in Colorado, Georgia, North Carolina, Rhode Island, and 25 other states, Southern Regional Education Board and US Department of Education

13 **OFFICE FOR INFORMATION RESOURCES SUPPORT** (required for information technology service)

☒ **ATTACHED** or ☐ **NOT APPLICABLE** (N/A only to non-information technology service & THDA)

14 **eHEALTH INITIATIVE SUPPORT** (required for health-related professional, pharmaceutical, laboratory, or imaging service)

☐ **ATTACHED** or ☒ **NOT APPLICABLE**

AGENCY REQUEST TRACKING # 33201-03310

15 **HUMAN RESOURCES SUPPORT** (required for state employee training service)

☐ **ATTACHED** or ☒ **NOT APPLICABLE**

16 **DESCRIPTION OF EFFORTS TO IDENTIFY REASONABLE, COMPETITIVE, PROCUREMENT ALTERNATIVES**

THEC conducted a review of on-line, college access resources and were unable to find another company with the ability to meet all business, functional and technical requirements. It is important to highlight, XAP is the only company we found offering career guidance (K – 12 and adult), customizable school planning, transcript exchange, professional center, and higher education admissions application resources all in one integrated system access via a single log on. Upon identifying Tennessee's goals and needs, as described above, and XAP'S unique programmatic benefits staff members secured references from peer states via phone and face-to-face conversations. THEC staff members spoke with professionals from Rhode Island, Georgia, Colorado and North Carolina at a conference in June 2008; staff members also spoke with professionals from North Carolina on numerous occasions since June 2008 regarding their experience working with XAP Corporation. Overwhelming, XAP is the preferred vendor of states working to make large gains in high school graduation, college enrollment and degree production.

17 **JUSTIFICATION FOR NON-COMPETITIVE NEGOTIATION RATHER THAN A COMPETITIVE PROCESS**

THEC conducted a review of on-line, college access resources and were unable to find another company with the ability to meet all business, functional and technical requirements. It is important to highlight, XAP is the only company we found offering career guidance (K – 12 and adult), customizable school planning, transcript exchange, professional center, and higher education admissions application resources all in one integrated system access via a single log on. Upon identifying Tennessee's goals and needs, as described above, and XAP'S unique programmatic benefits staff members secured references from peer states via phone and face-to-face conversations. THEC staff members spoke with professionals from Rhode Island, Georgia, Colorado and North Carolina at a conference in June 2008; staff members also spoke with professionals from North Carolina on numerous occasions since June 2008 regarding their experience working with XAP Corporation. Overwhelming, XAP is the preferred vendor of states working to make large gains in high school graduation, college enrollment and degree production.

AGENCY HEAD SIGNATURE & DATE

Richard G. Rhoda 4.5.10

RICHARD G. RHODA, EXECUTIVE DIRECTOR

STATE OF TENNESSEE
DEPARTMENT OF FINANCE AND ADMINISTRATION
OFFICE FOR INFORMATION RESOURCES

DAVE GOETZ
COMMISSIONER

312 ROSA L. PARKS AVENUE
SUITE 1600
WILLIAM R. SNODGRASS TN TOWER
NASHVILLE, TENNESSEE 37243-1102
TELEPHONE (615) 741-7358
FAX (615) 532-0471

JAMIE ETHERIDGE, DEPUTY CIO
MIKE DEDMON, BUDGET
MAX ARNOLD, DATA CENTER OPERATIONS
LEE GREGORY, PROJECT MANAGEMENT
JASON GUNNOE, INFORMATION SECURITY
LEIGHANNE HAYNES, IT PLANNING
TRICIA KITCHENS, SPECIAL SERVICES
F. BRADLEY MEYERS, ENTERPRISE ARCHITECTURE, QUALITY ASSURANCE & TESTING
ROGER PELHAM, DATA NETWORKING & TELECOMMUNICATIONS

MEMORANDUM

TO: O. W. Higley, Assistant Executive Director Fiscal Affairs/Information Technology
Tennessee Higher Education Commission

FROM: Jamie Etheridge, Chair
IT Assessment & Budget Committee (IT-ABC)

DATE: November 17, 2009

SUBJECT: College Access Portal/Transcript Exchange (GU0910) Project Disposition

The IT-ABC has reviewed the College Access Portal/Transcript Exchange (GU0910) project. This project is approved to proceed. Please work with Jason Gunnoe, Chief Information Security Officer, as you develop the Request for Proposal (RFP) to address the security of the student data that will be transmitted and stored on this website.

If you have any questions, please call Todd Ragan at 532-0245 or me at 741-7358. Also, feel free to call upon any of the various sections of OIR if we can provide you with any assistance in planning for your information technology needs.

cc: Mark Bengel, Chief Information Officer
Glenn Yarbrough, Chief Technology Officer
IT-ABC Members
Cathy Pierce, Budget Coordinator
Carol Neiger, Budget Analyst

C O N T R A C T

(FA-type fee-for-service contract with an individual, business, non-profit, or governmental entity of another state)

Agency Tracking #	Edison ID
33201-03310	19758
Contractor	**Contractor Federal Employer Identification or Social Security #**
XAP Corporation	☐ C- or ☒ V- 954610552

Service

This contract is for the provision of electronic transcript services and CollegeforTN initiative.

Contract Begin Date	Contract End Date	Subrecipient or Vendor	CFDA #(s)
May 1, 2010	April 28, 2015	☐ Subrecipient ☒ Vendor	

FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2010			$1,196,456.00		$1,196,456.00
2011			$1,196,456.00		$1,196,456.00
2012			$1,196,456.00		$1,196,456.00
2013			$1,196,456.00		$1,196,456.00
2014			$1,196,456.00		$1,196,456.00
TOTAL:			$5,982,280.00		**$1,196,456.00**

American Recovery and Reinvestment Act (ARRA) Funding – ☐ **YES** ☒ **NO**

OCR USE
FA

Agency Contact & Telephone #

James R. Vaden, Associate Executive Director of Fiscal Affairs

615.741.7575

Agency Budget Officer Approval (there is a balance in the appropriation from which this obligation is required to be paid that is not otherwise encumbered to pay obligations previously incurred)

Speed Code	Account Code

Contractor Ownership/Control

☐ African American ☐ Person w/ Disability ☐ Hispanic ☐ Small Business ☐ Government
☐ Asian ☐ Female ☐ Native American ☒ NOT Minority/Disadvantaged ☐ Other

Contractor Selection Method

☐ RFP ☐ Competitive Negotiation * ☐ Alternative Competitive Method *
☒ Non-Competitive Negotiation * ☐ Other *

***Procurement Process Summary**

The State found no other entities who offer the comprehensive array of career, high school, college and financial aid planning services needed by THEC, TSAC and the Tennessee school systems. No other vendor offers the total package of needed solutions including: transcript, higher education admission application, career exploration, high school planning, college planning, and financial aid planning resources needed by Tennessee integrated into one common system. XAP also holds extensive knowledge of State Board Rules and Regulations as well as the content/curriculum standards required by Tennessee law for school counselors, such institutional knowledge is invaluable to the partnership and fosters the portal's success.

TRAVELERS

Travelers Casualty and Surety Company of America

CONTINUATION CERTIFICATE
FIDELITY OR SURETY BONDS/POLICIES

License No. n/a

In consideration of $8,775.00 dollars renewal premium, the term of Bond/Policy No. 104534750 in the amount of $500,000.00, issued on behalf of XAP CORPORATION, whose address is 3534 HAYDEN AVE., CULVER CITY, CA 90232, in favor of STATE OF TENNESSEE, DEPARTMENT OF EDUCATION, whose address is 710 JAMES ROBERTSON PKY., 6TH FLOOR, NASHVILLE, TN 37243, in connection with ELECTRONIC TRANSCRIPT SERVICES - RFP NO. 331.25-002 is hereby extended to APRIL 30, 2010, subject to all covenants and conditions of said bond/policy.

This certificate is designed to extend only the term of the bond/policy. It does not increase the amount which may be payable thereunder. The aggregate liability of the Company under the said bond/policy together with this certificate shall be exactly the same as, and no greater than it would have been, if the said bond/policy had originally been written to expire on the date to which it is now being extended.

Signed, sealed and dated APRIL 24, 2009

Travelers Casualty and Surety Company of America

By: Jerome Biniegla, Attorney-in-Fact

F-58-M (2/95)

CONTRACT

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

Begin Date	End Date	Agency Tracking #	Edison ID
May 1, 2010	April 30, 2011	33201-03310	19758

Contractor Legal Entity Name	Registration ID
XAP Corporation	67443

Subrecipient or Vendor	CFDA #	FEIN or SSN
☐ Subrecipient ☒ Vendor		954610552

Service Caption (one line only)

This contract is for the provision of electronic transcript services and CollegeforTN initiative

FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2011			$1,196,456.00		$1,196,456.00
TOTAL:			$1,196,456.00		$1,196,456.00

American Recovery and Reinvestment Act (ARRA) Funding: ☐ YES ☒ NO

Ownership/Control

☐ African American ☐ Asian ☐ Hispanic ☐ Native American ☐ Female

☐ Person w/Disability ☐ Small Business ☐ Government ☒ NOT Minority/Disadvantaged

☐ Other:

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

☐ RFP	The procurement process was completed in accordance with the approved RFP document and associated regulations.
☐ Competitive Negotiation	The predefined, competitive, impartial, negotiation process was completed in accordance with the associated, approved procedures and evaluation criteria.
☐ Alternative Competitive Method	The predefined, competitive, impartial, procurement process was completed in accordance with the associated, approved procedures and evaluation criteria.
☒ Non-Competitive Negotiation	The non-competitive contractor selection was completed as approved, and the procurement process included a negotiation of best possible terms & price.
☐ Other	The contractor selection was directed by law, court order, settlement agreement, or resulted from the state making the same agreement with all interested parties or all parties in a predetermined "class."

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

O. W. Higley

O. W. Higley, Assistant Executive Director of Fiscal Affairs and Information Technology (615) 532-9846

F&A Secured Document

FA1031822

Speed Code	Account Code
Department: 3320105130	

FA CONTRACT INFORMATION SUPPLEMENT

FOR ALL FA-TYPE CONTRACTS — COMPLETE EITHER SECTION A OR SECTION B

Contract RFS #	**33201-03310**
Contractor:	XAP CORPORATION

SECTION A— CONTRACTOR IS AN INDIVIDUAL	**SECTION B— CONTRACTOR IS A COMPANY** (*e.g.*, sole proprietorship, partnership, or corporation)
Is or has the contractor been a state employee? ☐ **NO** *(no additional information required)* ☐ **YES**	**Does an individual, who is or has been a state employee, own controlling interest in (or own) the contractor company?** ☒ **NO** *(no additional information required)* ☐ **YES**
Was such employment within the past six months? ☐ **NO** ☐ **YES** *(an approved rule exception permitting a contract within six months of employment is also required)*	**Was such employment within the past six months?** ☐ **NO** ☐ **YES** *(an approved rule exception permitting a contract within six months of employment is also required)*
Does the contractor receive Tennessee Consolidated Retirement System (TCRS) retirement benefits? ☐ **NO** ☐ **YES** *(the procuring agency general counsel MUST sign an analysis of this procurement using the TCRS analysis guidelines)*	**Does the individual who owns controlling interest in the contractor company receive Tennessee Consolidated Retirement System (TCRS) retirement benefits?** ☐ **NO** ☐ **YES** *(the procuring agency general counsel MUST sign an analysis of this procurement using the TCRS analysis guidelines)*

CONTRACTOR SIGNATURE S. Ford

CONTRACTOR XAP CORPORATION **DATE** 8/30/2010

CONTRACT
BETWEEN THE STATE OF TENNESSEE,
TENNESSEE HIGHER EDUCATION COMMISSION
AND
XAP CORPORATION

This Contract, by and between the State of Tennessee, Tennessee Higher Education Commission (THEC), hereinafter referred to as the "State" and XAP Corporation, hereinafter referred to as the "Contractor," is for the provision of electronic transcript services and CollegeforTN initiative as further defined in the "SCOPE OF SERVICES."

The Contractor is a FOR-PROFIT CORPORATION

Contractor Federal Employer Identification: 954610552

Contractor Place of Incorporation or Organization: Delaware

A. SCOPE OF SERVICES:

A.1. The Contractor shall provide all service and deliverables as required, described, and detailed by this Scope of Services and shall meet all service and delivery timelines specified in the Scope of Services section or elsewhere in this Contract.

A.2. Background and Objectives: Tennessee lags regional and national averages in the educational attainment level. According to the National Center for Higher Education Management Systems, only six states have a working age population with a lower proportion of college graduates than Tennessee. Currently, only 29.9 percent of Tennessee's adults aged 25-64 hold an Associate's degree or higher, compared to an average of 34.3 percent for Southern Regional Education Board states and 37.2 percent for the nation.

Tennessee currently produces approximately 35,000 college graduates per year. Holding conditions constant, current production indicates that annual degree production will be about 38,000 in 2015. To meet the national average, Tennessee needs to produce a cumulative additional 269,000 degrees (Associates and Bachelors) by 2025. To achieve this goal, Tennessee higher education must produce 44,000 postsecondary degrees per year by 2015 and eventually 59,000 degrees per year by 2025. In the other words, Tennessee needs to increase the number of individuals obtaining degrees by 3.5 percent every year from now until 2025, according to www.MeetingtheChallengefromtn.gov/moa/what_goal.

In 2005, the Tennessee Department of Education (TDOE), Tennessee Student Assistance Corporation (TSAC), and Tennessee Higher Education commission (THEC) sought a solution that would provide a broad avenue of access to Tennessee educational opportunities beyond high school.

A.2. Product: Tennessee procured a solution from XAP Corporation to provide a broad avenue of access to Tennessee education opportunities beyond high school. The resulting website www.CollegeforTN.org is designed especially for use in Tennessee and allows the user, which includes students in grades K – 12, to plan their future careers, begin to understand the need for higher education, know which courses to take in middle and high school to be academically prepared for college, prepare for tests, including ACT, SAT, and GRE, and learn how to apply for financial aid. Additionally, postsecondary students, parents, guidance counselors, and college access professionals will have access to a comprehensive suite of career, college, and financial aid planning services in a web-based environment using a single log-on and password.

A.3. The Contractor shall provide the following Specific and Unique Features of the Web Portal:

a. Career planning and test preparations tools which will provide a comprehensive career exploration and standardized test preparation experience for all Tennessee citizens. Career assessments will include an Interest Profile, Career Cluster Survey, Basic Skills Survey, Transferable Skill checklist, Career Key and Work Values Sorter. Career exploration resources will also include career search and matching functionality organized around the career clusters as determined by the U.S. Department of Labor and will be tailored to reflect Tennessee's Department of Education career cluster customizations. Elementary School students will have access to age appropriate career exploration tools in the module Paws in Jobland. The career exploration resources found on the web portal will change in content and form dependent on the age of the user ensuring that all users have a career exploration experience customized to their needs and age level. The web portal will also provide standardized test preparation tools for the ACT, SAT and GRE.

b. High School planning tools which include a planning timeline and a personalized plan of study, outlining what students and parents should be doing throughout a student's high school career to effectively plan for college. The personalized plan of study will allow students to make high school course plans. The plans of study will be populated with all courses listed as approved by the Tennessee Department of Education and will be organized in accordance with Tennessee course and graduation standards. Local districts and schools will have the ability to customize course offerings, course sequences, and options for the personalized plan of study of students that attend their particular school or district.

c. College planning tools which offer resources allowing students to explore postsecondary education options. Web portal users will be able to browse higher education institutions, view program and major profiles and access college preparation content. The State will have the capability to customize and add college planning content as it sees fit. The web portal will provide online applications for admissions to all Tennessee higher education institutions. Additionally, the web portal will provide electronic transcript services for high school, high school equivalent and college transcripts.

d. Financial Aid planning tools which include a set of comprehensive financial aid resources including financial aid calculators, an Expect Family Contribution (EFC) calculator, user-personalized financial planning tool and scholarship search tools. The State will have the ability to customize and supplement the financial aid and financial literacy information provided. The portal will also provide the ability of users to transfer information found in user profiles directly to the Free Application for Federal Student Aid (FAFSA) form.

e. Life-long Portfolio which provide users with a personal web-based portfolio that will house all career, high school, college, and financial aid planning activity outcomes. Users will be able to manage items such as careers, postsecondary institutions, and academic programs of interest. The portfolio provides resources including email, calendar, and the capability of communicating with school personnel.

f. Adult Student Module which provides career planning, college planning, financial aid planning, life-long portfolio and professional center tools tailored to the adult student. Workforce development and career centers will have access to the Professional Center to better aid in facilitating resources to adults. The adult portions of the website will be customizable in appearance and content to better reflect the needs of Tennessee.

g. Professional Center which gives designated school, university, and workforce center personnel access to the accounts of all individuals associated with their respective programs. Professional center users will have the ability to segment individuals in a variety of ways (i.e. grade level, last name, career interests, etc) to maximize use. Professional center users will be able to track web portal user's progress in completing

site activities including assessment, college applications, and high school plans. Messages and event notices can be sent to individual portal user accounts. School personnel can upload and send transcripts through the Professional Center. User-friendly reports are available in the Professional Center to track, engage and keep portal users accountable. Sample reports include a list of students who are interested in majoring in Biology, which users have applied to college, or a list of students who have not yet completed a personalized plan of study. The Professional Center provides tools to more efficiently manage portal user's career, high school, college and financial aid planning. Additionally, school district and state level educators will have the capability of obtaining aggregate and disaggregate data regarding student usage and outcomes.

h. Middle School Module which provides career planning, college planning, financial aid planning, life-long portfolio and professional center tools tailored to the middle school student. All Tennessee middle schools will have access to the Professional Center to better aid in facilitating resources to middle school students. The student portions of the website will be customizable in appearance and content to better reflect the needs of Tennessee.

A.4. Functional Requirements: The Contractor shall provide the following functional requirements:

a. Customizable user access permission levels to accommodate multiple roles.

b. Customizable user interface that provides, integrates and/or supports social networking;

c. A single integrated portal with no or limited links to subsystems that provides core features such as:

(1) Single sign-on capabilities in a secure online environment requiring the use of a secured user id and password.
(2) Ability to identify, track and record student career interests.
(3) K-12 roadmaps that lead and measure a student's progress through the system's functionality and activities in a logical order culminating with the student arriving at their chosen college or career destination.
(4) A lifelong electronic portfolio to support student's future education and employment goals.
(5) Integrated ACT/SAT/GRE test prep and recording capabilities.
(6) Electronic admissions application capabilities to Tennessee higher education institutions.
(7) Electronic academic transcripts delivery to include high school to high school, high school to Tennessee agencies, high school to college, and college to college.
(8) Electronic assessment prep and delivery.
(9) Student and Adult learner resume development capabilities.
(10) Capabilities to provide or support the delivery of financial aid information on federal and Tennessee grants, scholarships, work study and student loans including the capabilities to provide and/or integrate electronic applications associated with each program.
(11) Capabilities to upload, store, retrieve and update academic and career related documents.

d. The ability to link to external websites and/or return pre-determined student support services and/or program information to the student.

e. On demand training related to the tools, features, and functionality for regional and Tennessee level users and administrators.

A.5. Technical Requirements: The Contractor shall provide the following technical requirements:

a. A low cost, interoperable, and commercial off-the-shelf solution that avoids new development, and leverages new or existing technologies.

b. Compliance with the Children's Online Privacy Protection Act (COPPA).

c. Compatibility and integration with the Occupational Employment Statistics Program (OES).

d. Electronically supported administration of assessments and accountability as outlined by the No Child Left Behind (NCLB) Act.

e. Interoperability (easy import, export or integration) with Tennessee student information systems (district and state level), GEAR UP programs, and other College and Career applications.

f. The ability to add and change content, links, and pages to best suit the needs of Tennessee.

g. The ability to incorporate Tennessee based information including employment outlook data to address Tennessee specific needs (i.e. the creation of a College Access Network page or a page dedicated to Tennessee-specific financial aid options).

h. Both standard and ad-hoc reporting on the state, district, and school level with capabilities of offering aggregated or disaggregated data on system usage, student portfolios, career interests individually or by groups, academic progress, pre-determined lesson plans, academic assessments, test and/or exit exam scores.

i. Timely system updates reflecting policy changes at both the federal and state levels.

j. Both on-site and fully hosted software options.

k. 24 x 7 support capabilities.

l. Minimum down-time.

m. The Contractor shall renew the domain name CollegeforTN.org as required.

A.6. At such time as this contract expires and is not renewed, or it is terminated pursuant to the terms of this contract, the Contractor agrees to transfer all rights to the domain name "CollegeforTN.org," to the State. The Contractor shall not be responsible for any costs associated with the transfer and future renewals if the State chooses to take ownership of the domain name.

B. CONTRACT TERM:

B.1. This Contract shall be effective for the period commencing on May 1, 2010 and ending on April 30, 2011. The State shall have no obligation for services rendered by the Contractor which are not performed within the specified period.

B.2. Term Extension. The State reserves the right to extend this Contract for an additional period or periods of time representing increments of no more than one year and a total contract term of no more than five (5) years, provided that such an extension of the contract term is effected prior to the current, contract expiration date by means of a contract amendment. If a term extension necessitates additional funding beyond that which was included in the original Contract, an

increase of the State's maximum liability will also be effected through contract amendment, and shall be based upon payment rates provided in the original Contract.

C. PAYMENT TERMS AND CONDITIONS:

C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed ONE MILLION ONE HUNDRED NINETY-SIX THOUSAND FOUR HUNDRED FIFTY-SIX DOLLARS ($1,196,456.00). The payment rates in Section C.3 shall constitute the entire compensation due the Contractor for the Service and all of the Contractor's obligations hereunder regardless of the difficulty, materials or equipment required. The payment rates include, but are not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by the Contractor.

The Contractor is not entitled to be paid the maximum liability for any period under the Contract or any extensions of the Contract for work not requested by the State. The maximum liability represents available funds for payment to the Contractor and does not guarantee payment of any such funds to the Contractor under this Contract unless the State requests work and the Contractor performs said work. In which case, the Contractor shall be paid in accordance with the payment rates detailed in Section C.3. The State is under no obligation to request work from the Contractor in any specific dollar amounts or to request any work at all from the Contractor during any period of this Contract.

C.2. Compensation Firm. The payment rates and the maximum liability of the State under this Contract are firm for the duration of the Contract and are not subject to escalation for any reason unless amended.

C.3. Payment Methodology. The Contractor shall be compensated based on the payment rates herein for units of service authorized by the State in a total amount not to exceed the Contract Maximum Liability established in Section C.1.

a. The Contractor's compensation shall be contingent upon the satisfactory completion of units, milestones, or increments of service defined in Section A.

b. The Contractor shall be compensated for said units, milestones, or increments of service based upon the following payment rates:

Service Description	**Amount** (per compensable increment)
May1, 2010 - April 30, 2011	
Career Planning and Test Preparation Tools (A.3.a.)	$81,250.00 per quarter
High School Planning Tools (A.3.b.)	$33,471.75 per quarter
College Planning Tools (A.3.c.)	$84,948.75 per quarter
Financial Aid Planning Tools (A.3.d.)	$33,471.75 per quarter
Life-Long Portfolio and Professional Center (A.3.e. and A.3.g.)	$33,471.75 per quarter
Adult Module (A.3.f)	$0.00 (Included with Contract)
Middle School Module (A.3.h.)	$32,500.00 per quarter

c. The Contractor shall not be compensated for travel time to the primary location of service provision.

C.4. Travel Compensation. The Contractor shall not be compensated or reimbursed for travel, meals, or lodging.

C.5. Invoice Requirements. The Contractor shall invoice the State only for completed increments of service and for the amount stipulated in Section C.3, above, and as required below prior to any payment.

a. The Contractor shall submit invoices no more often than quarterly, with all necessary supporting documentation, to:

Tennessee Higher Education Commission
Suite 1900 – Parkway Towers
404 James Robertson Parkway
Nashville, TN 37243

b. The Contractor agrees that each invoice submitted shall clearly and accurately (all calculations must be extended and totaled correctly) detail the following required information.

(1) Invoice/Reference Number (assigned by the Contractor);
(2) Invoice Date;
(3) Invoice Period (period to which all invoiced charges are applicable);
(4) Contract Number (assigned by the State to this Contract);
(5) Account Name: Tennessee Higher Education Commission, GEAR UP TN;
(6) Account/Customer Number (uniquely assigned by the Contractor to the above-referenced Account Name);
(7) Contractor Name;
(8) Contractor Federal Employer Identification Number or Social Security Number (as referenced in this Contract);
(9) Contractor Contact (name, phone, and/or fax for the individual to contact with billing questions);
(10) Contractor Remittance Address;
(11) Complete Itemization of Charges, which shall detail the following:
   i. Service or Milestone Description (including name /title as applicable) of each service invoiced;
   ii. Number of Completed Units, Increments, Hours, or Days as applicable, of each service invoiced;
   iii. Applicable Payment Rate (as stipulated in Section C.3.) of each service invoiced;
   iv. Amount Due by Service; and
   v. Total Amount Due for the invoice period.

c. The Contractor understands and agrees that an invoice to the State under this Contract shall:

(1) include only charges for service described in Contract Section A and in accordance with payment terms and conditions set forth in Contract Section C;
(2) not include any future work but will only be submitted for completed service; and
(3) not include sales tax or shipping charges.

d. The Contractor agrees that timeframe for payment (and any discounts) begins when the State is in receipt of each invoice meeting the minimum requirements above.

e. The Contractor shall complete and sign a "Substitute W-9 Form" provided to the Contractor by the State. The taxpayer identification number contained in the Substitute W-9 submitted to the State shall agree to the Federal Employer Identification Number or Social Security Number referenced in this Contract for the Contractor. The Contractor shall not invoice the State for services until the State has received this completed form.

C.6. Payment of Invoice. The payment of the invoice by the State shall not prejudice the State's right to object to or question any invoice or matter in relation thereto. Such payment by the State shall neither be construed as acceptance of any part of the work or service provided nor as an approval of any of the amounts invoiced therein.

C.7. Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by the State, on the basis of audits conducted in accordance with the terms of this Contract, not to constitute proper remuneration for compensable services.

C.8. Deductions. The State reserves the right to deduct from amounts which are or shall become due and payable to the Contractor under this or any Contract between the Contractor and the State of Tennessee any amounts which are or shall become due and payable to the State of Tennessee by the Contractor.

C.9. Automatic Deposits. The Contractor shall complete and sign an "Authorization Agreement for Automatic Deposit (ACH Credits) Form." This form shall be provided to the Contractor by the State. Once this form has been completed and submitted to the State by the Contractor all payments to the Contractor, under this or any other Contract the Contractor has with the State of Tennessee shall be made by Automated Clearing House (ACH). The Contractor shall not invoice the State for services until the Contractor has completed this form and submitted it to the State.

D. STANDARD TERMS AND CONDITIONS:

D.1. Required Approvals. The State is not bound by this Contract until it is approved by the appropriate State officials in accordance with applicable Tennessee State laws and regulations.

D.2. Modification and Amendment. This Contract may be modified only by a written amendment executed by all parties hereto and approved by the appropriate Tennessee State officials in accordance with applicable Tennessee State laws and regulations.

D.3. Termination for Convenience. The State may terminate this Contract without cause for any reason. Said termination shall not be deemed a Breach of Contract by the State. The State shall give the Contractor at least ninety (90) days written notice before the effective termination date. The Contractor shall be entitled to receive compensation for satisfactory, authorized service completed as of the termination date, but in no event shall the State be liable to the Contractor for compensation for any service which has not been rendered. Upon such termination, the Contractor shall have no right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

D.4. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor violates any terms of this Contract, the State shall have the right to immediately terminate the Contract and withhold payments in excess of fair compensation for completed services. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any breach of this Contract by the Contractor.

D.5. Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the services performed under this Contract without obtaining the prior written approval of the State. If such subcontracts are approved by the State, they shall contain, at a minimum, sections of this Contract below pertaining to "Conflicts of Interest," "Nondiscrimination," and "Records" (as identified by the section headings). Notwithstanding any use of approved subcontractors, the Contractor shall be the prime contractor and shall be responsible for all work performed.

D.6. Conflicts of Interest. The Contractor warrants that no part of the total Contract Amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages,

compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed relative to this Contract.

D.7. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law. The Contractor shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

D.8. Prohibition of Illegal Immigrants. The requirements of Public Acts of 2006, Chapter Number 878, of the state of Tennessee, addressing the use of illegal immigrants in the performance of any Contract to supply goods or services to the state of Tennessee, shall be a material provision of this Contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Contract.

a. The Contractor hereby attests, certifies, warrants, and assures that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the document at Attachment REFERENCE A, hereto, semi-annually during the period of this Contract. Such attestations shall be maintained by the Contractor and made available to state officials upon request.

b. Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the period of this Contract, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work relative to this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work relative to this Contract. Attestations obtained from such subcontractors shall be maintained by the Contractor and made available to state officials upon request.

c. The Contractor shall maintain records for all personnel used in the performance of this Contract. Said records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.

d. The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of Public Chapter 878 of 2006 for acts or omissions occurring after its effective date. This law requires the Commissioner of Finance and Administration to prohibit a contractor from contracting with, or submitting an offer, proposal, or bid to contract with the State of Tennessee to supply goods or services for a period of one year after a contractor is discovered to have knowingly used the services of illegal immigrants during the performance of this Contract.

e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not either a United States citizen, a Lawful Permanent Resident, or a person whose physical presence in the United States is authorized or allowed by the federal Department of Homeland Security and who, under federal immigration laws and/or regulations, is authorized to be employed in the U.S. or is otherwise authorized to provide services under the Contract.

D.9. Records. The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, insofar as they relate to work performed or money received under this Contract, shall be maintained for a period of three (3) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.

D.10. Prevailing Wage Rates. All contracts for construction, erection, or demolition or to install goods or materials that involve the expenditure of any funds derived from the State require compliance with the prevailing wage laws as provided in *Tennessee Code Annotated*, Section 12-4-401 *et seq.*.

D.11. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.

D.12. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.

D.13. Strict Performance. Failure by any party to this Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.

D.14. Independent Contractor. The parties hereto, in the performance of this Contract, shall not act as employees, partners, joint venturers, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Contract shall be construed to create an employer/employee relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.

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

D.15. State Liability. The State shall have no liability except as specifically provided in this Contract.

D.16. Force Majeure. The obligations of the parties to this Contract are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, natural disasters, riots, wars, epidemics, or any other similar cause.

D.17. State and Federal Compliance. The Contractor shall comply with all applicable State and Federal laws and regulations in the performance of this Contract.

D.18. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Contractor agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Contract. The Contractor acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under *Tennessee Code Annotated*, Sections 9-8-101 through 9-8-407.

D.19. Completeness. This Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions of the parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties relating hereto, whether written or oral.

D.20. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Contract are declared severable.

D.21. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.

E. SPECIAL TERMS AND CONDITIONS:

E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, these special terms and conditions shall control.

E.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by certified, first class mail, return receipt requested and postage prepaid, by overnight courier service with an asset tracking system, or by EMAIL or facsimile transmission with recipient confirmation. Any such communications, regardless of method of transmission, shall be addressed to the respective party at the appropriate mailing address, facsimile number, or EMAIL address as set forth below or to that of such other party or address, as may be hereafter specified by written notice.

The State:

Kathleen Tone, Associate Executive Director for P-16 Initiatives
Tennessee Higher Education Commission
Suite 1900, Parkway Towers
404 James Robertson Parkway
Nashville, TN 37243
Email: Kathleen.Tone@tn.gov
Telephone Number: 615.741.7565
Fax Number: 615.741.2630

The Contractor:

Barbara McDaniel, Regional Sales Director
XAP Corporation
3534 Hayden Ave.
Culver City, CA
90232
bmcdaniel@xap.com
Telephone Number: 251.980.5240
FAX Number: 310.842.9898

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

E.3. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State and/or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate the Contract upon written notice to the

Contractor. Said termination shall not be deemed a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. Should such an event occur, the Contractor shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

E.4. Confidentiality of Records. Strict standards of confidentiality of records and information shall be maintained in accordance with applicable state and federal law. All material and information, regardless of form, medium or method of communication, provided to the Contractor by the State or acquired by the Contractor on behalf of the State shall be regarded as confidential information in accordance with the provisions of applicable state and federal law, state and federal rules and regulations, departmental policy, and ethical standards. Such confidential information shall not be disclosed, and all necessary steps shall be taken by the Contractor to safeguard the confidentiality of such material or information in conformance with applicable state and federal law, state and federal rules and regulations, departmental policy, and ethical standards.

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

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

E.5. Printing Authorization. The Contractor agrees that no publication coming within the jurisdiction of *Tennessee Code Annotated*, Section 12-7-101, *et. seq.*, shall be printed unless a printing authorization number has been obtained and affixed as required by *Tennessee Code Annotated*, Section 12-7-103 (d).

E.6. Prohibited Advertising. The Contractor shall not refer to this Contract or the Contractor's relationship with the State hereunder in commercial advertising in such a manner as to state or imply that the Contractor or the Contractor's services are endorsed. It is expressly understood and agreed that the obligations set forth in this section shall survive the termination of this Contract in perpetuity.

E.7. Environmental Tobacco Smoke. Pursuant to the provisions of the federal "Pro-Children Act of 1994" and the Tennessee "Children's Act for Clean Indoor Air of 1995," the Contractor shall prohibit smoking of tobacco products within any indoor premises in which services are provided pursuant to this Contract to individuals under the age of eighteen (18) years. The Contractor shall post "no smoking" signs in appropriate, permanent sites within such premises. This prohibition shall be applicable during all hours, not just the hours in which children are present. Violators of the prohibition may be subject to civil penalties and fines. This prohibition shall apply to and be made part of any subcontract related to this Contract.

E.8. Tennessee Consolidated Retirement System. The Contractor acknowledges and understands that, subject to statutory exceptions contained in *Tennessee Code Annotated*, Section 8-36-801, *et. seq.*, the law governing the Tennessee Consolidated Retirement System (TCRS), provides that if a retired member of TCRS, or of any superseded system administered by TCRS, or of any local retirement fund established pursuant to *Tennessee Code Annotated*, Title 8, Chapter 35,

Part 3 accepts state employment, the member's retirement allowance is suspended during the period of the employment. Accordingly and notwithstanding any provision of this Contract to the contrary, the Contractor agrees that if it is later determined that the true nature of the working relationship between the Contractor and the State under this Contract is that of "employee/employer" and not that of an independent contractor, the Contractor may be required to repay to TCRS the amount of retirement benefits the Contractor received from TCRS during the period of this Contract.

E.9. Voluntary Buyout Program. The Contractor acknowledges and understands that, for a period of two years beginning August 16, 2008, restrictions are imposed on former state employees who received a State of Tennessee Voluntary Buyout Program (VBP) severance payment with regard to contracts with state agencies that participated in the VBP.

a. The State will not contract with either a former state employee who received a VBP severance payment or an entity in which a former state employee who received a VBP severance payment or the spouse of such an individual holds a controlling financial interest.

b. The State may contract with an entity with which a former state employee who received a VBP severance payment is an employee or an independent contractor. Notwithstanding the foregoing, the Contractor understands and agrees that there may be unique business circumstances under which a return to work by a former state employee who received a VBP severance payment as an employee or an independent contractor of a State contractor would not be appropriate, and in such cases the State may refuse Contractor personnel. Inasmuch, it shall be the responsibility of the State to review Contractor personnel to identify any such issues.

c. With reference to either subsection a. or b. above, a contractor may submit a written request for a waiver of the VBP restrictions regarding a former state employee and a contract with a state agency that participated in the VBP. Any such request must be submitted to the State in the form of the *VBP Contracting Restriction Waiver Request* format available from the State and the Internet at: www.state.tn.us/finance/rds/ocr/waiver.html. The determination on such a request shall be at the sole discretion of the head of the state agency that is a Party to this Contract, the Commissioner of Finance and Administration, and the Commissioner of Human Resources.

E.10. Ownership of Software and Work Products.

a. Definitions.

(1) "Contractor-Owned Software," which shall mean commercially available software the rights to which are owned by Contractor, including but not limited to commercial "off-the-shelf" software which is not developed using State's money or resources.

(2) "Custom-Developed Application Software," which shall mean customized application software developed by Contractor solely for State.

(3) "Rights Transfer Application Software," which shall mean any pre-existing application software owned by Contractor or a third party, provided to State and to which Contractor will grant and assign, or will facilitate the granting and assignment of, all rights, including the source code, to State.

(4) "Third-Party Software," which shall mean software not owned by the State or the Contractor.

(5) "Work Product," which shall mean all deliverables exclusive of hardware, such as software, software source code, documentation, planning, etc., that are created, designed, developed, or documented by the Contractor for the State during the course of the project using State's money or resources, including Custom-Developed Application Software. If the system solution includes Rights Transfer Application Software, the definition of Work Product shall also include such software.

b. Rights and Title to the Software

(1) All right, title and interest in and to the Contractor-Owned Software shall at all times remain with Contractor, subject to any license granted herein.

(2) All right, title and interest in and to the Work Product, and to modifications thereof made by State, including without limitation all copyrights, patents, trade secrets and other intellectual property and other proprietary rights embodied by and arising out of the Work Product, shall belong to State. To the extent such rights do not automatically belong to State, Contractor hereby assigns, transfers, and conveys all right, title and interest in and to the Work Product, including without limitation the copyrights, patents, trade secrets, and other intellectual property rights arising out of or embodied by the Work Product. Contractor shall execute any other documents that State or its counsel deem necessary or desirable to document this transfer and/or allow State to register its claims and rights to such intellectual property rights or enforce them against third parties, and Contractor shall cooperate fully in the foregoing endeavors.

(3) All right, title and interest in and to the Third-Party Software shall at all times remain with the third party, subject to any license granted thereby.

c. Nothing in this Contract shall prohibit the Contractor's use for its own purposes of the general knowledge, skills, experience, ideas, concepts, know-how, and techniques obtained and used during the course of providing the services requested under this Contract.

d. Nothing in the Contract shall prohibit the Contractor from developing for itself, or for others, materials which are similar to and/or competitive with those that are produced under this Contract.

IN WITNESS WHEREOF,

XAP CORPORATION:

8/30/2010.

RAMESH SETHURAMAN, VICE PRESIDENT AND CONTROLLER **DATE**

TENNESSEE HIGHER EDUCATION COMMISSION:

8-31-10

RICHARD G. RHODA, EXECUTIVE DIRECTOR **DATE**

ATTACHMENT A

ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE

SUBJECT CONTRACT NUMBER:	33201-03310
CONTRACTOR LEGAL ENTITY NAME:	XAP CORPORATION
FEDERAL EMPLOYER IDENTIFICATION NUMBER: (or Social Security Number)	954610552

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

RAMESH SETHURAMAN, VICE PRESIDENT AND CONTROLLER

NOTICE: This attestation MUST be signed by an individual empowered to contractually bind the Contractor. If said individual is not the chief executive or president, this document shall attach evidence showing the individual's authority to contractually bind the Contractor.

8/30/2010

DATE OF ATTESTATION

CERTIFICATE OF ASSISTANT SECRETARY

The undersigned, Vanessa Pipes does hereby certify that she is the fully elected and acting Assistant Secretary of Xap Corporation, A Delaware Corporation (the " Corporation"), and does further certify as follows:

Ramesh Sethuraman, is the Vice president and Controller of Xap Corporation. He is an officer of the Corporation and is authorized to sign on behalf of the Corporation and bind the Corporation

In Witness whereof, the undersigned has executed this certificate of Assistant Secretary this 2nd day of April, 2010.

Vanessa Pipes