

Mike Krause
Executive Director



Bill Lee
Governor

State of Tennessee
Tennessee Higher Education Commission
9th Floor, 312 Rosa L. Parks Avenue
Nashville, TN 37243
(615) 741-3605

MEMORANDUM

TO: Rep. Ron Travis, Chair, Fiscal Review Committee

FROM: Shauna Jennings, Deputy General Counsel, Tennessee Higher Education Commission

DATE: July 7, 2020

RE: Non-Competitive Contract Summary
National Student Clearinghouse

Pursuant to Chapter 403, Public Acts of 2013, the Tennessee Higher Education Commission (THEC) submits this non-competitive contract for the provision of a statewide electronic transcript exchange with the National Student Clearinghouse.

THEC is providing the information below at the request of the Fiscal Review Committee.

Background and Objectives: The Tennessee Electronic Transcript Exchange streamlines the process for Tennessee students to transmit high school and higher education transcripts. The Transcript Exchange provides a FERPA-compliant portal that allows for the secure transmission of education records as opposed to sending FERPA-protected student records via regular mail. The Exchange streamlines the process for high school counselors and registrars to exchange transcripts with higher education institutions and other entities, like the NCAA Eligibility Center and NAIA Eligibility Center, both within Tennessee and outside the state. There is no cost to Tennessee high schools or their students to use the Exchange. Additionally, the Tennessee Electronic Transcript Exchange allows higher education institutions to exchange transcripts with other higher education institutions and employers in a secure, efficient manner. There is no charge to Tennessee postsecondary institutions to participate in the postsecondary to postsecondary exchange. Additionally, there is no charge to Tennessee college students to send electronic transcripts to Tennessee institutions that participate in the Exchange.

Notably, the Exchange provides GPA data to e*GRandS, the electronic grants and scholarships system used to administer the application, payment, and reporting process of state financial aid, for the purpose of determining eligibility for Tennessee Education Lottery Scholarship (TELS) programs. This transfer alleviates the need for school staff members to manually submit student data. Sending GPAs through the Exchange ensures accurate data transfer to determine scholarship eligibility. Of the transcripts submitted last year, 23,999 transcripts matched with a Free Application for Federal Student Aid (FAFSA) record. During the last academic year, THEC and the Tennessee State Assistance

Corporation (TSAC) used the Tennessee Electronic Transcript Exchange data to determine eligibility for 25.99% of high school seniors in the state.

Contract Term: October 26, 2020 through October 25, 2025 **Maximum Contract Liability:** \$2,000,000
Annual expenditures will be \$400,000 and will be paid as follows from Interdepartmental (Lottery) funds:

Goods or Services Description	Amount (per compensable increment)
Quarterly Rate	\$100,000

Justification for Non- Competitive Contract

The National Student Clearinghouse won a previous competitively procured bid for the high school transcript exchange. The transition to a new electronic exchange vendor would disrupt the state's ability to continuously provide a convenient and FERPA-protected transcript exchange solution. Last school year, Tennessee high schools sent 37,886 transcripts to postsecondary education institutions (27,710 in-state, 10,176 out-of-state) using the Tennessee Electronic Transcript Exchange. The number of transcripts sent from Tennessee high schools to postsecondary institutions nearly doubled each year of implementation on the past five (5) year contract. Due to the need to onboard each individual high school or school district, transitioning vendors could disrupt the transcript sending and receiving practices at Tennessee high schools and higher education institutions. For context, the need for redeploying a transcript solution on the last contract resulted in taking approximately four (4) years to return the volume of transcripts being sent to TSAC to levels commensurate with what was occurring at the close of the previous transcript exchange contract.

Additionally, the implementation of a new solution would come at significant cost of time and effort amount K12 and higher education staff. Currently, 172 high schools have completed the steps for full implementation of the current exchange. It takes approximately 15 hours to do the testing and setup necessary to use the system. If a new vendor were selected, high schools stand to commit 2,580 hours of effort to transition to a different solution. This estimate does not account for the 120 high schools that are currently in the implementation pipeline. Currently, 47 Tennessee higher education institutions are set up to receive electronic high school transcripts using the Electronic Transcript Exchange. Enrollment at these 47 institutions represents 79% of the students enrolled at Tennessee postsecondary institutions. Additionally, the Tennessee Board of Regents (TBR) has spent hundreds of hours customizing their student information system output to not only take full advantage of the currently procured system but also further enhance their institutions' efficiencies by leveraging the transmission of electronic data.

The contract costs for the current procurement with the National Student Clearinghouse were approximately half of the proposed costs of the second highest ranking respondent to the 2015 request for proposals. Furthermore, costs proposed by the National Student Clearinghouse for the new procurement are 16.7% less than the current contract costs since a continuation of services would not require new development or implementation costs. Lastly, the current system has become a key component to important business systems.

Supplemental Documentation Required for
Fiscal Review Committee

*Contact Name:	Troy Grant	*Contact Phone:	615.532.0423		
*Presenter's name(s):	Emily House, Lou Hanneman				
Edison Contract Number: <i>(if applicable)</i>	66059	RFS Number: <i>(if applicable)</i>	33201-00321		
*Original or Proposed Contract Begin Date:	10/26/2020	*Current or Proposed End Date:	10/25/2025		
Current Request Amendment Number: <i>(if applicable)</i>	N/A				
Proposed Amendment Effective Date: <i>(if applicable)</i>	N/A				
*Department Submitting:	Tennessee Higher Education Commission				
*Division:	College Access Initiatives				
*Date Submitted:	07/07/2020				
*Submitted Within Sixty (60) days:	Yes				
<i>If not, explain:</i>					
*Contract Vendor Name:	National Student Clearinghouse				
*Current or Proposed Maximum Liability:	\$2,000,000.00				
*Estimated Total Spend for Commodities:	\$2,000,000.00				
*Current or Proposed Contract Allocation by Fiscal Year: (as Shown on Most Current Fully Executed Contract Summary Sheet)					
FY: 21	FY: 22	FY: 23	FY: 24	FY 25	FY
\$ 400,000.00	\$ 400,000.00	\$ 400,000.00	\$ 400,000.00	\$ 400,000.00	\$
*Current Total Expenditures by Fiscal Year of Contract: (attach backup documentation from Edison)					
FY:	FY:	FY:	FY:	FY	FY
\$	\$	\$	\$	\$	\$
IF Contract Allocation has been greater than Contract Expenditures, please give the reasons and explain where surplus funds were spent:					
IF surplus funds have been carried forward, please give the reasons and provide the authority for the carry forward provision:					
IF Contract Expenditures exceeded Contract Allocation, please give the reasons and explain how funding was acquired to pay the overage:					

Supplemental Documentation Required for
Fiscal Review Committee

*Contract Funding Source/Amount:			
State:		Federal:	
<i>Interdepartmental:</i>	\$2,000,000.00	<i>Other:</i>	
If “ <i>other</i> ” please define:			
If “ <i>interdepartmental</i> ” please define:		THEC is reimbursed by Tennessee Student Assistance Corporation (TSAC).	
Dates of All Previous Amendments or Revisions: <i>(if applicable)</i>		Brief Description of Actions in Previous Amendments or Revisions: <i>(if applicable)</i>	
Method of Original Award: <i>(if applicable)</i>		Sole-Source	
*What were the projected costs of the service for the entire term of the contract prior to contract award? How was this cost determined?		The projected costs of the service for the entire term of the contract was \$2,000,000.00 and was determined by NSC's set rate schedule that is consistent with rates of these services provided nationally.	
*List number of other potential vendors who could provide this good or service; efforts to identify other competitive procurement alternatives; and the reason(s) a sole-source contract is in the best interest of the State.		In 2015, THEC procured a transcript data exchange solution through a competitive request for proposals. The National Student Clearinghouse was winner of that bid. The second vendor in contention for the service provided a bid of \$4,815,651.00, or approximately twice the bid price of the winning solution. These services are provided by NSC with the annual rate based on student enrollment at affiliate postsecondary institutions. The current vendor is in good standing and has delivered contract deliverables as outlined in the current contract agreement. The transition to a new electronic exchange vendor would disrupt the state's ability to continuously provide a convenient and FERPA-protected transcript exchange solution. Furthermore, costs proposed by the National Student Clearinghouse for the new procurement are 16.7 percent less than the current contract costs due to the fact that a continuation of services would not require development or implementation costs.	

Rule Exception Request

Use this document to request changes to Central Procurement Office templates, policies, or other procurement documents or to modify the “necessary contract clauses” identified in Tenn. Comp. R. & Reg. 0690-03-01-.17 (“CPO Rule 17”). Complete this document in conformity with CPO Rule 17, which is available [here](#). Upload the completed document and route for approvals by selecting the appropriate RER e-Form in Edison. For additional guidance, please see the e-Forms Job Aid available online at the following: <https://www.teamtn.gov/cpo/learning-development/cpo-job-aids.html>. All Rule Exception Requests are subject to review and approval by the Chief Procurement Officer. Rule Exception Requests that propose to modify any of CPO Rule 17’s necessary contract clauses shall be subject to review and approval by the Comptroller of the Treasury. Note: If the requested changes involve contracts under a delegation, please use the RER for the DA or DGA templates. Also, any change to the template language regarding the Limitation of Contractor’s Liability shall be submitted using the Limitation of Contractor’s Liability Request.

<p>APPROVED</p> <p>[Upload this RER to e-Forms in Edison. Approval will be captured in Edison Workflow.]</p> <hr/> <p>CHIEF PROCUREMENT OFFICER</p>	<p>APPROVED</p> <p>[Upload this RER to e-Forms in Edison. Approval will be captured in Edison Workflow.]</p> <hr/> <p>COMPTROLLER OF THE TREASURY</p>
Agency request tracking #	33201-00321
1. Procuring Agency	Tennessee Higher Education Commission (THEC)
2. Edison contract ID #	66059
3. Please select Procurement or Contract Type. (This will be the RER e-Form for routing purposes.)	<input type="checkbox"/> Grant Contract – for contracts involving Grants <input checked="" type="checkbox"/> Technology - for contracts involving technology <input type="checkbox"/> Risk Management - for changes to insurance or indemnification <input checked="" type="checkbox"/> Standard – Agency Term Contract or Statewide Contract (use for non-technology contracts for goods or services)
4. Contractor or Grantee	National Student Clearinghouse (NSC)
5. Contract’s Effective Date	10/26/2020
6. Contract or grant contract’s Term (with ALL options to extend exercised)	60 months
7. Contract’s Maximum Liability (with ALL options to extend exercised)	\$2,000,000.00
8. Citation and explanation of the rule(s) for which the exception is requested	Tenn. Comp. R. & Regs. 0690-03-01-.17(2) provides a mechanism for requesting modifications and additions to contract template provisions. NSC has requested multiple changes to the FA template, which do not materially change the obligations, and thus THEC is requesting through this rule exception request.
9. Description of requested changes If adding new provisions or modifying existing provisions, insert the new or modified provisions in their entirety. Please provide red-lines or track changes to highlight any deviations from template language.	<p>The following changes to the FA template are requested, please note that other template changes have been approved with RER SEQ. 1612:</p> <p>E.4. <u>Family Educational Rights and Privacy Act & Tennessee Data Accessibility, Transparency and Accountability Act.</u> The Contractor shall comply with the Family Educational Rights and Privacy</p>

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

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

Any instances of unauthorized disclosure of data containing personally identifiable information in violation of FERPA or DATAA that come to the attention of the Contractor shall be reported to the State within ~~seventy-two~~forty-eight (7248) hours. Contractor shall indemnify and hold harmless State, its employees, agents and representatives, from and against any and all claims, liabilities, losses, or causes of action that may arise, accrue, or result to any person or entity that is injured or damaged as a direct result of Contractor’s failure to comply with this section.

- E.5. Personally Identifiable Information. While performing its obligations under this Contract, Contractor may have access to Personally Identifiable Information held by the State (“PII”). For the purposes of this Contract, “PII” includes “Nonpublic Personal Information” as that term is defined in Title V of the Gramm-Leach-Bliley Act of 1999 or any successor federal statute, and the rules and regulations thereunder, all as may be amended or supplemented from time to time (“GLBA”) and personally identifiable information and other data protected under any other applicable laws, rule or regulation of any jurisdiction relating to disclosure or use of personal information (“Privacy Laws”). Contractor agrees it shall perform its services in compliance with Privacy Laws. Contractor shall, and shall cause its employees, agents and representatives to: (i) keep PII confidential and may use and disclose PII only as necessary to carry out those specific aspects of the purpose for which the PII was disclosed to Contractor and in accordance with this Contract, GLBA and Privacy Laws; and (ii) implement and maintain appropriate technical and organizational measures regarding information security to: (A) ensure the security and confidentiality of PII; (B) protect against any threats or hazards to the security or integrity of PII; and (C) prevent unauthorized access to or use of PII. Contractor shall immediately notify State: (1) of any disclosure or use of any PII by Contractor or any of its employees, agents and representatives in breach of this Contract; and (2) of any disclosure of any PII to Contractor or its employees, agents and representatives where the purpose of such disclosure is not known to Contractor or its employees, agents and representatives. The State reserves the right to review Contractor's policies and procedures used to maintain the security and confidentiality of PII and Contractor shall, and cause its employees, agents and representatives to, comply with all reasonable requests or directions from the State to enable the State to verify or ensure that Contractor is in full compliance with its obligations under this Contract in relation to PII. Upon termination or expiration of the Contract or at the State’s direction at any time in its sole discretion, whichever is earlier, Contractor shall destroy all records of PII which it has received under this Contract. Notwithstanding the previous sentence, the Contractor may retain copies of PII, to the extent such copies are electronically stored pursuant to the Contractor’s ordinary back-up procedures (including, without limitation, those regarding electronic communications), or otherwise as may be required by applicable law, so long as PII is kept confidential as required under this Contract and is used for no other purpose, and the Contractor destroys or permanently erases all such copies pursuant to its ordinary back-up procedures or otherwise when it no longer is prohibited by law from destroying such copies.

<p>The Contractor shall report to the State any instances of unauthorized access to or potential disclosure of PII in the custody or control of Contractor (“Unauthorized Disclosure”) that come to the Contractor’s attention. Any such report shall be made by the Contractor within twenty-four (24)forty-eight (48) hours after the Unauthorized Disclosure has come to the attention of the Contractor. Contractor shall take all necessary measures to halt any further Unauthorized Disclosures. The Contractor, at the sole discretion of the State, shall provide no cost credit monitoring services for individuals whose PII was affected by the Unauthorized Disclosure. The Contractor shall bear the cost of notification to all individuals affected by the Unauthorized Disclosure, including individual letters and public notice. The remedies set forth in this Section are not exclusive and are in addition to any claims or remedies available to this State under this Contract or otherwise available at law. The obligations set forth in this Section shall survive the termination of this Contract.</p>
<p>10. Scope of Goods or Services Caption:</p> <p>Provision of the resources of the Student Tracker services for enrollment and academic achievement of current and former students of each public postsecondary institution in the State of Tennessee.</p>
<p>11. Justification</p> <p>E.4. This change was requested by NSC and approved by CPO Legal prior to the submission of this RER.</p> <p>E.5. This change was requested by NSC and approved by CPO Legal prior to the submission of this RER.</p>
<p>Signature of Agency head or designee and date [Either upload signed RER to e-Forms in Edison or capture authorized agency approval in Edison Workflow]</p>

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7. Contract’s Maximum Liability (with ALL options to extend exercised)	\$ 2,000,000.00
8. Citation and explanation of the rule(s) for which the exception is requested	<p>Tenn. Comp. R. & Regs. 0690-03-01-.17(2) provides a mechanism for requesting modifications and additions to contract template provisions. NSC has requested multiple changes to the FA template, which do not materially change the obligations, and thus THEC is requesting through this rule exception request.</p>
9. Description of requested changes If adding new provisions or modifying existing provisions, insert the new or modified provisions in their entirety. Please provide red-lines or track changes to highlight any deviations from template language.	<p>The following changes to the FA template are requested:</p> <p>A.9. <u>Warranty</u>. Contractor represents and warrants that the term of the warranty (“Warranty Period”) shall be the greater of the Term of this Contract or any other warranty generally offered by Contractor, its suppliers, or manufacturers to customers of its goods or services. The goods or services provided</p>

under this Contract shall conform to the terms and conditions of this Contract throughout the Warranty Period. Any nonconformance of the goods or services to the terms and conditions of this Contract shall constitute a "Defect" and shall be considered "Defective." If Contractor receives notice of a Defect during the Warranty Period, then Contractor shall correct the Defect, at no additional charge.

Contractor represents and warrants that the State is authorized to ~~possess and~~ use all equipment, materials, software, and deliverables as provided for under this Contract, subject to the restrictions contained herein.

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

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

- D.10. Prohibition of Illegal Immigrants. The requirements of Tenn. Code Ann. § 12-3-309 addressing the use of illegal immigrants in the performance of any contract to supply goods or services to the state of Tennessee, shall be a material provision of this Contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Contract.
- a. The Contractor agrees that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation upon request, in writing, by submitting to the State a completed and signed copy of the document at Attachment B, semi-annually during the Term. If the Contractor is a party to more than one contract with the State, the Contractor may submit one attestation that applies to all contracts with the State. All Contractor attestations shall be maintained by the Contractor and made available to State officials upon request.
 - b. Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the Term, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work under this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work under this Contract. Attestations obtained from subcontractors shall be maintained by the Contractor and made available to State officials upon request.
 - c. The Contractor shall maintain records for all personnel used in the performance of this Contract. Contractor's records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.
 - d. The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of Tenn. Code Ann. § 12-3-309 for acts or omissions occurring after its effective date.
 - e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not: (i) a United States citizen; (ii) a Lawful Permanent Resident; (iii) a person whose physical presence in the United States is authorized; (iv) allowed by the federal Department of Homeland Security and who, under federal immigration laws or regulations, is authorized to be employed in the U.S.; or (v) is otherwise authorized to provide services under the Contract.
- D.19. Hold Harmless. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of ~~acts, omissions, intentional misconduct~~ or negligence negligent acts or omissions on the part of the Contractor, its employees, or any person acting for or on its or their behalf relating to this Contract. The Contractor further agrees it shall be liable for the

reasonable cost of attorneys' fees, court costs, expert witness fees, and other litigation expenses for the State to enforce the terms of this Contract.

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

- D.32. Insurance. Contractor shall maintain insurance coverage as specified in this Section. The State reserves the right to ~~amend or require~~request additional insurance coverage, coverage amounts, and endorsements required under this Contract.If the Contractor does not obtain the additional requested coverage, the State may terminate the Contract with no further obligation. Contractor's failure to maintain or submit evidence of insurance coverage, as required and as requested, herein, is a material breach of this Contract. If Contractor loses insurance coverage, fails to renew coverage, or for any reason becomes uninsured during the Term, Contractor shall immediately notify the State. All insurance companies providing coverage must be: (a) acceptable to the State; (b) authorized by the Tennessee Department of Commerce and Insurance ("TDCI"); and (c) rated A- / VII or better by A.M. Best. All coverage must be on a primary basis and noncontributory with any other insurance or self-insurance carried by the State. Contractor agrees to name the State as an additional insured on any insurance policy with the exception of workers' compensation (employer liability) and professional liability (errors and omissions) insurance. All policies must contain an endorsement for a waiver of subrogation in favor of the State. Any deductible or self-insured retention ("SIR") over fifty thousand dollars (\$50,000) must be approved by the State. The deductible or SIR and any premiums are the Contractor's sole responsibility. The Contractor agrees that the insurance requirements specified in this Section do not reduce any liability the Contractor has assumed under this Contract including any indemnification or hold harmless requirements.

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

Contractor shall provide the State a certificate of insurance ("COI") evidencing the coverages and amounts specified in this Section. The COI must be on a form approved by the TDCI (standard ACORD form preferred). The COI must list each insurer's National Association of Insurance Commissioners (NAIC) number and be signed by an authorized representative of the insurer. The COI must list the State of Tennessee – CPO Risk Manager, 312 Rosa L. Parks Ave., 3rd floor Central Procurement Office, Nashville, TN 37243 as the certificate holder. Contractor shall provide the COI ten (10) business days prior to the Effective Date and again thirty (30) calendar days before renewal or replacement of coverage. Contractor shall provide the State evidence that all subcontractors maintain the required insurance or that subcontractors are included under the Contractor's policy. At any time, the State may require Contractor to provide a valid COI. The Parties agree that failure to provide evidence of insurance coverage as required is a material breach of this Contract. If Contractor self-insures, then a COI will not be required to prove coverage. Instead Contractor shall provide a certificate of self-insurance or a letter, on Contractor's letterhead, detailing its coverage, policy amounts, and proof of funds to reasonably cover such expenses. The State reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

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

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

a. Commercial General Liability (“CGL”) Insurance

- 1) The Contractor shall maintain CGL, which shall be written on an ISO Form CG 00 01 occurrence form (or a substitute form providing equivalent coverage) and shall cover liability arising from property damage, premises and operations products and completed operations, bodily injury, personal and advertising injury, and liability assumed under an insured contract ~~(including the tort liability of another assumed in a business contract).~~
The Contractor shall maintain single limits not less than one million dollars (\$1,000,000) per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this policy or location of occurrence or the general aggregate limit shall be twice the required occurrence limit.

b. Workers’ Compensation and Employer Liability Insurance

- 1) For Contractors statutorily required to carry workers’ compensation and employer liability insurance, the Contractor shall maintain:
 - i. Workers’ compensation in an amount not less than ~~one million five hundred thousand dollars (\$1,0500,000)~~ including employer liability of one million dollars (\$1,000,000) per accident for bodily injury by accident, one million dollars (\$1,000,000) policy limit by disease, and one million dollars (\$1,000,000) per employee for bodily injury by disease.
- 2) If the Contractor certifies that it is exempt from the requirements of Tenn. Code Ann. §§ 50-6-101 – 103, then the Contractor shall furnish written proof of such exemption for one or more of the following reasons:
 - i. The Contractor employs fewer than five (5) employees;
 - ii. The Contractor is a sole proprietor;
 - iii. The Contractor is in the construction business or trades with no employees;
 - iv. The Contractor is in the coal mining industry with no employees;
 - v. The Contractor is a state or local government; or
 - vi. The Contractor self-insures its workers’ compensation and is in compliance with the TDCI rules and Tenn. Code Ann. § 50-6-405.

c. Automobile Liability Insurance

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

E.3. Family Educational Rights and Privacy Act & Tennessee Data Accessibility, Transparency and Accountability Act. The Contractor shall comply with the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. 1232(g)) and its accompanying regulations (34 C.F.R. § 99) (“FERPA”). The Contractor warrants that the Contractor is familiar with FERPA requirements and that it will comply with these requirements in the performance of its duties under this Contract. The Contractor agrees to cooperate with the State, as required by FERPA, in the performance of its duties under this Contract. The Contractor agrees to maintain the confidentiality of all education records and student information. The Contractor shall only use such records and information for the exclusive purpose of performing its duties under this Contract. The obligations set forth in this Section shall survive the termination of this Contract.

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

Any instances of unauthorized disclosure of data containing personally identifiable information in violation of FERPA or DATAA that come to the attention of the Contractor shall be reported to the State within ~~twenty-four (24)~~ seventy-two (72) hours. Contractor shall indemnify and hold harmless State, its employees, agents and representatives, from and against any and all claims, liabilities, losses, or causes of action that may arise, accrue, or result to any person or entity that is injured or damaged as a direct result of Contractor’s failure to comply with this section.

E.4. Personally Identifiable Information. While performing its obligations under this Contract, Contractor may have access to Personally Identifiable Information held by the State (“PII”). For the purposes of this Contract, “PII” includes “Nonpublic Personal Information” as that term is defined in Title V of the Gramm-Leach-Bliley Act of 1999 or any successor federal statute, and the rules and regulations thereunder, all as may be amended or supplemented from time to time (“GLBA”) and personally identifiable information and other data protected under any other applicable laws, rule or regulation of any jurisdiction relating to disclosure or use of personal information (“Privacy Laws”). Contractor agrees it shall ~~not do or omit to do anything which would cause the State to be in breach of~~ perform its services in compliance with Privacy Laws. Contractor shall, and shall cause its employees, agents and representatives to: (i) keep PII confidential and may use and disclose PII only as necessary to carry out those specific aspects of the purpose for which the PII was disclosed to Contractor and in accordance with this Contract, GLBA and Privacy Laws; and (ii) implement and maintain appropriate technical and organizational measures regarding information security to: (A) ensure the security and confidentiality of PII; (B) protect against any threats or hazards to the security or integrity of PII; and (C) prevent unauthorized access to or use of PII. Contractor shall immediately notify State: (1) of any disclosure or use of any PII by Contractor or any of its employees, agents and representatives in breach of this Contract; and (2) of any disclosure of any PII to Contractor or its employees, agents and representatives where the purpose of such disclosure is not known to Contractor or its employees, agents and representatives. The State reserves the right to review Contractor’s policies and procedures used to maintain the security and confidentiality of PII and Contractor shall, and cause its employees, agents and representatives to, comply with all reasonable requests or directions from the State to enable the State to verify or ensure that Contractor is in full compliance with its obligations under this Contract in relation to PII. Upon termination or expiration of the Contract or at the State’s direction at any time in its sole discretion, whichever is earlier, Contractor ~~shall immediately return to the State any and all PII which it has received under this Contract and~~ shall destroy all records of ~~such~~ PII ~~which it has received under this Contract.~~ Notwithstanding the previous sentence, the Contractor may retain copies of PII, to the

extent such copies are electronically stored pursuant to the Contractor's ordinary back-up procedures (including, without limitation, those regarding electronic communications), or otherwise as may be required by applicable law, so long as PII is kept confidential as required under this Contract and is used for no other purpose, and the Contractor destroys or permanently erases all such copies pursuant to its ordinary back-up procedures or otherwise when it no longer is prohibited by law from destroying such copies.

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

10. Scope of Goods or Services Caption: Provision of a statewide electronic transcript exchange.

11. Justification

The justifications for the requested changes are as follows:

- A.7. These changes to the template language were negotiated in consultation with CPO and NSC.
- D.10. These changes to the template language were negotiated in consultation with CPO and NSC.
- D.19. These changes to the template language were negotiated in consultation with CPO and NSC.
- D.32. These changes to the template language were negotiated in consultation with CPO and NSC.
- E.4. These changes to the template language were negotiated in consultation with CPO and NSC.
- E.5. These changes to the template language were negotiated in consultation with CPO and NSC.

Signature of Agency head or designee and date

[Either upload signed RER to e-Forms in Edison or capture authorized agency approval in Edison Workflow]

Special Contract Request

This form should be utilized to facilitate contract and procurement requests that require the Chief Procurement Officer's prior approval and that of the Comptroller of the Treasury, as applicable.

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@tn.gov.

CHIEF PROCUREMENT OFFICER	DATE
COMPTROLLER OF THE TREASURY	DATE

Request Tracking #	33201-00321
1. Contracting Agency	Tennessee Higher Education Commission (THEC)
2. Type of Contract or Procurement Method	<input type="checkbox"/> No Cost <input type="checkbox"/> Revenue <input checked="" type="checkbox"/> Sole Source <input type="checkbox"/> Proprietary <input type="checkbox"/> Competitive Negotiation <input type="checkbox"/> Other _____
3. Requestor Contact Information	Shauna Jennings, Deputy General Counsel shauna.jennings@tn.gov 615-253-7462
4. Brief Goods or Services Caption	The Tennessee Higher Education Commission plans to procure a web-based transcript data exchange solution for Tennessee high schools and Tennessee institutions of higher education benefitting Tennessee public and private high schools, Tennessee institutions of higher education, and students and parents/guardians.

Request Tracking #	
<p>5. Description of the Goods or Services to be Acquired</p>	<p>The transcript data exchange solution shall:</p> <ul style="list-style-type: none"> a. Facilitate the movement of transcripts between high schools and higher education institutions, high schools and TSAC, and between higher education institutions. b. Provide a secure user-friendly solution for requesting and transmitting transcripts between educational entities and organizations across Tennessee. c. Provide a Tennessee-standardized dataset of all electronically transmitted transcripts. d. Provide a secure user-friendly solution for high schools to submit transcripts to the Tennessee Student Assistance Corporation (TSAC) for the purposes of GPA verification for the Tennessee Education Lottery Scholarship (TELS) Program. e. Reduce data entry by higher education institution personnel into their student information systems. f. Support the transfer of transcripts and records to external stakeholders such as the National Collegiate Athletic Association (NCAA) Eligibility Clearinghouse.
6. Proposed Contractor	National Student Clearinghouse
<p>7. Name & Address of the Contractor's principal owner(s) <i>- NOT required for a TN state education institution</i></p>	<p>National Student Clearinghouse Suite 300 2300 Dulles Station Blvd. Herndon, VA 20171</p>

Request Tracking #	
8. Proposed Contract Period – with ALL options to extend exercised <i>The proposed contract start date shall follow the approval date of this request.</i>	Five Years October, 2020 – October, 2025
9. Strategic Technology Solutions (“STS”) Pre-Approval Endorsement Request <i>– information technology (N/A to THDA)</i>	<input type="checkbox"/> Not Applicable <input checked="" type="checkbox"/> Attached
10. eHealth Pre-Approval Endorsement Request <i>– health-related professional, pharmaceutical, laboratory, or imaging</i>	<input checked="" type="checkbox"/> Not Applicable <input type="checkbox"/> Attached
11. Human Resources Pre-Approval Endorsement Request <i>– contracts with an individual, state employee training, or services related to the employment of current or prospective state employees</i>	<input checked="" type="checkbox"/> Not Applicable <input type="checkbox"/> Attached
12. Are these goods or services currently available on a statewide contract? If YES, please explain why the current statewide contract is not being used for this procurement.	<input checked="" type="checkbox"/> NO <input type="checkbox"/> YES,
13. Maximum Contract Cost – with ALL options to extend exercised	\$ 2,000,000.00
14. Was there an initial government estimate? If so, what amount?	<input checked="" type="checkbox"/> NO <input type="checkbox"/> YES, \$
15. Cost Determination Used- How did agency arrive at the estimate of expected costs?	NSC has determined their costs on a set rate schedule consistent with rates of these services provided nationally.
16. Explanation of Fair and Reasonable Price - Explain how agency determined that price is fair and reasonable	In 2015, THEC procured a transcript data exchange solution through a competitive request for proposals. The National Student Clearinghouse was the winner of that bid. The second vendor in contention for the service provided a bid of \$4,815,651, or approximately twice the bid price of the winning solution. These services are provided by NSC with the annual rate based on student enrollment at affiliate postsecondary institutions.
17. Documentation of Discussions with Contractor - How did agency document discussions with Contractor? Attach documentation to this request as applicable.	These discussions were based on a proposal provided by NSC for the continuation of the transcript data exchange solution currently provided through the existing contract with NSC for this service. All electronic communications with NSC regarding the continuation of services are documented and archived with the proposed contract files.

Request Tracking #	
<p>18. Explanation of Need for or requirement placed on the State to acquire the goods or services</p>	<p>The Tennessee Electronic Transcript Exchange streamlines the process for high school counselors and registrars to exchange transcripts with higher education institutions and other entities, like the NCAA Eligibility Center and NAIA Eligibility Center, both within Tennessee and outside the state. There is no cost to Tennessee high schools or their students to use the Exchange. The increased efficiencies gained by using the Exchange allow staff to spend more time guiding and counseling students regarding their college choice. Additionally, procuring a FERPA-compliant solution allows for the secure transmission of transcripts between high schools and postsecondary institutions while also providing immediate confirmation that the transcript has been sent and received. Entities not leveraging an electronic means of sending transcript data send this FERPA-protected data via traditional mail.</p> <p>In addition to facilitating transcript exchange between educational institutions, the Exchange provides GPA data to e*GRandS for the purpose of determining eligibility for Tennessee Education Lottery Scholarship (TELS) programs. This transfer alleviates the need for school staff members to manually submit student data through the e*GRandS GPA entry process. Sending GPAs through the Exchange alleviates concerns regarding data entry errors and ensures that the uniform grading policy GPA is the GPA used to determine scholarship eligibility.</p> <p>Additionally, the Tennessee Electronic Transcript Exchange allows higher education institutions to exchange transcripts with other higher education institutions in a secure, efficient manner. The system allows the receiving higher education institution to determine the format and manner in which transcript data is delivered. This functionality allows for the flow of transcripts to match existing business processes. Finally, it is essential to procure a system that is fully integrated into Ellucian Banner, the enterprise resource planning system used by the majority of Tennessee higher education institutions. There will be no charge to Tennessee postsecondary institutions to participate in the postsecondary to postsecondary exchange. Additionally, there is no charge to Tennessee college students to send electronic transcripts to Tennessee institutions that participate in the Exchange.</p>

<p>19. Proposed contract impact on current State operations</p>	<p>The proposed contract should have no impact on current State operations.</p> <p>To meet reporting and administration statutory requirements regarding postsecondary education, T.C.A § 49-4-924(e) authorizes the appropriation of funds from the Education Lottery account sufficient to accomplish these responsibilities placed on THEC.</p>
<p>20. Justification – Specifically explain why the goods or services should be acquired through the procurement method or contract type selected.</p>	<p>The current vendor is in good standing and has delivered contract deliverables as outlined in the current contract agreement. THEC proposes procuring electronic transcript exchange services through a sole source procurement for the reasons outlined below:</p> <ol style="list-style-type: none"> 1. Transitioning to a new electronic exchange vendor would disrupt the state's ability to continuously provide a convenient and FERPA-protected transcript exchange solution. Last school year, Tennessee high schools sent 37,886 transcripts to postsecondary education institutions (27,710 in-state, 10,176 out-of-state) using the Tennessee Electronic Transcript Exchange. The number of transcripts sent from Tennessee high schools to postsecondary institutions has nearly doubled each year of implementation. Due to the need to onboard each individual high school or school district, transitioning vendors could disrupt the transcript sending and receiving practices at Tennessee high schools and higher education institutions. For context, the need for redeploying a transcript solution has resulted in taking approximately four years to return the volume of transcripts being sent to TSAC to levels commensurate with what was occurring at the close of the previous transcript exchange contract. 2. Implementation of a new solution would come at significant cost of time and effort among K12 and higher education staff. Currently, 172 high schools have completed the steps for full implementation. It takes approximately 15 hours to do the testing and setup necessary to use the system. So, if a new vendor were selected, high schools stand to commit 2,580 hours of effort to transition to a different solution. This estimate does not account for the 120 high schools that are currently in the implementation pipeline. Currently, 47 Tennessee higher education institutions are set up to receive electronic high school transcripts using the Electronic Transcript Exchange. Enrollment at these 47 institutions represents 79% of the students enrolled at Tennessee postsecondary institutions. Additionally, the Tennessee Board of Regents has spent hundreds of hours customizing their student information system output to not only take full advantage of the currently

	<p>procured system but also further enhance their institutions' efficiencies by leveraging the transmission of electronic data.</p> <ol style="list-style-type: none"><li data-bbox="1019 323 1520 659">3. Contract costs for the current procurement with the National Student Clearinghouse were approximately half of the proposed costs of the second highest ranking respondent to the 2015 request for proposals. Furthermore, costs proposed by the National Student Clearinghouse for the new procurement are 16.7 percent less than the current contract costs due to the fact that a continuation of services would not require new development or implementation costs.<li data-bbox="1019 688 1520 1024">4. The current system has become a key component to key business systems. High schools are increasingly using the Exchange to verify student's eligibility for state aid. Last year, the current system sent 33,720 high school transcripts to e*GRandS, Tennessee's financial aid data system, for the purpose of determining TELS eligibility. During the 2018- 2019 academic year, TSAC used Tennessee Electronic Transcript Exchange data to determine eligibility for state aid for 25.9% of high school seniors in the state.
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Request Tracking #	
For No Cost and Revenue Contracts Only	
21. What costs will the State incur as a result of this contract? If any, please explain.	
22. What is the total estimated revenue that the State would receive as a result of this contract?	
23. Could the State also contract with other parties interested in entering substantially the same agreement? Please explain.	<input type="checkbox"/> NO <input type="checkbox"/> YES
24. Summary of State responsibilities under proposed contract	
For Sole Source and Proprietary Procurements Only	
25. Evidence of Contractor's experience & length of experience providing the goods or services to be procured.	<p>Founded in 1993 by the higher education community, the National Student Clearinghouse relieves the administrative burdens and costs related to student data reporting and exchange. NSC is a 501(c)(6) nonprofit and nongovernmental organization and the leading provider of educational reporting, data exchange, verification, and research services.</p> <p>NSC provides this information in a trusted, secure and private environment, and provides numerous time- and cost-saving benefits to students, schools, administrators, and requestors.</p> <p>More than 3,600 colleges and universities participate in the Clearinghouse, reporting enrollment and degree information to NSC throughout the year. Participating entities enroll 98% of all students in public and private U.S. institutions. NSC provides these services at affordable rates, saving higher education institutions over \$500 million annually.</p> <p>Additionally, the NSC Research Center, a 501(c)(3) nonprofit organization, provides educators and policymakers with accurate longitudinal data on student outcomes to enable informed decision making.</p> <p>NSC services are designed to facilitate an institution's compliance with the Family Educational Rights and Privacy Act, The Higher Education Act, and other applicable laws.</p>

Request Tracking #	
<p>26. Has the contracting agency procured the subject goods or services before? If yes, provide the method used to purchase the goods or services and the name and address of the contractor.</p>	<p><input type="checkbox"/> NO <input checked="" type="checkbox"/> YES</p> <p>Method: Competitive RFP</p> <p>Name/Address: Noted above</p>
<p>27. Contractor selection process and efforts to identify reasonable, competitive, procurement alternatives</p>	<p>For the reasons outlined above, there are no competitive, procurement alternatives.</p> <p>THEC has contracted with NSC since 2005 to provide the student enrollment and academic achievements of Tennessee students that are attending, or have attended, out-of-state institutions for the SIS maintained by THEC to fulfill statutory reporting requirements.</p> <p>NSC has been a trusted partner to the higher education community since 1993 and now provides verification and reporting services to most of the postsecondary institutions in the U.S. NSC also provides online enrollment reporting for U.S. students to hundreds of international postsecondary institutions.</p>
<p>Signature Required for all Special Contract Requests</p>	
<p>Signature of Agency head or authorized designee, title of signatory, and date (the authorized designee may sign his or her own name if indicated on the Signature Certification and Authorization document)</p> <p> <u>Mike Krause (May 6, 2020)</u></p> <p>Signature: _____ Date: _____</p>	

Edison Approvals

1. Rule Exception Request – Seq. # 2363

RER Technology

Subject 33201-00321 ID 66059 NSC RER Add

Review/Edit Approvers

RER Technology

▼ **RER Technology: 2363:Approved** View/Hide Comments

RER Technology

Approved Matthew S Sloan Agency Forms Approver 06/22/20 - 10:52 AM	Approved Kevin Wieck CPO Tech Forms Approver 06/22/20 - 1:45 PM	Approved Bryan S Chriske COT Treasury Forms Approver 06/23/20 - 2:31 PM
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▶ **Comments**

OK

2. Rule Exception Request – Seq. # 1914

RER Technology

Subject 33201-00321 ID 66059 NSC RER Temp Change

Review/Edit Approvers

RER Technology

▼ **RER Technology: 1914:Approved** View/Hide Comments

RER Technology

Approved Matthew S Sloan Agency Forms Approver 05/12/20 - 11:31 AM	Approved Kevin Wieck CPO Tech Forms Approver 05/13/20 - 8:32 AM	Approved Bryan S Chriske COT Treasury Forms Approver 05/15/20 - 10:53 AM
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▶ **Comments**

▶ **Comment History**

OK

3. Special Contract Request – Sole Source – Seq. # 1917

SCR Technology

Subject 33201-00321 ID 66059 NSC SCR

Review/Edit Approvers

SCR Technology

▼ **SCR Technology: 1917:Approved** View/Hide Comments

SCR Technology

Approved Matthew S Sloan Agency Forms Approver 05/12/20 - 10:32 AM	Approved William Harmon III CPO Sourcing Forms Approver 05/12/20 - 11:16 AM	Approved Kevin Wieck CPO Tech Forms Approver 05/12/20 - 2:49 PM	Approved Christopher Salita CPO Director Forms Approver 05/13/20 - 9:28 AM	Approved Terry L. Mason COT Treasury Forms Approver 05/15/20 - 2:53 AM
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▶ **Comments**

OK



STS Pre-Approval Endorsement Request E-Mail Transmittal

TO : STS Contracts
Department of Finance & Administration
https://tn.service-now.com/sp?id=sc_cat_item&sys_id=a912fd4213b46b80316a73d36144b097

For additional instructions please visit:
<https://www.teamtn.gov/sts/planning-services/information-systems-planning/endorsement-request.html>

FROM : Heather King
E-mail : Heather.King@tn.gov

DATE : 4/2/2020 Received by STS on Tuesday, April 28, 2020

RE : Request for STS Pre-Approval Endorsement

Applicable RFS # 33201-00321 (END0000373)

State Security Confidential Information Applicability

Under Tenn. Code Ann. §10-7-504(i) vendor identity or a description of the goods or services provided by the vendor shall be confidential.

- Applicable
 Not Applicable

Additional language is attached and endorsement is contingent upon inclusion of this additional language:

- Applicable
 Not Applicable

STS Endorsement Signature & Date:

**Stephanie Dedmon,
CIO (WMH)**

Digitally signed by Stephanie
Dedmon, CIO (WMH)

Date: 2020.05.05 14:35:23 -05'00'

Chief Information Officer

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

Applicable RFS # 33201-00321

Strategic Technology Solutions (STS) pre-approval endorsement is required pursuant to procurement regulations pertaining to contracts with information technology as a component of the scope of service. This request seeks to ensure that STS is aware of and has an opportunity to review the procurement detailed below and in the attached document(s). This requirement applies to any procurement method regardless of dollar amount.

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

Contracting Agency	Tennessee Higher Education Commission (THEC)
Agency Contact (name, phone, e-mail)	Amber Walsh (615) 532-3500 Amber.Walsh@tn.gov
<p>Attachments Supporting Request (mark all applicable)</p> <p>Note: The complete draft procurement document and the applicable documents listed below must accompany this request when submitted to STS. Special Contract Requests and Amendment Requests without Agency Head signature are acceptable. STS is aware that these documents will not have CPO signature when submitted with this request.</p> <p> <input type="checkbox"/> Solicitation Document <input checked="" type="checkbox"/> Special Contract Request <input type="checkbox"/> Amendment Request <input checked="" type="checkbox"/> Proposed Contract/Grant or Amendment <input type="checkbox"/> Original Contract/Grant and Previous Amendments (if any) </p>	
<p>Information Systems Plan (ISP) Project Applicability</p> <p>To avoid delay of STS pre-approval, the applicability of an ISP project to the procurement must be confirmed with agency IT staff prior to submitting this request to STS. If necessary, agency IT staff should contact STS Planning with questions concerning the need for an ISP project.</p> <p>IT Director/Staff Name Confirming (required): Heather King</p> <p> <input type="checkbox"/> Applicable – Approved ISP Project# <input type="checkbox"/> Not Applicable </p>	
<p>Subject Information Technology Service Description</p> <p>Provide a brief summary of the information technology services involved. Clearly identify included technologies such as system development/maintenance, security, networking, etc. As applicable, identify the contract or solicitation sections related to the IT services.</p> <p>THEC is proposing to contract with the National Student Clearinghouse (NSC) for the provision of a statewide transcript exchange.</p> <p>THEC currently contracts with NSC, and has since 2015, to provide THEC, the Tennessee Department of Education (TDOE), and the Tennessee Student Assistance Corporation (TSAC) with the facilitation of the electronic movement of transcript data between K-12 and higher education sectors for the purpose of verifying students' eligibility for the Tennessee Education Lottery Scholarship (TELS) awards.</p>	

Applicable RFS # 33201-00321

NSC has requested multiple changes to the contract language template on a contract with THEC last year for a different service. As a result, the Central Procurement Office (CPO) negotiated language along with STS. This negotiated language is in this contract draft and we are requesting to continue to use this prior negotiated language.

The Special Contract Request, pursuant to the supporting document instructions above, is attached as Attachment A.

The draft fee-for-service contract, pursuant to the supporting document instructions above, is attached as Attachment B. NSC's requested template changes are in redline, and THEC is submitting a Rule Exception Request for each change to the Central Procurement Office (CPO). Relevant IT/ security sections of the contract are as follows:

A.7. System Infrastructure, A.8. Electronic File Transfer System, A.9. Database Integration, A.10. User Management System, A.11. Notification Functionality, A.12. Reporting Functionality, A.14. System Security and Privacy, A.15. System Performance and Maintenance, A.16. Disaster Recovery Plan, A.19. Defects, A.20. Warranty, D.19. Hold Harmless, D.34. Confidentiality of Records, E.4. Extraneous Terms and Conditions, E.5. Contractor Hosted Services Confidential Data, Audit, and Other Requirements, E.6. Family Educational Rights and Privacy Act & Tennessee Data Accessibility, Transparency, and Accountability Act (FERPA), and E.8. Personally Identifiable Information (PII).

**CONTRACT**

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

Begin Date 10/26/2020	End Date 10/25/2025	Agency Tracking # 33201-00321	Edison Record ID 66059		
Contractor Legal Entity Name National Student Clearinghouse (NSC)			Edison Vendor ID 0000037980		
Goods or Services Caption (one line only) Statewide Electronic Transcript Exchange Services					
Contractor <input checked="" type="checkbox"/> Contractor		CFDA #			
Funding —					
FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
21			\$400,000.00		\$400,000.00
22			\$400,000.00		\$400,000.00
23			\$400,000.00		\$400,000.00
TOTAL:			\$1,200,000.00		\$1,200,000.00
Contractor Ownership Characteristics:					
<input type="checkbox"/> Minority Business Enterprise (MBE): <input type="checkbox"/> African American <input type="checkbox"/> Asian American <input type="checkbox"/> Hispanic American <input type="checkbox"/> Native American					
<input type="checkbox"/> Woman Business Enterprise (WBE)					
<input type="checkbox"/> Tennessee Service Disabled Veteran Enterprise (SDVBE)					
<input type="checkbox"/> Disabled Owned Business (DSBE)					
<input type="checkbox"/> Tennessee Small Business Enterprise (SBE): \$10,000,000.00 averaged over a three (3) year period or employs no more than ninety-nine (99) employees.					
<input type="checkbox"/> Government <input type="checkbox"/> Non-Minority/Disadvantaged <input checked="" type="checkbox"/> Other: None- M/W/SB					
Selection Method & Process Summary (mark the correct response to confirm the associated summary)					
<input type="checkbox"/> Competitive Selection					
<input checked="" type="checkbox"/> Other					
A competitive Request for Proposal procurement was previously conducted pursuant to Tenn. Comp. R. & Regs. Chapter 0960-03-01-.05(2). We have obtained a Special Contract Request for a Sole Source Contract for this contract.					
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.					
Jason Cavender, Chief Financial Officer 615.532.8303					
Speed Chart (optional)			Account Code (optional)		

3320105110

010240

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**CONTRACT
BETWEEN THE STATE OF TENNESSEE,
TENNESSEE HIGHER EDUCATION COMMISSION
AND
NATIONAL STUDENT CLEARINGHOUSE**

This Contract, by and between the State of Tennessee, Tennessee Higher Education Commission, hereinafter referred to as "THEC" or "State" and National Student Clearinghouse, hereinafter referred to as "NSC" or "Contractor," is for the provision of a statewide electronic transcript exchange, as further defined in the "SCOPE." State and Contractor may be referred to individually as a "Party" or collectively as the "Parties" to this Contract.

The Contractor is a Non-Profit Corporation.
Contractor Place of Incorporation or Organization: Virginia
Contractor Edison Registration ID: 0000037980

A. SCOPE:

A.1. The Contractor shall provide all goods or services and deliverables as required, described, and detailed below and shall meet all service and delivery timelines as specified by this Contract.

A.2. Definitions. For purposes of this Contract, definitions shall be as follows and as set forth in the Contract:

- a. Financial Aid System of Tennessee ("FAST"): The electronic grants and scholarships system, formerly known as e*GRandS, used to administer the application, payment, and reporting process of the Tennessee Promise Scholarship
- b. GPA: Grade Point Average
- c. SIS: THEC's Student Information System Database that collects student data, including demographics, attempted hours, GPAs, financial aid data, TELS data, and transfer information for every college student at public and private institutions in Tennessee that receive lottery funding
- d. System: Web-based electronic transcript data exchange service for Tennessee high schools and Tennessee institutions of higher education
- e. TCAT: Tennessee College of Applied Technology
- f. TELS Program: Tennessee Education Lottery Scholarship Program
- g. Transcript: An official record of a student's performance at a high school or institution of higher education
- h. Users: Employees of Tennessee public and private high schools, Tennessee institutions of higher education, students, and parents/guardians

A.3. System. NSC shall deploy and implement a solution that facilitates the movement of Transcripts between high schools and higher education institutions, high schools and TSAC, and between higher education institutions. The System shall also provide a solution for the electronic movement of homeschool students' Transcripts. The System shall provide for the flow of Transcripts to other databases managed by THEC, including, but not limited to, SIS and FAST.

A.4. Project Plan. Before the second quarter of the first contract year, NSC shall provide a project plan to THEC for the third and fourth quarters of the first contract year. Each contract year thereafter, the project plan shall be provided to the THEC project manager thirty (30) calendar days prior to the start of the new year of the Contract. The project plan will contain the following: (1) an outline of NSC's plans to maintain and update the System; (2) product timelines; (3) identification of

Contractor and THEC responsibilities, respectively; (4) schedule of meetings and key business rules for communication between Contractor and THEC; (5) internal and external stakeholder training schedule, if appropriate; (6) names and title of key implementation staff; and (7) a report of all deliverables identified in the previous project plan.

THEC will assist NSC in identifying updates to the project plan. After these updates have been identified, NSC will accept the project plan, make the necessary updates, and submit to THEC for review and approval. Upon approval, NSC shall assume ongoing maintenance responsibilities for the project plan in coordination with THEC as needed. NSC will report quarterly on the project progress to the project manager. This report will detail completed, usable, functional aspects of the project as well as listing the next quarter's development effort.

A.5. System Infrastructure. The System provided by NSC shall, at minimum, include the following system infrastructure requirements:

- a. User access through a secure, web-based portal hosted by NSC;
- b. Infrastructure that ensures Users can easily and without the purchase of dedicated servers or software send and receive Transcripts;
- c. A web-based User interface for ordering or requesting Transcripts from high schools or higher education institutions;
- d. A web-based User interface for fulfilling Transcript requests from students, parents, and higher education institutions;
- e. A web-based User interface for retrieving and requesting Transcripts from all TELS- eligible high schools;
- f. A web-based User interface for retrieving and requesting Transcripts from all TELS-eligible higher education institutions and all TCATs;
- g. Capability for local printing of Transcripts by high school or higher education personnel for a single student, or all students; and
- h. Compliance with Section 508 (29 U.S.C. 794d), of the Rehabilitation Act, as amended.

A.6. Electronic File Transfer System. The System must meet the following file transfer system requirements:

- a. Support for appropriate education industry-accepted Postsecondary Electronic Standards Council (PESC) data standards and specifications and the capability to transmit Transcripts to destinations as PESC XML data files, not PDF files wrapped in XML. The System must also support SPEEDE EDI, PDF, and CSV file formats;
- b. The capability for participating K-12 entities, encompassing public, private, and homeschooled students, to request Transcripts be sent to the institution or entity of their choice, including TSAC and the National Collegiate Athletic Association (NCAA) Clearinghouse;
- c. The capability for higher education students and entities to request Transcripts be sent to the institution or entity of their choice, and the capability to send to multiple institutions at one time;
- d. The capability of higher education entities to receive both XML and PDF versions of a Transcript simultaneously.
- e. The capability for students and parents/guardians, in the case of a minor, to request high school Transcripts to be sent to the institution or entity of their choice, and to multiple

institutions at one time. Parents/guardians of minors cannot request college Transcripts of minors;

- f. Users will not be charged for the sending of high school electronic Transcripts;
- g. Users will not be charged for the sending of electronic Transcripts of students currently enrolled at a postsecondary institution participating in the System to other Tennessee higher education institutions participating in the System. Any fee charged to students sending transcripts outside of the System must be at a rate approved by the State;
- h. Users will not be charged for the sending of electronic Transcripts to TSAC;
- i. Transcripts sent to TSAC will include the GPA calculated by Tennessee high schools using the uniform grading policy and all data necessary for an independent calculation of students' GPAs used for TELS eligibility determination.

A.7. Database Integration. The System shall provide for the seamless integration and extraction of Transcripts into K-12, higher education, and data systems operated by the State. Database integration functionality shall meet the following requirements:

- a. NSC shall provide and implement the technology necessary to integrate Transcripts into the student information systems housed and maintained by TELS-eligible higher education institutions and TCATs that choose to use NSC supplied transcript system, including, but not limited to, Ellucian Company L.P.'s Banner and Colleague systems;
- b. NSC will provide and implement automated Transcript extraction and sending functionality for all major student information systems used by Tennessee K12 school districts;
- c. The System must provide for the flow of Transcripts to state managed databases, including, but not limited to, the SIS, the Internet-based lottery scholarship delivery system FAST, and Tennessee's reverse transcript system; and
- d. NSC shall provide the capability to link the System to Tennessee's college access and success web portal, www.CollegeforTN.org, administered by the THEC Office of P-16 Initiatives.

A.8. User Management System. The System shall include a User management system based on industry best practices and include:

- a. Processes for User authentication, access management, role-based security architecture, security rules and regulations, and a single sign-on.
- b. The capability to import Users and profiles, verify electronic mailing addresses, enforce utilization of a strong password, capacity for user to change their passwords at any time, and capability to retrieve forgotten username and/or password information.

A.9. Notification Functionality. The System shall provide a system of notifications to ensure effective System use. Private and confidential information will not be displayed within notifications. Notification functionality will include:

- a. A combination of automated electronic email, mobile, and portal messaging notifications;
- b. Workflow transaction notification throughout the Transcript transfer process;
- c. Transaction receipt notification for Users;
- d. Notification when an error in transmission has occurred; and

- e. Reminder notification if the expected User action is not taken within a predetermined time frame. Reminders will be automatic until the action has been taken or the transaction is cancelled by the User.
- A.10. Reporting Functionality. The System shall provide for the tracking and logging of all system transactions. Reporting functionality shall meet the following requirements:
- a. The capability for Users to view their transaction file and request logs;
 - b. The capability for Users to view transaction workflow status; and
 - c. The capability for THEC staff to view User and system-wide transactions, including, but not limited to, transactions by individual high school, higher education institution, etc.
- A.11. Outreach and Training. Successful implementation of Tennessee's electronic transcript exchange is dependent upon the number of System Users; therefore, NSC shall, in partnership with THEC, develop and implement plans for outreach, recruitment, and training of Tennessee's education entities. The draft outreach and training plan is due to THEC within thirty (30) days following the contract start date. The draft outreach and training plan shall include, at minimum:
- a. Articulation of a statewide marketing plan to implement the System;
 - b. Plans to onboard a critical mass of all public and private high schools onto the System;
 - c. Plans to onboard a critical mass of Tennessee higher education institutions onto the System;
 - d. Development of documents and public relations materials that describe the System and the benefits the System brings Users;
 - e. Training materials and sessions for Users of the System, including web-based training options; and
 - f. Technical assistance documentation for Users on how to use System tools.

Upon receipt of the draft plan, a project kick-off meeting shall be scheduled for THEC and NSC staff to review and discuss the draft and finalize the outreach and training plan.

- A.12. System Security and Privacy. The student record and transcript exchange System shall use and disclose personally identifiable information (PII) only according to applicable state and federal law. All PII must be transferred and stored securely. NSC proposed solution must provide adequate measures to ensure all housed or transmitted PII is protected against unauthorized disclosure, modification, transfer, or destruction, whether accidental or intentional.

NSC shall comply with all state and federal data breach notification laws and provide timely notification and no-cost credit monitoring services to individuals that may be impacted by a breach or unauthorized access, use, release, or disclosure of PII, pursuant to Section E.8.

The System must meet or exceed federal and state privacy and security standards including, but not limited to, the Family Educational Rights and Privacy Act (FERPA) and the Children's Online Privacy Protection Act (COPPA).

The System must meet, or exceed, the following security requirements:

- a. The capability to apply field-level and server encryption;
- b. Auditing and transaction logging functionality;
- c. Capability of establishing "timeout" and "terminate session" limited by type of User;

- d. Secure role-based access for User accounts;
 - e. Regular vulnerability patching and security updates for associated applications;
 - f. Adequate physical security of facilities housing the hosted solution;
 - g. Network security for the System;
 - h. Unique log-on for each User;
 - i. Capability to require passwords for each User that will expire on a staggered schedule;
 - j. Role-based security to define access levels by User groups; and
 - k. Safeguards that prevent unauthorized modifications to the System and the data contained within.
 - l. Meet all other requirements outlined in Section E.6.
- A.13. System Performance and Maintenance. The System will be available 99.5 percent of the time in any given calendar quarter, excluding interruptions resulting from scheduled maintenance, user equipment or LAN failure, and User-caused disruptions including without limitations, THEC's failure to timely respond to information requests by NSC; interconnections to or from the internet; or force majeure events, i.e., events that are beyond NSC's control, including without limitation, any interruptions caused by third parties outside of NSC's control.

Scheduled maintenance should occur during the period between 12 a.m. and 3 a.m. Central Standard Time (CST). Additionally, NSC may perform scheduled maintenance from 9 p.m. CST Sunday through 3 a.m. CST Monday, or at any time by providing notice to THEC at least five (5) business days in advance of the interruption. Any scheduled maintenance set forth in such a notice, must be acknowledged and approved by THEC in writing; provided, however, that if THEC does not provide such approval or rejection prior to the start of such scheduled maintenance, THEC will be deemed to have approved the scheduled maintenance. This notice and approval requirement does not apply to the regularly- scheduled maintenance window or without notification and approval for other scheduled maintenance will be considered unscheduled maintenance and count as System unavailability.

In the case of unscheduled maintenance or service interruption, NSC agrees to immediately notify THEC of the nature of the interruption. NSC will comply with the service-level requirements as outlined in the Service Level Agreement as Attachment A.

- A.14. Technical Assistance. NSC will provide technical support for Users and THEC staff on use of the System. Technical assistance must be available Monday – Friday, 8:00 a.m. – 6:00 p.m. CST.

At a minimum, the technical assistance shall include:

- a. A toll-free telephone number to be answered at NSC's location during published technical assistance times. NSC will also provide a mailbox for messages, including an automated message offering optional support options during peak or off times.
 - b. A technical assistance email address monitored during published technical assistance times.
 - c. Web-based tutorials for common support issues.
- A.15. Functional Design Requirements. THEC may, at its sole discretion and with written notice to NSC, request functional development revisions to the System not included in development and implementation as noted in Contract Sections A.5. and A.6., in addition to the development hours

included within the scope of the contract as noted in Contract Section C.3.b., and shall not exceed thirty (30) hours per month, according to a priority schedule as provided by THEC.

a. Functional Design Document. No more than ten (10) business days after receiving a signed, finalized functional design document from THEC, NSC shall respond with a written proposal for completing the service. Said proposal must specify:

- (1) The effect, if any, of implementing the requested change(s) on all other services required under this Contract;
- (2) The specific effort involved in completing the change(s);
- (3) The expected date for User Acceptance Testing;
- (4) The expected schedule for completing the change(s);
- (5) The maximum number and type of person hours required for the change(s); and
- (6) Maximum cost for any change(s), PROVIDED THAT such maximum cost shall not exceed the product of the person hours required multiplied by the appropriate payment rate proposed for functional design work.

NSC shall not perform any functional design service until THEC has approved the functional design proposal. If approved, THEC will sign the functional design proposal, and it shall constitute a Memorandum of Understanding (MOU) between the Contract Parties pertaining to the specified change(s) and shall be incorporated, hereby, as part of this Contract.

b. Functional Design Performance. Subsequent to THEC approval of an MOU, NSC shall complete the required functional design services. THEC shall perform User Acceptance Testing as applicable before providing written approval of the work performed. THEC will be the sole judge of the acceptable completion of functional design work and, upon such determination, shall provide NSC written approval of the work.

c. Functional Design Remuneration. THEC will remunerate NSC only for acceptable work, to be determined at THEC's discretion in a manner consistent with the reasonable expectations of NSC. All acceptable work performed pursuant to an approved MOU, without a formal amendment of this Contract, shall be remunerated in accordance with and further limited by contract Section C.3.(c.), PROVIDED THAT, THEC shall be liable to NSC only for the cost of the actual person hours worked to complete the functional design work, not to exceed the maximum cost for the change detailed in the MOU. In no instance shall THEC be liable to NSC for the cost of any person hours worked in excess of the maximum person hours indicated in or of any amount exceeding the maximum cost specified by the approved MOU authorizing the service. Upon THEC's approval of the functional design work, NSC shall invoice THEC in accordance with the relevant provisions of this Contract.

A.17. Defects. Any corrections of deficiencies relating to this Contract and any investigation necessary to determine the source of the deficiencies shall not be considered additional work and shall be made at no additional costs to THEC.

Any defect in software utilized by, but not created by NSC, to deliver services contained in this Contract, upon verification of the defect will be reported within forty-eight (48) hours to the appropriate software vendor. NSC shall utilize all appropriate and reasonable means to assist the vendor in resolving the defect in a timely manner and shall install any software updates to correct the defect within forty-eight (48) hours of receiving the appropriate software update and completion of validation testing.

a. Defects Defined. The following is a non-exclusive list of events that THEC classifies as defects or deficiencies:

- (1) Total failure of the software or hardware;
- (2) Unrecoverable data loss;
- (3) Failure of individual System components;
- (4) Erroneous data preventing correct billing for services;
- (5) System or files cannot be accessed by Users;
- (6) Loss of functionality; and
- (7) Missing data files or program files after software or hardware updates.

- A.18. Warranty. Contractor represents and warrants that the term of the warranty (“Warranty Period”) shall be the greater of the Term of this Contract or any other warranty generally offered by Contractor, its suppliers, or manufacturers to customers of its goods or services. The goods or services provided under this Contract shall conform to the terms and conditions of this Contract throughout the Warranty Period. Any nonconformance of the goods or services to the terms and conditions of this Contract shall constitute a “Defect” and shall be considered “Defective.” If Contractor receives notice of a Defect during the Warranty Period, then Contractor shall correct the Defect, at no additional charge.

Contractor represents and warrants that the State is authorized to use all equipment, materials, software, and deliverables as provided for under this Contract, subjected to the restriction contained herein.

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

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

- A.19. Inspection and Acceptance. The State shall have the right to inspect all goods or services provided by Contractor under this Contract. If, upon inspection, the State determines that the goods or services are Defective, the State shall notify Contractor, and Contractor shall re-deliver the goods or provide the services at no additional cost to the State. If after a period of thirty (30) days following delivery of goods or performance of services the State does not provide a notice of any Defects, the goods or services shall be deemed to have been accepted by the State.

B. TERM OF CONTRACT:

This Contract shall be effective on October 26, 2020 (“Effective Date”) and ending on October 25, 2023 (“Term”). The State shall have no obligation for goods or services provided by the Contractor prior to the Effective Date.

- B.1. Renewal Options. This Contract may be renewed upon satisfactory completion of the Term. The State reserves the right to execute up to two (2) renewal options under the same terms and conditions for a period not to exceed twelve (12) months each by the State, at the State’s sole option. In no event, however, shall the maximum Term, including all renewals or extensions, exceed a total of sixty (60) months.

C. PAYMENT TERMS AND CONDITIONS:

- C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed One Million Two Hundred Thousand Dollars (\$1,200,000.00) ("Maximum Liability"). This Contract does not grant the Contractor any exclusive rights. The State does not guarantee that it will buy any minimum quantity of goods or services under this Contract. Subject to the terms and conditions of this Contract, the Contractor will only be paid for goods or services provided under this Contract after a purchase order is issued to Contractor by the State or as otherwise specified by this Contract.
- C.2. Compensation Firm. The payment methodology in Section C.3. of this Contract shall constitute the entire compensation due the Contractor for all goods or services provided under this Contract regardless of the difficulty, materials or equipment required. The payment methodology includes all applicable taxes, fees, overhead, and all other direct and indirect costs incurred or to be incurred by the Contractor.
- C.3. Payment Methodology. The Contractor shall be compensated based on the payment methodology for goods or services authorized by the State in a total amount as set forth in Section C.1.
- a. The Contractor's compensation shall be contingent upon the satisfactory provision of goods or services as set forth in Section A.
 - b. The Contractor shall be compensated based upon the following payment methodology:

Goods or Services Description	Amount (per compensable increment)
Quarterly Rate	\$100,000

- C.4. Travel Compensation. The Contractor shall not be compensated or reimbursed for travel time, travel expenses, meals, or lodging.
- C.5. Invoice Requirements. The Contractor shall invoice the State only for goods delivered and accepted by the State or services satisfactorily provided at the amounts stipulated in Section C.3., above. Contractor shall submit invoices and necessary supporting documentation, no more frequently than once a month, and no later than thirty (30) days after goods or services have been provided to the following address:

Tennessee Higher Education Commission
 312 Rosa L. Parks Ave.
 9th Floor, TN Tower
 Nashville, TN 37243

- a. Each invoice, on Contractor's letterhead, shall clearly and accurately detail all of the following information (calculations must be extended and totaled correctly):
 - (1) Invoice number (assigned by the Contractor);
 - (2) Invoice date;
 - (3) Contract number (assigned by the State);
 - (4) Customer account name: Tennessee Higher Education Commission, College Access Initiatives
 - (5) Customer account number (assigned by the Contractor to the above-referenced Customer);
 - (6) Contractor name;
 - (7) Contractor Tennessee Edison registration ID number;
 - (8) Contractor contact for invoice questions (name, phone, or email);

- (9) Contractor remittance address;
- (10) Description of delivered goods or services provided and invoiced, including identifying information as applicable;
- (11) Number of delivered or completed units, increments, hours, or days as applicable, of each good or service invoiced;
- (12) Applicable payment methodology (as stipulated in Section C.3.) of each good or service invoiced;
- (13) Amount due for each compensable unit of good or service; and
- (14) Total amount due for the invoice period.

b. Contractor's invoices shall:

- (1) Only include charges for goods delivered or services provided as described in Section A and in accordance with payment terms and conditions set forth in Section C;
- (2) Only be submitted for goods delivered or services completed and shall not include any charge for future goods to be delivered or services to be performed;
- (3) Not include Contractor's taxes, which includes without limitation Contractor's sales and use tax, excise taxes, franchise taxes, real or personal property taxes, or income taxes; and
- (4) Include shipping or delivery charges only as authorized in this Contract.

c. The timeframe for payment (or any discounts) begins only when the State is in receipt of an invoice that meets the minimum requirements of this Section C.5.

C.6. Payment of Invoice. A payment by the State shall not prejudice the State's right to object to or question any payment, invoice, or other matter. A payment by the State shall not be construed as acceptance of goods delivered, any part of the services provided, or as approval of any amount invoiced.

C.7. Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment that is determined by the State, on the basis of audits conducted in accordance with the terms of this Contract, to not constitute proper compensation for goods delivered or services provided.

C.8. Deductions. The State reserves the right to deduct from amounts, which are or shall become due and payable to the Contractor under this or any contract between the Contractor and the State of Tennessee, any amounts that are or shall become due and payable to the State of Tennessee by the Contractor.

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

- a. The Contractor shall complete, sign, and present to the State the "Authorization Agreement for Automatic Deposit Form" provided by the State. By doing so, the Contractor acknowledges and agrees that, once this form is received by the State, payments to the Contractor, under this or any other contract the Contractor has with the State of Tennessee, may be made by ACH; and
- b. The Contractor shall complete, sign, and return to the State the State-provided W-9 form. The taxpayer identification number on the W-9 form must be the same as the Contractor's Federal Employer Identification Number or Social Security Number referenced in the Contractor's Edison registration information.

D. MANDATORY TERMS AND CONDITIONS:

D.1. Required Approvals. The State is not bound by this Contract until it is duly approved by the Parties and all appropriate State officials in accordance with applicable Tennessee laws and regulations. Depending upon the specifics of this Contract, this may include approvals by the Commissioner of Finance and Administration, the Commissioner of Human Resources, the Comptroller of the

Treasury, and the Chief Procurement Officer. Approvals shall be evidenced by a signature or electronic approval.

- D.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by certified, first class mail, return receipt requested and postage prepaid, by overnight courier service with an asset tracking system, or by email or facsimile transmission with recipient confirmation. All communications, regardless of method of transmission, shall be addressed to the respective Party at the appropriate mailing address, facsimile number, or email address as stated below or any other address provided in writing by a Party.

The State:

Troy Grant, Senior Director for College Access Initiatives
Tennessee Higher Education Commission
312 Rosa L. Parks Ave.
9th Floor, TN Tower
Nashville, TN 37243
Troy.Grant@tn.gov
Telephone: 615.532.0423

Jason Cavender, Chief Financial Officer
Tennessee Higher Education Commission
312 Rosa L. Parks Ave.
9th Floor, TN Tower
Nashville, TN 37243
Jason.Cavender@tn.gov
Telephone: 615.532.8303

The Contractor:

Blair Fogarty, Contracts Manager
National Student Clearinghouse
2300 Dulles Station Blvd., Ste. 220
Herndon, VA 20171
contracts@studentclearinghouse.org
Telephone: 703.742.4458

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

- D.3. Modification and Amendment. This Contract may be modified only by a written amendment signed by all Parties and approved by all applicable State officials.
- D.4. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State or federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate this Contract upon written notice to the Contractor. The State's exercise of its right to terminate this Contract shall not constitute a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. If the State terminates this Contract due to lack of funds availability, the Contractor shall be entitled to compensation for all conforming goods requested and accepted by the State and for all satisfactory and authorized services completed as of the termination date. Should the State exercise its right to terminate this Contract due to unavailability of funds, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages of any description or amount.
- D.5. Termination for Convenience. The State may terminate this Contract for convenience without cause and for any reason. The State shall give the Contractor at least thirty (30) days written notice before the termination date. The Contractor shall be entitled to compensation for all conforming

goods delivered and accepted by the State or for satisfactory, authorized services completed as of the termination date. In no event shall the State be liable to the Contractor for compensation for any goods neither requested nor accepted by the State or for any services neither requested by the State nor satisfactorily performed by the Contractor. In no event shall the State's exercise of its right to terminate this Contract for convenience relieve the Contractor of any liability to the State for any damages or claims arising under this Contract.

- D.6. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor materially violates any terms of this Contract ("Breach Condition"), the State shall have the right to immediately terminate the Contract and withhold payments in excess of compensation for completed services or provided goods. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any Breach Condition and the State may seek other remedies allowed at law or in equity for breach of this Contract.
- D.7. Assignment and Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the goods or services provided under this Contract without the prior written approval of the State. Notwithstanding any use of the approved subcontractors, the Contractor shall be the prime contractor and responsible for compliance with all terms and conditions of this Contract. The State reserves the right to request additional information or impose additional terms and conditions before approving an assignment of this Contract in whole or in part or the use of subcontractors in fulfilling the Contractor's obligations under this Contract.
- D.8. Conflicts of Interest. The Contractor warrants that no part of the Contractor's compensation shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed under this Contract.

The Contractor acknowledges, understands, and agrees that this Contract shall be null and void if the Contractor is, or within the past six (6) months has been, an employee of the State of Tennessee or if the Contractor is an entity in which a controlling interest is held by an individual who is, or within the past six (6) months has been, an employee of the State of Tennessee.

- D.9. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of handicap or disability, age, race, creed, color, religion, sex, national origin, or any other classification protected by federal or state law. The Contractor shall, upon request, show proof of nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- D.10. Prohibition of Illegal Immigrants. The requirements of Tenn. Code Ann. § 12-3-309 addressing the use of illegal immigrants in the performance of any contract to supply goods or services to the state of Tennessee, shall be a material provision of this Contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Contract.
- a. The Contractor agrees that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation upon request, in writing, by submitting to the State a completed and signed copy of the document at Attachment B, semi-annually during the Term. If the Contractor is a party to more than one contract with the State, the Contractor may submit one attestation that applies to all contracts with the State. All Contractor attestations shall be maintained by the Contractor and made available to State officials upon request.
 - b. Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the Term, the Contractor shall obtain and retain a current, written

attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work under this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work under this Contract. Attestations obtained from subcontractors shall be maintained by the Contractor and made available to State officials upon request.

- c. The Contractor shall maintain records for all personnel used in the performance of this Contract. Contractor's records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.
 - d. The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of Tenn. Code Ann. § 12-3-309 for acts or omissions occurring after its effective date.
 - e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not: (i) a United States citizen; (ii) a Lawful Permanent Resident; (iii) a person whose physical presence in the United States is authorized; (iv) allowed by the federal Department of Homeland Security and who, under federal immigration laws or regulations, is authorized to be employed in the U.S.; or (v) is otherwise authorized to provide services under the Contract.
- D.11. Records. The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, for work performed or money received under this Contract, shall be maintained for a period of five (5) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.12. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- D.13. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.14. Strict Performance. Failure by any Party to this Contract to require, in any one or more cases, the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the Parties.
- D.15. Independent Contractor. The Parties shall not act as employees, partners, joint venturers, or associates of one another. The Parties are independent contracting entities. Nothing in this Contract shall be construed to create an employer/employee relationship or to allow either Party to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one Party are not employees or agents of the other Party.
- D.16. Patient Protection and Affordable Care Act. The Contractor agrees that it will be responsible for compliance with the Patient Protection and Affordable Care Act ("PPACA") with respect to itself and its employees, including any obligation to report health insurance coverage, provide health insurance coverage, or pay any financial assessment, tax, or penalty for not providing health insurance. The Contractor shall indemnify the State and hold it harmless from any costs to the State arising from Contractor's failure to fulfill its PPACA responsibilities for itself or its employees.
- D.17. Limitation of State's Liability. The State shall have no liability except as specifically provided in this Contract. In no event will the State be liable to the Contractor or any other party for any lost revenues, lost profits, loss of business, decrease in the value of any securities or cash position, time, goodwill, or any indirect, special, incidental, punitive, exemplary or consequential damages

of any nature, whether based on warranty, contract, statute, regulation, tort (including but not limited to negligence), or any other legal theory that may arise under this Contract or otherwise. The State's total liability under this Contract (including any exhibits, schedules, amendments or other attachments to the Contract) or otherwise shall under no circumstances exceed the Maximum Liability. This limitation of liability is cumulative and not per incident.

- D.18. Limitation of Contractor's Liability. In accordance with Tenn. Code Ann. § 12-3-701, the Contractor's liability for all claims arising under this Contract shall be limited to an amount equal to two (2) times the Maximum Liability amount detailed in Section C.1. and as may be amended, PROVIDED THAT in no event shall this Section limit the liability of the Contractor for: (i) intellectual property or any Contractor indemnity obligations for infringement for third-party intellectual property rights; (ii) any claims covered by any specific provision in the Contract providing for liquidated damages; or (iii) any claims for intentional torts, criminal acts, fraudulent conduct, or acts or omissions that result in personal injuries or death. For clarity, except as otherwise expressly set forth in this Section, Contractor's indemnification obligations and other remedies available under this Contract are subject to the limitations on liability set forth in this Section.
- D.19. Hold Harmless. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of intentional misconduct or negligent acts or omission on the part of the Contractor, its employees, or any person acting for or on its or their behalf relating to this Contract. The Contractor further agrees it shall be liable for the reasonable cost of attorneys' fees, court costs, expert witness fees, and other litigation expenses for the State to enforce the terms of this Contract.

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

- D.20. HIPAA Compliance. The State and Contractor shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), Health Information Technology for Economic and Clinical Health ("HITECH") Act and any other relevant laws and regulations regarding privacy (collectively the "Privacy Rules"). The obligations set forth in this Section shall survive the termination of this Contract.
- a. Contractor warrants to the State that it is familiar with the requirements of the Privacy Rules, and will comply with all applicable requirements in the course of this Contract.
 - b. Contractor warrants that it will cooperate with the State, including cooperation and coordination with State privacy officials and other compliance officers required by the Privacy Rules, in the course of performance of the Contract so that both parties will be in compliance with the Privacy Rules.
 - c. The State and the Contractor will sign documents, including but not limited to business associate agreements, as required by the Privacy Rules and that are reasonably necessary to keep the State and Contractor in compliance with the Privacy Rules. This provision shall not apply if information received or delivered by the parties under this Contract is NOT "protected health information" as defined by the Privacy Rules, or if the Privacy Rules permit the parties to receive or deliver the information without entering into a business associate agreement or signing another document.
 - d. The Contractor will indemnify the State and hold it harmless for any violation by the Contractor or its subcontractors of the Privacy Rules. This includes the costs of responding to a breach of protected health information, the costs of responding to a government

enforcement action related to the breach, and any fines, penalties, or damages paid by the State because of the violation.

- D.21. Tennessee Consolidated Retirement System. Subject to statutory exceptions contained in Tenn. Code Ann. §§ 8-36-801, *et seq.*, the law governing the Tennessee Consolidated Retirement System ("TCRS"), provides that if a retired member of TCRS, or of any superseded system administered by TCRS, or of any local retirement fund established under Tenn. Code Ann. §§ 8-35-101, *et seq.*, accepts State employment, the member's retirement allowance is suspended during the period of the employment. Accordingly and notwithstanding any provision of this Contract to the contrary, the Contractor agrees that if it is later determined that the true nature of the working relationship between the Contractor and the State under this Contract is that of "employee/employer" and not that of an independent contractor, the Contractor, if a retired member of TCRS, may be required to repay to TCRS the amount of retirement benefits the Contractor received from TCRS during the Term.
- D.22. Tennessee Department of Revenue Registration. The Contractor shall comply with all applicable registration requirements contained in Tenn. Code Ann. §§ 67-6-601 – 608. Compliance with applicable registration requirements is a material requirement of this Contract.
- D.23. Debarment and Suspension. The Contractor certifies, to the best of its knowledge and belief, that it, its current and future principals, its current and future subcontractors and their principals:
- a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency;
 - b. have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
 - c. are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed in section b. of this certification; and
 - d. have not within a three (3) year period preceding this Contract had one or more public transactions (federal, state, or local) terminated for cause or default.

The Contractor shall provide immediate written notice to the State if at any time it learns that there was an earlier failure to disclose information or that due to changed circumstances, its principals or the principals of its subcontractors are excluded, disqualified, or presently fall under any of the prohibitions of sections a-d.

- D.24. Force Majeure. "Force Majeure Event" means fire, flood, earthquake, elements of nature or acts of God, wars, riots, civil disorders, rebellions or revolutions, acts of terrorism or any other similar cause beyond the reasonable control of the Party except to the extent that the non-performing Party is at fault in failing to prevent or causing the default or delay, and provided that the default or delay cannot reasonably be circumvented by the non-performing Party through the use of alternate sources, workaround plans or other means. A strike, lockout or labor dispute shall not excuse either Party from its obligations under this Contract. Except as set forth in this Section, any failure or delay by a Party in the performance of its obligations under this Contract arising from a Force Majeure Event is not a default under this Contract or grounds for termination. The non-performing Party will be excused from performing those obligations directly affected by the Force Majeure Event, and only for as long as the Force Majeure Event continues, provided that the Party continues to use diligent, good faith efforts to resume performance without delay. The occurrence of a Force Majeure Event affecting Contractor's representatives, suppliers, subcontractors, customers or business apart from this Contract is not a Force Majeure Event under this Contract. Contractor will

- promptly notify the State of any delay caused by a Force Majeure Event (to be confirmed in a written notice to the State within one (1) day of the inception of the delay) that a Force Majeure Event has occurred, and will describe in reasonable detail the nature of the Force Majeure Event. If any Force Majeure Event results in a delay in Contractor's performance longer than forty-eight (48) hours, the State may, upon notice to Contractor: (a) cease payment of the fees for the affected obligations until Contractor resumes performance of the affected obligations; or (b) immediately terminate this Contract or any purchase order, in whole or in part, without further payment except for fees then due and payable. Contractor will not increase its charges under this Contract or charge the State any fees other than those provided for in this Contract as the result of a Force Majeure Event.
- D.25. State and Federal Compliance. The Contractor shall comply with all State and federal laws and regulations applicable to Contractor in the Contractor's performance of this Contract.
- D.26. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee, without regard to its conflict or choice of law rules. The Tennessee Claims Commission or the state or federal courts in Tennessee shall be the venue for all claims, disputes, or disagreements arising under this Contract. The Contractor acknowledges and agrees that any rights, claims, or remedies against the State of Tennessee or its employees arising under this Contract shall be subject to and limited to those rights and remedies available under Tenn. Code Ann. §§ 9-8-101 - 408.
- D.27. Entire Agreement. This Contract is complete and contains the entire understanding between the Parties relating to its subject matter, including all the terms and conditions of the Parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the Parties, whether written or oral.
- D.28. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions of this Contract shall not be affected and shall remain in full force and effect. The terms and conditions of this Contract are severable.
- D.29. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.
- D.30. Incorporation of Additional Documents. Each of the following documents is included as a part of this Contract by reference. In the event of a discrepancy or ambiguity regarding the Contractor's duties, responsibilities, and performance under this Contract, these items shall govern in order of precedence below:
- a. any amendment to this Contract, with the latter in time controlling over any earlier amendments;
 - b. this Contract with any attachments or exhibits (excluding the items listed at subsections c. through f., below), which includes Service Level Agreement as Attachment A;
 - c. any clarifications of or addenda to the Contractor's proposal seeking this Contract;
 - d. the State solicitation, as may be amended, requesting responses in competition for this Contract;
 - e. any technical specifications provided to proposers during the procurement process to award this Contract; and
 - f. the Contractor's response seeking this Contract.
- D.31. Iran Divestment Act. The requirements of Tenn. Code Ann. § 12-12-101, *et seq.*, addressing contracting with persons as defined at Tenn. Code Ann. §12-12-103(5) that engage in investment activities in Iran, shall be a material provision of this Contract. The Contractor certifies, under penalty of perjury, that to the best of its knowledge and belief that it is not on the list created pursuant to Tenn. Code Ann. § 12-12-106.

D.32. Insurance. Contractor shall maintain insurance coverage as specified in this Section. The State reserves the right to request additional insurance coverage, coverage amounts, and endorsements required under this Contract. If the Contractor does not obtain the additional requested coverage, the State may terminate the Contract with no further obligation. Contractor's failure to maintain or submit evidence of insurance coverage, as required and as requested, herein, is a material breach of this Contract. If Contractor loses insurance coverage, fails to renew coverage, or for any reason becomes uninsured during the Term, Contractor shall immediately notify the State. All insurance companies providing coverage must be: (a) acceptable to the State; (b) authorized by the Tennessee Department of Commerce and Insurance ("TDCI"); and (c) rated A- / VII or better by A.M. Best. All coverage must be on a primary basis and noncontributory with any other insurance or self-insurance carried by the State. Contractor agrees to name the State as an additional insured on any insurance policy with the exception of workers' compensation (employer liability) and professional liability (errors and omissions) insurance. All policies must contain an endorsement for a waiver of subrogation in favor of the State. Any deductible or self insured retention ("SIR") over fifty thousand dollars (\$50,000) must be approved by the State. The deductible or SIR and any premiums are the Contractor's sole responsibility. The Contractor agrees that the insurance requirements specified in this Section do not reduce any liability the Contractor has assumed under this Contract including any indemnification or hold harmless requirements.

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

Contractor shall provide the State a certificate of insurance ("COI") evidencing the coverages and amounts specified in this Section. The COI must be on a form approved by the TDCI (standard ACORD form preferred). The COI must list each insurer's National Association of Insurance Commissioners (NAIC) number and be signed by an authorized representative of the insurer. The COI must list the State of Tennessee – CPO Risk Manager, 312 Rosa L. Parks Ave., 3rd floor Central Procurement Office, Nashville, TN 37243 as the certificate holder. Contractor shall provide the COI ten (10) business days prior to the Effective Date and again thirty (30) calendar days before renewal or replacement of coverage. Contractor shall provide the State evidence that all subcontractors maintain the required insurance or that subcontractors are included under the Contractor's policy. At any time, the State may require Contractor to provide a valid COI. The Parties agree that failure to provide evidence of insurance coverage as required is a material breach of this Contract. If Contractor self-insures, then a COI will not be required to prove coverage. Instead Contractor shall provide a certificate of self-insurance or a letter, on Contractor's letterhead, detailing its coverage, policy amounts, and proof of funds to reasonably cover such expenses. The State reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

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

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

a. Commercial General Liability (“CGL”) Insurance

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

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

b. Workers’ Compensation and Employer Liability Insurance

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

- i. Workers’ compensation in an amount not less than one million dollars (\$1,000,000) including employer liability of one million dollars (\$1,000,000) per accident for bodily injury by accident, one million dollars (\$1,000,000) policy limit by disease, and one million dollars (\$1,000,000) per employee for bodily injury by disease.

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

- i. The Contractor employs fewer than five (5) employees;
- ii. The Contractor is a sole proprietor;
- iii. The Contractor is in the construction business or trades with no employees;
- iv. The Contractor is in the coal mining industry with no employees;
- v. The Contractor is a state or local government; or
- vi. The Contractor self-insures its workers’ compensation and is in compliance with the TDCI rules and Tenn. Code Ann. § 50-6-405.

c. Automobile Liability Insurance

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

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

- D.33. Major Procurement Contract Sales and Use Tax. Pursuant to Tenn. Code Ann. § 4-39-102 and to the extent applicable, the Contractor and the Contractor's subcontractors shall remit sales and use taxes on the sales of goods or services that are made by the Contractor or the Contractor's subcontractors and that are subject to tax.
- D.34. Confidentiality of Records. Strict standards of confidentiality of records and information shall be maintained in accordance with applicable state and federal law. All material and information, regardless of form, medium or method of communication, provided to the Contractor by the State or acquired by the Contractor on behalf of the State that is regarded as confidential under state or federal law shall be regarded as "Confidential Information." Nothing in this Section shall permit Contractor to disclose any Confidential Information, regardless of whether it has been disclosed or made available to the Contractor due to intentional or negligent actions or inactions of agents of the State or third parties. Confidential Information shall not be disclosed except as required or permitted under state or federal law. Contractor shall take all necessary steps to safeguard the confidentiality of such material or information in conformance with applicable state and federal law.

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

E. SPECIAL TERMS AND CONDITIONS:

- E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, the special terms and conditions shall be subordinate to the Contract's other terms and conditions.
- E.2. Printing Authorization. The Contractor agrees that no publication coming within the jurisdiction of Tenn. Code Ann. §§ 12-7-101, *et. seq.*, shall be printed pursuant to this Contract unless a printing authorization number has been obtained and affixed as required by Tenn. Code Ann. § 12-7-103 (d).
- E.3. Intellectual Property Indemnity. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims or suits which may be brought against the State concerning or arising out of any claim of an alleged patent, copyright, trade secret or other intellectual property infringement. In any such claim or action brought against the State, the Contractor shall satisfy and indemnify the State for the amount of any settlement or final judgment, and the Contractor shall be responsible for all legal or other fees or expenses incurred by the State arising from any such claim. The State shall give the Contractor notice of any such claim or suit, however, the failure of the State to give such notice shall only relieve Contractor of its obligations under this Section to the extent Contractor can demonstrate actual prejudice arising from the State's failure to give notice. This Section shall not grant the Contractor, through its attorneys, the right to represent the State of Tennessee in any legal matter, as provided in Tenn. Code Ann. § 8-6-106.
- E.4. Extraneous Terms and Conditions. Contractor shall fill all orders submitted by the State under this Contract. No purchase order, invoice, or other documents associated with any sales, orders, or supply of any good or service under this Contract shall contain any terms or conditions other than as set forth in the Contract. Any such extraneous terms and conditions shall be void, invalid and unenforceable against the State. Any refusal by Contractor to supply any goods or services under this Contract conditioned upon the State submitting to any extraneous terms and conditions shall be a material breach of the Contract and constitute an act of bad faith by Contractor.
- E.5. Contractor Hosted Services Confidential Data, Audit, and Other Requirements.
- a. "Confidential State Data" is defined as data deemed confidential by State or Federal statute or regulation. The Contractor shall protect Confidential State Data as follows:

- (1) The Contractor shall ensure that all Confidential State Data is housed in the continental United States, inclusive of backup data.
- (2) The Contractor shall encrypt Confidential State Data at rest and in transit using the current version of Federal Information Processing Standard ("FIPS") 140-2 validated encryption technologies.
- (3) The Contractor and the Contractor's processing environment containing Confidential State Data shall either (1) be in accordance with at least one of the following security standards: (i) International Standards Organization ("ISO") 27001; (ii) Federal Risk and Authorization Management Program ("FedRAMP"); or (2) be subject to an annual engagement by a CPA firm in accordance with the standards of the American Institute of Certified Public Accountants ("AICPA") for a System and Organization Controls for service organizations ("SOC") Type II audit. The State shall approve the SOC audit control objectives. The Contractor shall provide proof of current ISO certification or FedRAMP authorization for the Contractor and Subcontractor(s), or provide the State with the Contractor's and Subcontractor's annual SOC Type II audit report within 30 days from when the CPA firm provides the audit report to the Contractor or Subcontractor. The Contractor shall submit corrective action plans to the State for any issues included in the audit report within 30 days after the CPA firm provides the audit report to the Contractor or Subcontractor.

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

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

- (4) The Contractor must annually perform Penetration Tests and Vulnerability Assessments against its Processing Environment. "Processing Environment" shall mean the combination of software and hardware on which the Application runs. "Application" shall mean the computer code that supports and accomplishes the State's requirements as set forth in this Contract. "Penetration Tests" shall be in the form of attacks on the Contractor's computer system, with the purpose of discovering security weaknesses which have the potential to gain access to the Processing Environment's features and data. The "Vulnerability Assessment" shall be designed and executed to define, identify, and classify the security holes (vulnerabilities) in the Processing Environment. The Contractor shall allow the State, at its option, to perform Penetration Tests and Vulnerability Assessments on the Processing Environment.
- (5) Upon State request, the Contractor shall provide a copy of all Confidential State Data it holds. The Contractor shall provide such data on media and in a format determined by the State
- (6) Upon termination of this Contract and in consultation with the State, the Contractor shall destroy all Confidential State Data it holds (including any copies such as backups) in accordance with the current version of National Institute of Standards and Technology ("NIST") Special Publication 800-88.

The Contractor shall provide a written confirmation of destruction to the State within ten (10) business days after destruction.

b. Minimum Requirements

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

c. Comptroller Audit Requirements

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

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

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

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

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

d. Business Continuity Requirements. The Contractor shall maintain set(s) of documents, instructions, and procedures which enable the Contractor to respond to accidents, disasters, emergencies, or threats without any stoppage or hindrance in

its key operations (“Business Continuity Requirements”). Business Continuity Requirements shall include:

- (1) “Disaster Recovery Capabilities” refer to the actions the Contractor takes to meet the Recovery Point and Recovery Time Objectives defined below. Disaster Recovery Capabilities shall meet the following objectives:
 - i. Recovery Point Objective (“RPO”). The RPO is defined as the maximum targeted period in which data might be lost from an IT service due to a major incident: twenty-four (24) hours
 - ii. Recovery Time Objective (“RTO”). The RTO is defined as the targeted duration of time and a service level within which a business process must be restored after a disaster (or disruption) in order to avoid unacceptable consequences associated with a break in business continuity: twenty-four (24) hours
- (2) The Contractor and the Subcontractor(s) shall perform at least one Disaster Recovery Test every three hundred sixty-five (365) days. A “Disaster Recovery Test” shall mean the process of verifying the success of the restoration procedures that are executed after a critical IT failure or disruption occurs. The Disaster Recovery Test shall use actual State Data Sets that mirror production data, and success shall be defined as the Contractor verifying that the Contractor can meet the State’s RPO and RTO requirements. A “Data Set” is defined as a collection of related sets of information that is composed of separate elements but can be manipulated as a unit by a computer. The Contractor shall provide written confirmation to the State after each Disaster Recovery Test that its Disaster Recovery Capabilities meet the RPO and RTO requirements.

- e. The Contractor and any Subcontractor used by the Contractor to host State data, including data center vendors, shall be subject to an annual engagement by a CPA firm in accordance with the standards of the American Institute of Certified Public Accountants (“AICPA”) for a System and Organization Controls for service organizations (“SOC”) Type II audit. The State shall approve the SOC audit control objectives. The Contractor shall provide the State with the Contractor’s and Subcontractor’s annual audit report within 30 days from when the CPA firm provides the audit report to the Contractor or Subcontractor. The Contractor shall submit corrective action plans to the State for any issues included in the audit report within 30 days after the CPA firm provides the audit report to the Contractor and Subcontractor.

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

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

- E.6. Family Educational Rights and Privacy Act & Tennessee Data Accessibility, Transparency and Accountability Act. The Contractor shall comply with the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. 1232(g)) and its accompanying regulations (34 C.F.R. § 99) (“FERPA”). The Contractor warrants that the Contractor is familiar with FERPA requirements and that it will comply with these requirements in the performance of its duties under this Contract. The Contractor agrees to cooperate with the State, as required by FERPA, in the performance of its duties under this

Contract. The Contractor agrees to maintain the confidentiality of all education records and student information. The Contractor shall only use such records and information for the exclusive purpose of performing its duties under this Contract. The obligations set forth in this Section shall survive the termination of this Contract.

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

Any instances of unauthorized disclosure of data containing personally identifiable information in violation of FERPA or DATAA that come to the attention of the Contractor shall be reported to the State within forty-eight (48) hours. Contractor shall indemnify and hold harmless State, its employees, agents and representatives, from and against any and all claims, liabilities, losses, or causes of action that may arise, accrue, or result to any person or entity that is injured or damaged as a result of Contractor’s failure to comply with this section.

- E.7. Prohibited Advertising or Marketing. The Contractor shall not suggest or imply in advertising or marketing materials that Contractor’s goods or services are endorsed by the State. The restrictions on Contractor advertising or marketing materials under this Section shall survive the termination of this Contract.
- E.8. Personally Identifiable Information. While performing its obligations under this Contract, Contractor may have access to Personally Identifiable Information held by the State (“PII”). For the purposes of this Contract, “PII” includes “Nonpublic Personal Information” as that term is defined in Title V of the Gramm-Leach-Bliley Act of 1999 or any successor federal statute, and the rules and regulations thereunder, all as may be amended or supplemented from time to time (“GLBA”) and personally identifiable information and other data protected under any other applicable laws, rule or regulation of any jurisdiction relating to disclosure or use of personal information (“Privacy Laws”). Contractor agrees it shall not do or omit to do anything which would cause the State to be in breach of any Privacy Laws. Contractor shall, and shall cause its employees, agents and representatives to: (i) keep PII confidential and may use and disclose PII only as necessary to carry out those specific aspects of the purpose for which the PII was disclosed to Contractor and in accordance with this Contract, GLBA and Privacy Laws; and (ii) implement and maintain appropriate technical and organizational measures regarding information security to: (A) ensure the security and confidentiality of PII; (B) protect against any threats or hazards to the security or integrity of PII; and (C) prevent unauthorized access to or use of PII. Contractor shall immediately notify State: (1) of any disclosure or use of any PII by Contractor or any of its employees, agents and representatives in breach of this Contract; and (2) of any disclosure of any PII to Contractor or its employees, agents and representatives where the purpose of such disclosure is not known to Contractor or its employees, agents and representatives. The State reserves the right to review Contractor’s policies and procedures used to maintain the security and confidentiality of PII and Contractor shall, and cause its employees, agents and representatives to, comply with all reasonable requests or directions from the State to enable the State to verify or ensure that Contractor is in full compliance with its obligations under this Contract in relation to PII. Upon termination or expiration of the Contract or at the State’s direction at any time in its sole discretion, whichever is earlier, Contractor shall immediately return to the State any and all PII which it has received under this Contract and shall destroy all records of such PII.

The Contractor shall report to the State any instances of unauthorized access to or potential disclosure of PII in the custody or control of Contractor (“Unauthorized Disclosure”) that come to the Contractor’s attention. Any such report shall be made by the Contractor within forty-eight (48) hours after the Unauthorized Disclosure has come to the attention of the Contractor. Contractor shall take all necessary measures to halt any further Unauthorized Disclosures. The Contractor, at the sole discretion of the State, shall provide no cost credit monitoring services for individuals whose PII was affected by the Unauthorized Disclosure. The Contractor shall bear the cost of

notification to all individuals affected by the Unauthorized Disclosure, including individual letters and public notice. The remedies set forth in this Section are not exclusive and are in addition to any claims or remedies available to this State under this Contract or otherwise available at law. The obligations set forth in this Section shall survive the termination of this Contract.

IN WITNESS WHEREOF,

NATIONAL STUDENT CLEARINGHOUSE:

RICARDO D. TORRES, PRESIDENT AND CEO

DATE

TENNESSEE HIGHER EDUCATION COMMISSION:

MIKE KRAUSE, EXECUTIVE DIRECTOR

DATE

ATTACHMENT B**ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE**

If the attestation applies to more than one contract, modify this row accordingly.	
SUBJECT CONTRACT NUMBER:	33201-00321
CONTRACTOR LEGAL ENTITY NAME:	National Student Clearinghouse
EDISON VENDOR IDENTIFICATION NUMBER:	0000037980

If the attestation applies to more than one contract, modify the following paragraph accordingly.

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

CONTRACTOR SIGNATURE

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

PRINTED NAME AND TITLE OF SIGNATORY

DATE OF ATTESTATION



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
<p>Unscheduled Maintenance/Downtime</p>	<p>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.</p> <p>The Contractor will provide immediate notification of Unscheduled Maintenance/Downtime to System Users, when possible, and escalation to THEC after 30 minutes of interruption</p>	<p>System availability of 99.5% of the time per Contract quarter (see below for interruptions that are excluded from downtime percentage)</p>	<p>Service Level Credits: NSC will credit THEC 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.</p>



1. Service Level Agreement

NSC will designate the method of measurement for each of the key metrics defined in this document. NSC 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, NSC 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), NSC must provide a report to THEC 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	<p>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.</p> <p>Scheduled maintenance should occur during the period between 12 a.m. and 3 a.m. Central Standard Time (CST). Additionally, NSC may perform scheduled maintenance from 9 p.m. CST Sunday through 3 a.m. CST Monday, or at any time by providing notice to THEC at least five (5) 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.</p>	<p>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 NSC, interconnections to or from the Internet or force majeure events, i.e., events that are beyond NSC's control, including without limitation, any interruptions caused by third parties outside of NSC's control. Scheduled maintenance should occur during low usage times when feasible.</p>
Concurrent System Users	<p>The system will be able to support up to 10,000 Concurrent System Users per hour</p>	<p>As measured by the 99.5% availability</p>



Description	Details/Notification	Minimum Acceptable Service Level
Transaction response time	NSC must provide notification to System Users if the system is experiencing response time issues. If the issues continue for more than one (1) day NSC must provide an explanation and remediation steps to THEC.	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.



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 NSC or THEC 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, THEC shall receive a credit equal to 1/90th of the following quarter's fee.

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