Fiscal Review Committee
Contract # 39620
Tracking # 33111-00414
Severin Intermediate Holdings, LLC
dba PowerSchool Group LLC

1. Summary Letter
2. Supplemental documentation form
3. Edison query in Excel
4. STS pre-approval request (approved on 11.21.2017)
5. Amendment request form (approved on 11.30.2017)
6. Rule Exception Request
7. Original contract
8. Amendment 1
9. Amendment 2
10. Proposed amendment

BILL HASLAM
GOVERNOR

STATE OF TENNESSEE
DEPARTMENT OF EDUCATION
NINTH FLOOR, ANDREW JOHNSON TOWER
710 JAMES ROBERTSON PARKWAY
NASHVILLE, TN 37243-0375

CANDICE MCQUEEN
COMMISSIONER

SUBMITTED VIA ELECTRONIC MAIL

TO: Fiscal Review Committee

FROM: Candice McQueen, Commissioner

DATE: December 8, 2017

RE: Request to appear before the fiscal review committee regarding non-competitive contract amendment for agency tracking #: 33111-00414

Please consider the enclosed request for a one year extension of the department's contract with Severin Intermediate Holdings, LLC dba PowerSchool Group LLC for the provision of a student information system (SIS) to school districts across the state. The SIS is the application that districts use to enter all their student demographics, schedules, grades, discipline, attendance, etc. and track all operations in the district. In addition, the SIS application is the system by which the districts submit state and federal reporting into our Tennessee Education Information Systems (EIS). These contracts were originally procured through a formal competitive RFQ process. Over the past four years, the SIS vendors, including Severin Intermediate Holdings, LLC dba PowerSchool Group LLC, have worked to gain interoperability with our state systems through grant funds that are no longer available.

We are requesting an extension so that the current vendors continue to be an option for school districts in the upcoming school year. Changing to a different solution would require districts to retrain thousands of staff members in a highly complex application. Additionally, this is the time of year that districts are currently planning their budgets for the upcoming school year and have asked for a commitment that they will be able to continue with their current SIS vendors. We are still discussing the best option for the next procurement with CPO and it will not be in place before the current contracts expire. Therefore, it is in the best interest of the state to provide the option for districts to continue using their current providers for the upcoming school year to avoid a debilitating lapse in services.

The amendment will extend the contract to June 30, 2019 for a total contract term of 68 months, with no changes to the scope or maximum liability.

Thank you for your consideration.

Supplemental Documentation Required for Fiscal Review Committee

*Contact Name:	Joanna Collins	*Contact Phone:	615.770.3869
*Presenter's name(s):	Joanna Collins, Steven Sanders, Elizabeth Fiveash		
Edison Contract Number: *(if applicable)*	NV39620	RFS Number: *(if applicable)*	33111-00414
*Original or Proposed Contract Begin Date:	November 1, 2013	*Current or Proposed End Date:	June 30, 2019
Current Request Amendment Number: *(if applicable)*	3		
Proposed Amendment Effective Date: *(if applicable)*	June 30, 2018		
*Department Submitting:	Education		
*Division:	Office of District Technology		
*Date Submitted:	December 8, 2017		
*Submitted Within Sixty (60) days:	Yes		
If not, explain:			
*Contract Vendor Name:	Severin Intermediate Holdings, LLC dba PowerSchool Group LLC		
*Current or Proposed Maximum Liability:	$2,701,844.73		
*Estimated Total Spend for Commodities:			

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

FY: 2015	FY: 2016	FY: 2017	FY: 2018	FY: 2019	FY
$79,388.52	$89,290.80	$67,396.50	$ 67,177.20	$2,398,591.71	$

*Current Total Expenditures by Fiscal Year of Contract:
(attach backup documentation from Edison)

FY: 2015	FY: 2016	FY: 2017	FY: 2018	FY	FY
$79,388.52	$89,290.80	$67,396.50	$67,177.20	$	$

IF Contract Allocation has been greater than Contract Expenditures, please give the reasons and explain where surplus funds were spent:	N/A
IF surplus funds have been carried forward, please give the reasons and provide the authority for the carry forward provision:	N/A
IF Contract Expenditures exceeded Contract Allocation, please give the reasons and explain how funding	N/A

Supplemental Documentation Required for Fiscal Review Committee

was acquired to pay the overage:			
*Contract Funding Source/Amount:			
State:	$5,229,705.94	Federal:	
Interdepartmental:		*Other*:	
If "*other*" please define:			
If "*interdepartmental*" please define:			

Dates of All Previous Amendments or Revisions: *(if applicable)*	Brief Description of Actions in Previous Amendments or Revisions: *(if applicable)*
October 1, 2016	Extended the contract term to enable school districts to continue to use their current SIS system without disruption; revised the scope and updated the template language; decreased the maximum liability; changed the vendor name.
June 30, 2017	Extended the contract term to enable school districts to continue to use their current SIS system without disruption.

Method of Original Award: *(if applicable)*	RFQ
*What were the projected costs of the service for the entire term of the contract prior to contract award? How was this cost determined?	$24,334,199.18 Cost determined as if the contractor had all school districts in the State of Tennessee for Student Information Systems (SIS).
*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.	N/A– amendment to existing contract. The State contracted with all 5 vendors qualified through the original RFQ process. An extension is needed to avoid a lapse in services.

3111-00414 - 39620

BU	Voucher ID	Invoice #	Invoice Date	Acctg Date	PO No.	Vendor ID	Vendor Location	Vendor Addr Seq#	Vendor Name	Address 1	City	St	Postal	Amount Pd
33101	00365863	INV103807	6/16/2016	10/6/2016	0000078184	0000197223	CAT7-001	1	PowerSchool Group LLC	150 Parkshore Dr	Folsom	CA	95630	89290.800
33101	00384053	INV112473	1/19/2017	2/15/2017	0000081713	0000197223	CAT7-001	1	PowerSchool Group LLC	150 Parkshore Dr	Folsom	CA	95630	67396.500
33101	00412210	INV126195	8/9/2017	10/1/2017	0000088668	0000197223	CAT7-001	1	PowerSchool Group LLC	150 Parkshore Dr	Folsom	CA	95630	67177.200
33101	00297459	4636465	2/6/2015	3/9/2015	0000063616	0000000593	CHICAG-003	24	Ncs Pearson Inc	13036 Collection Center Dr	Chicago	IL	60693-0130	79388.520

Pymnt Date	Pymnt Method	EFT/ACH Layout	ACH/Wrnt #	Pay Status	Redeemed Status	Redeemed Dt	Handling	Distrib Line	GL Unit	Account	DeptID	Fund	Location CF	Program	Distrib Amount
10/12/2016	Check		0004713247	Paid	Recon	10/25/2016	RG	1	33101	72203000	3311102000	25000	19105	281000	89290.800
2/23/2017	Check		0004891179	Paid	Recon	3/7/2017	RG	1	33101	72203000	3311102000	25000	19105	281000	67396.500
10/16/2017	Check		0005202119	Paid	Recon	10/23/2017	RG	1	33101	72203000	3311102000	25000	19105	281000	67177.200
3/18/2015	EFT	PPD	0001494650	Paid	Recon	3/18/2015	RG	1	33101	72203000	3311102000	25000	19105	281000	79388.520

STS Pre-Approval Endorsement Request
E-Mail Transmittal

TO : STS Contracts
Department of Finance & Administration
E-mail : it.abc@tn.gov

FROM : Steven Sanders, Director of District Technology
E-mail : Steven.Sanders@tn.gov

DATE : 11.03.2017

RE : Request for STS Pre-Approval Endorsement

Applicable RFS # 33111-00414

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

STS Endorsement Signature & Date:

Mark F. Bengel (by WMH)

Digitally signed by Mark F. Bengel (by WMH)
DN: cn=Mark F. Bengel (by WMH), o=TN Finance & Admin, ou=Strategic Technology Solutions, email=william.hafley@tn.gov, c=US
Date: 2017.11.21 17:27:09 -06'00'

Chief Information Officer

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

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	**Education – Office of District Technology**
Agency Contact (name, phone, e-mail)	**Steven Sanders, 615.693.0207, Steven.Sanders@tn.gov**

Applicable RFS # 33111-00414

Attachments Supporting Request (mark all applicable)

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.

- ☐ Solicitation Document
- ☐ Special Contract Request
- ☒ Amendment Request
- ☐ Proposed Contract/Grant or Amendment
- ☐ Original Contract/Grant and Previous Amendments (if any)

Information Systems Plan (ISP) Project Applicability

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.

IT Director/Staff Name Confirming (required):

- ☒ Applicable – Approved ISP Project# CAFTTT01
- ☐ Not Applicable

Subject Information Technology Service Description

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.

Third-party software solutions to provide local education agency (LEAs) with a student management software package to maximize the collection and reporting of student data and information.

cy17-9916

Amendment Request

This request form is not required for amendments to grant contracts. Route a completed request, as one file in PDF format, via e-mail attachment sent to: Agsprs.Agsprs@tn.gov

APPROVED
Cooper N. Gallimore for Michael F. Perry

Digitally signed by Cooper N. Gallimore for Michael F. Perry
DN: cn=Cooper N. Gallimore for Michael F. Perry, o=CPO, ou, email=Cooper.Gallimore@tn.gov, c=US
Date: 2017.11.29 13:38:17 -06'00'

CHIEF PROCUREMENT OFFICER | DATE

Agency request tracking #	**33111-00414**
1. Procuring Agency	**Education – Office of District Technology**
2. Contractor	**Severin Intermediate Holdings, LLC dba PowerSchool Group LLC**
3. Edison contract ID #	**NV39620**
4. Proposed amendment #	**3**

5. Contract's Original Effective Date	**Nov. 1, 2013**
6. Current end date	**June 30, 2018**
7. Proposed end date	**June 30, 2019**
8. Current Maximum Liability or Estimated Liability	**$ 2,701,844.73**
9. Proposed Maximum Liability or Estimated Liability	**$ 2,701,844.73**
10. Strategic Technology Solutions Pre-Approval Endorsement Request – *information technology service (N/A to THDA)*	☐ **Not Applicable** ☒ **Attached**
11. eHealth Pre-Approval Endorsement Request – *health-related professional, pharmaceutical, laboratory, or imaging*	☒ **Not Applicable** ☐ **Attached**
12. Human Resources Pre-Approval Endorsement Request – *state employee training service*	☒ **Not Applicable** ☐ **Attached**

13. Explain why the proposed amendment is needed

We consulted with CPO and determined that an extension of the existing student information systems (SIS) contracts is needed while we work on the next procurement. This amendment just extends the contract term and revises the renewal/extension clauses, without changing the scope or maximum liability, so that districts can continue to use their current SIS without a lapse in services.

14. If the amendment involves a change in Scope, describe efforts to identify reasonable, competitive, procurement alternatives to amending the contract.

Agency request tracking #	**33111-00414**
N/A	

The contract was originally procured through a formal competitive RFQ process. The amendment request is to extend the current contract services for twelve months.

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)

Candice McQueen_jc

Digitally signed by Candice McQueen_jc
DN: cn=Candice McQueen_jc, o, ou=TN Department of Education, email=joanna.collins@tn.gov, c=US
Date: 2017.11.22 14:10:52 -06'00'

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. Send the completed document in PDF format to: Agsprs.Agsprs@tn.gov 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: the Limitation of Liability Request should be utilized for any proposed changes to the limitation of liability.

APPROVED

Cooper N. Gallimore for Michael F. Perry

Digitally signed by Cooper N. Gallimore for Michael F. Perry
DN: cn=Cooper N. Gallimore for Michael F. Perry, o=CPO, ou, email=Cooper.Gallimore@tn.gov, c=US
Date: 2017.12.04 12:54:42 -06'00'

CHIEF PROCUREMENT OFFICER

APPROVED

COMPTROLLER OF THE TREASURY 12/13/2017

Agency request tracking #	33111-00414
1. Procuring Agency	TN Department of Education (TDOE)
2. Edison contract ID #	NV39620
3. Contractor or Grantee	Severin Intermediate Holdings, LLC dba PowerSchool Group LLC
4. Contract's Effective Date	Nov. 1, 2013
5. Contract or grant contract's Term (with ALL options to extend exercised)	72 months
6. Contract's Maximum Liability (with ALL options to extend exercised)	$ 2,701,844.73

7. Citation and explanation of the rule(s) for which the exception is requested

The TDOE requests an exception to the 60 month contract term limitation, as outlined in the rule below.

0690-03-01-.14 CONTRACT TYPE.(2) Term Contract-General
(c) The requirement of a multi-year contract shall be stated in the solicitation, and any multi-year contract shall be awarded pursuant to these Rules and shall not be for a period longer than sixty (60) months unless approved by the Chief Procurement Officer as being in the best interests of the State. The justification for the contract term exceeding sixty (60) months shall be maintained in the records of the Central Procurement Office. A report of all contracts awarded for a period longer than sixty (60) months in such format and at such interval determined requested shall be provided to the Comptroller of the Treasury.

8. 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.

B. TERM OF CONTRACT:

B.1. This Contract shall be effective for the period beginning on November 1, 2013 ("Effective Date") and ending on June 30, 2019 ("Term"). The State shall have no obligation for goods or services provided by the Contractor prior to the Effective Date.

B.2. Renewal Options. This Contract may be renewed upon satisfactory completion of the Term. The State reserves the right to execute up to ~~number (#)~~five (5) 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)~~seventy-two (72)~~ months.

Sixty-Eight (68)

B.3. Term Extension. The State may extend the Term an additional period of time, not to exceed one hundred-eighty (180) days beyond the expiration date of this Contract, under the same terms and conditions, 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)~~seventy-two (72) sixty ~~(60)~~ months.

Sixty-Eight (68)

9. Justification

Upon consultation with CPO, the TDOE is seeking a 1 year extension of the existing student information system (SIS) vendor contracts in order to allow time to complete the next procurement without a lapse in services to districts.

The SIS is the application that school districts use to enter all their student demographics, schedules, grades, discipline, attendance, etc. and track all operations in the district. In addition, the SIS application is the system by which the districts submit state and federal reporting into our Tennessee Education Information Systems (EIS). The current SIS vendors have worked over the last four years to gain interoperability with our state systems through federal grant funds that are no longer available. We want to make sure that all the current vendors continue to be an option for school districts in the upcoming school year because changing to a different solution would require districts to retrain thousands of staff members in a highly complex application. Additionally, this is the time of year that districts are currently planning their budgets for the upcoming school year, so they have been inquiring about the status of these contracts and have expressed concern about the contracts not being in place in time. We are still discussing the best option for the next procurement with CPO and it will not be in place before the current contracts expire. Therefore, it is in the best interest of the state to provide the option for districts to continue using their current providers for the upcoming school year so they do not have to shoulder the burden of running their own procurement, especially at this late date. The effective date of the amendments will be June 30, 2018 to avoid a lapse in service.

Signature of Agency head or designee and date

Candice McQueen_jc

Digitally signed by Candice McQueen_jc
DN: cn=Candice McQueen_jc, o, ou=TN Department of Education, email=joanna.collins@tn.gov, c=US
Date: 2017.11.30 17:07:21 -06'00'

33111-0041

CONTRACT

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

Begin Date	End Date	Agency Tracking #	Edison Record ID
November 1, 2013	October 31, 2016	33111-00414	39620

Contractor Legal Entity Name: NCS Pearson, Inc.

Edison Vendor ID: 0000000593

Service Caption (one line only): Student Information System Solution

Subrecipient or Vendor: ☐ Subrecipient ☒ Vendor

CFDA #: N/A

Funding —

FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2014	$4,731,649.84	$0.00	$0.00	$0.00	$4,731,649.84
2015	$8,111,399.73	$0.00	$0.00	$0.00	$8,111,399.73
2016	$8,111,399.72	$0.00	$0.00	$0.00	$8,111,399.72
2017	$3,379,749.89	$0.00	$0.00	$0.00	$3,379,749.89
TOTAL:	**$24,334,199.18**	**$0.00**	**$0.00**	**$0.00**	**24,334,199.18**

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

Ownership/Control

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

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

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

Budget Officer Confirmation: There is a balance in 331.11 Program 281000 to fund the SEA portion of the contract (i.e. $2.55 per student), LEAs will purchase from this contract (as a Master Agreement) for their portion of the SIS expenditure. The current, state master contract with NCS Pearson expires in 2014 without renewal.

John F. Sharp

Speed Chart	Account Code
ED00000458	84510000

CONTRACT
BETWEEN THE STATE OF TENNESSEE,
DEPARTMENT OF EDUCATION
AND
NCS PEARSON, INC.

This Contract, by and between the State of Tennessee, Department of Education, hereinafter referred to as the 'State" and NCS Pearson, Inc., hereinafter referred to as the "Contractor," is for the provision of Student Information System Solution, as further defined in the "SCOPE OF SERVICES."

The Contractor is For-Profit Corporation
Contractor Place of Incorporation or Organization: Bloomington, MN
Contractor Edison Registration ID # 0000000593

A. SCOPE OF SERVICES:

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

A.2. The Contractor shall provide a third-party software solution to provide local education agencies (LEAs) with a student management software package to maximize utilization of student data and information. This software solution will be targeted to the LEAs. It must be available for adoption by 137 LEAs, four (4) state special schools, and any new LEAS that may be created.

a. The system functionality must support online student data and analysis.

b. The system must have capability for recording student data and information required by federal and state rules, regulations, and laws including but not limited to the following:

(1) Attendance data
(2) LEA and school calendars
(3) Student demographics
(4) Student enrollment, transfer and withdrawal information
(5) Master Scheduling
(6) Grades
(7) Graduation Requirements
(8) Testing and assessment data
(9) Discipline
(10) Transportation
(11) Health
(12) Exceptional Student Education (ESE)
(13) Language Services
(14) Faculty and staff
(15) Special Services
(16) Counseling
(17) Adult and community education
(18) Student activity fund and other fees
(19) Standard and ad-hoc reporting

A.3. The Contractor shall provide a system that is available in a web-delivery model where all solution support is delivered by the Contractor.

A.4. The Contractor shall provide all necessary software components and licensing for deployment and implementation of the solution including, but not limited to, database or application server licensing, etc.

A.5. The Contractor shall provide a solution that may be accessed by users via any major commercially available web browsers on any basic configuration PC or Mac computer.

A.6. The Contractor shall provide a solution with the ability to integrate or interface with the State's ERP system(s) and other common systems needed in the process of gathering student data.

A.7. The Student Information System Solution provided by the Contractor is subject to the service level agreement as provided and agreed to by both parties.

A.8. The Contractor shall provide a written Disaster Recovery plan, which shall be approved by the State and which outlines criterion for classifying Disaster Recovery situations and procedures for managing Disaster Recovery situations.

A.9. Contractor shall provide a system with the capability to sustain 99% continuous uptime outside of scheduled maintenance windows.

A.10. The Contractor shall provide a communication plan, which outlines the change/release management plan for introducing product upgrades and modifications, and communicating reasons and impacts of the upgrades and modifications to the customer organization. This shall also include a formal test and quality assurance plan, all requiring approval by the State of Tennessee prior to implementation

A.11. Contractor shall provide product upgrades at no additional cost, without operational impact, deterioration of services, support or technical SLA performance during upgrades.

A.12. Contractor shall provide to the State on demand, database schema(s) and provide information about database structure(s), including layout and table interdependencies. The schemas shall include, at a minimum, a description of the data characteristics of the tables and columns in database(s), which includes data types and sizes, nullability, index, sequence, key and constraint information.

A.13. Contractor shall provide to the State on a continual basis a current data dictionary. The data dictionary shall, at a minimum, consist of record types (tables) created in the database by systems generated command files, for each supported back-end DBMS.

A.14. Contractor shall disclose all information regarding software that contains a "phone-home", metering, or other feature designed to periodically transmit usage, statistical or other data to the Contractor or an affiliate of the Contractor. The Contractor shall warrant and represent that the "phone-home" or other such feature:

a. Will not result in the transmission of any Confidential Information from TDOE systems; and

b. Will not create a security vulnerability that would permit any unauthorized party to gain access to TDOE systems or data; and

c. Will only send information at mutually agreed upon times, and that at all other times TDOE may prevent access to the internet.

Contractor shall not implement any feature that will flag, terminate, or prohibit the usage of the software by the State or any educational institution in the State of Tennessee.

A.15. Contractor's system shall provide the ability to run in Azure IaaS immediately upon execution of this contract.

A.16. Contractor's system shall have the ability to be migrated to Azure PaaS prior to June 2014. If a component required for this migration is not made available by Azure by June 2014, the vendor may request written permission from the Department of Education for an adjustment to the deadline.

A.17. Contractor's system shall meet all technical requirements to run on the Azure platform as defined by the Azure service provider.

A.18. Contractor shall provide a system with the ability to integrate any state reporting data held with other current data systems. The system shall provide the ability to integrate any data held within future State systems within sixty (60) calendar days of notification by the State.

A.19. Contractor shall provide data conversion from the currently implemented student information system for a minimum of five years of data. At the State or LEA's request, Contractor shall provide data conversion for any number of years.

A.20. Contractor shall provide system support staff available for the Tennessee customer base with a minimum required availability of Monday through Friday, 7:00 a.m. to 5:00 p.m. CST.

B. CONTRACT PERIOD:

B.1 Contract Period. This Contract shall be effective for the period beginning November 1, 2013 and ending on October 31, 2016 with two options to renew. The Contractor hereby acknowledges and affirms that the State shall have no obligation for supplies ordered or services rendered by the Contractor which were not performed within this specified contract period.

B.2 Term Extension. The State reserves the right to extend this Contract for an additional period or periods of time representing increments of no more than one year and a total contract term of no more than five (5) years, provided that such an extension of the contract term is effected prior to the current, contract expiration date by means of a contract amendment. If a term extension necessitates additional funding beyond that which was included in the original Contract, an increase of the State's maximum liability will also be effected through contract amendment, and shall be based upon payment rates provided in the original Contract.

C. PAYMENT TERMS AND CONDITIONS:

C.1. Payment Methodology.

a. Billing instructions - The Contractor shall invoice the State and the LEA ("Participating Entity") as follows:

(1) The State shall be invoiced quarterly for the annual cost of licensing, maintenance and support described in the purchase order/contract, and as required below prior to any payment. The Contractor shall submit an invoice, with all necessary supporting documentation, to the State contact person.

(2) The Participating Entity shall be invoiced for all services provided with the exception of annual cost of licensing, maintenance and support which shall be paid by the State as stated above. Such invoice shall be submitted by Contractor only after completion of the work described in the purchase order/contract, and as required below prior to any payment. The Contractor shall submit an invoice, with all necessary supporting documentation, to the Participating Entity contact person.

(3) Invoices shall clearly and accurately detail the following required information:

Invoice/reference number (assigned by the Contractor)
Invoice date
Contract number (assigned by the State) and/or PO number (assigned by the State and/or Participating Entity)
Account name
Participating Entity
Account/customer number (uniquely assigned by the Contractor)
Contractor name
Contractor FEI number or SS
Security number (as referenced in contract)
Contractor contact
Contractor remittance address
Description of delivered item or service

Total amount due for delivered item or service.

(4) The Contractor understands and agrees that the invoice shall:

i. Include only charges for service described in contract or purchase order and in accordance with payment terms and conditions set forth in contract or purchase order.
ii. Not include any future work (other than ongoing support) but will only be submitted for completed service.
iii. Not include sales tax or shipping charges (unless otherwise stipulated in the contract or purchase order).

(5) The Contractor agrees that the timeframe for payment (and any discounts) begins when the Participating Entity or State is in receipt of an invoice approved by the State or Participating Entity that meets the minimum requirements stated above.

b. Line Items – The Participating Entity agrees to purchase those line items deemed necessary for base functionality as defined in Section A. Scope of Services. The Participating Entity retains the right, but is not required to purchase the optional line items outlined in the master contract.

c. The costs associated with this contract are located in Attachment A of this contract.

C.2. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed twenty-four million, three hundred thirty-four thousand, one hundred ninety-nine dollars and eighteen cents ($24,334,199.18). The payment rates in Attachment A shall constitute the entire compensation due the Contractor for all service and Contractor obligations hereunder regardless of the difficulty, materials or equipment required. The payment rates include, but are not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by the Contractor.

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

C.3. Travel Compensation. The Contractor shall not be compensated or reimbursed for travel, meals, or lodging.

C.4. Deductions. The State reserves the right to deduct from amounts, which are or shall become due and payable to the Contractor under this or any contract between the Contractor and the State of Tennessee any amounts, which are or shall become due and payable to the State of Tennessee by the Contractor.

C.5. F.O.B. Destination for shipment to: All local education agencies and state special schools located within the State of Tennessee.

D. STANDARD TERMS AND CONDITIONS:

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

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

D.3. Termination for Convenience. The State may terminate this Contract without cause for any reason. Said termination shall not be deemed a breach of contract by the State. The State shall give the Contractor at least thirty (30) days written notice before the effective termination date. The Contractor shall be entitled to compensation for satisfactory, authorized service completed as of the termination date, but in no event shall the State be liable to the Contractor for compensation for any service which has not been rendered. Upon such termination, the Contractor shall have no right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

D.4. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor violates any terms of this Contract, the State shall have the right to terminate the Contract and withhold payments in excess of fair compensation for completed services.

a. The State will provide notification of termination for cause in writing. This notice will: (1) specify in reasonable detail the nature of the breach; (2) provide the Contractor with an opportunity to cure, which must be requested in writing no less than 10 days from the date of the Termination Notice; and (3) shall specify the effective date of termination in the event the Contractor fails to correct the breach. The Contractor must present the State with a written request detailing the efforts it will take to resolve the problem and the time period for such resolution. This opportunity to "cure" shall not apply to circumstances in which the Contractor intentionally withholds its services or otherwise refuses to perform. The State will not consider a request to cure contract performance where there have been repeated problems with respect to identical or similar issues, or if a cure period would cause a delay that would impair the effectiveness of State operations. In circumstances where an opportunity to cure is not available, termination will be effective immediately.

b. Notwithstanding the foregoing, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any breach of this Contract by the Contractor.

D.5. Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the services performed under this Contract without obtaining the prior written approval of the State. If such subcontracts are approved by the State, each shall contain, at a minimum, sections of this Contract below pertaining to "Conflicts of Interest," "Nondiscrimination," and "Records" (as identified by the section headings). Notwithstanding any use of approved subcontractors, the Contractor shall be the prime contractor and shall be responsible for all work performed.

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

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

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

Contractor shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

D.8. Prohibition of Illegal Immigrants. The requirements of *Tennessee Code Annotated*, Section 12-4-124, *et seq.*, addressing the use of illegal immigrants in the performance of any Contract to supply goods or services to the state of Tennessee, shall be a material provision of this Contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Contract.

a. The Contractor hereby attests, certifies, warrants, and assures that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the document at Attachment B, hereto, semi-annually during the period of this Contract. Such attestations shall be maintained by the Contractor and made available to state officials upon request.

b. Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the period of this Contract, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work relative to this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work relative to this Contract. Attestations obtained from such subcontractors shall be maintained by the Contractor and made available to state officials upon request.

c. The Contractor shall maintain records for all personnel used in the performance of this Contract. Said records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.

d. The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of *Tennessee Code Annotated*, Section 12-4-124, *et seq.* for acts or omissions occurring after its effective date. This law requires the Commissioner of Finance and Administration to prohibit a contractor from contracting with, or submitting an offer, response, proposal, or bid to contract with the State of Tennessee to supply goods or services for a period of one year after a contractor is discovered to have knowingly used the services of illegal immigrants during the performance of this Contract.

e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not either a United States citizen, a Lawful Permanent Resident, or a person whose physical presence in the United States is authorized or allowed by the federal Department of Homeland Security and who, under federal immigration laws and/or regulations, is authorized to be employed in the U.S. or is otherwise authorized to provide services under the Contract.

D.9. Records. The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, insofar as they relate to work performed or money received under this Contract, shall be maintained for a period of three (3) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.

D.10. 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.11. Strict Performance. Failure by any party to this Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or

provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.

D.12. Independent Contractor. The parties hereto, in the performance of this Contract, shall not act as employees, partners, joint venturers, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Contract shall be construed to create an employer/employee relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.

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

D.13. State Liability. The State shall have no liability except as specifically provided in this Contract.

D.14. Limitation of Liability. The parties agree that the Contractor's liability under this Contract shall be limited to an amount equal to two times the total value of the Purchase Orders issued against this Contract within the twelve (12) month period immediately prior to the claim, PROVIDED THAT in no event shall this section limit the liability of the Contractor for intentional torts, criminal acts, or fraudulent conduct.

D. 15. Indemnification. Subject to paragraph D.14., the Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of the Contractor, its employees, or any person acting for or on its or their behalf relating to this Contract. The Contractor further agrees it shall be liable for the reasonable cost of attorneys for the State in the event such service is necessitated to enforce the terms of this Contract or otherwise enforce the obligations of the Contractor to the State.

In the event of any such suit or claim, the Contractor shall give the State immediate notice thereof and shall provide all assistance required by the State in the State's defense. The State shall give the Contractor written notice of any such claim or suit, and the Contractor shall have full right and obligation to conduct the Contractor's own defense thereof. Nothing contained herein shall be deemed to accord to the Contractor, through its attorney(s), the right to represent the State of Tennessee in any legal matter, such rights being governed by Tennessee Code Annotated, Section 8-6-106

D.16. Copyrights and Patents. 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 for infringement of any laws regarding patents or copyrights which may arise from the Contractor's performance of this Contract. In any such action brought against the State, the Contractor shall satisfy and indemnify the State for the amount of any final judgment for infringement. The Contractor further agrees it shall be liable for the reasonable fees of attorneys for the State in the event such service is necessitated to enforce the terms of this Contract or otherwise enforce the obligations of the Contractor to the State. The State shall give the Contractor written notice of any such claim or suit and full right and opportunity to conduct the Contractor's own defense thereof.

D.17. Force Majeure. The obligations of the parties to this Contract are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, natural disasters, riots, wars, epidemics, or any other similar cause.

D.18. Insurance. The Contractor shall carry adequate liability and other appropriate forms of insurance.

a. The Contractor shall maintain, at minimum, the following insurance coverage:

(1) Workers' Compensation/ Employers' Liability (including all states coverage) with a limit not less than the relevant statutory amount or one million dollars ($1,000,000) per occurrence for employers' liability whichever is greater.

(2) Comprehensive Commercial General Liability (including personal injury & property damage, premises/operations, independent contractor, contractual liability and completed operations/products) with a bodily injury/property damage combined single limit not less than one million dollars ($1,000,000) per occurrence and two million dollars ($2,000,000) aggregate.

(3) Automobile Coverage (including owned, leased, hired, and non-owned vehicles) with a bodily injury/property damage combined single limit not less than one million dollars ($1,000,000) per occurrence.

(4) Professional Malpractice Liability with a limit of not less than one million dollars ($1,000,000) per claim and two million dollars ($2,000,000) aggregate.

b. At any time State may require the Contractor to provide a valid Certificate of Insurance detailing Coverage Description; Insurance Company & Policy Number; Exceptions and Exclusions; Policy Effective Date; Policy Expiration Date; Limit(s) of Liability; and Name and Address of Insured. Failure to provide required evidence of insurance coverage shall be a material breach of this Contract.

D.19. State and Federal Compliance. The Vendor shall comply with all applicable State and Federal laws and regulations in the performance of this Contract.

D.20. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Vendor agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Contract. The Vendor acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising there from, shall be subject to and limited to those rights and remedies, if any, available under *Tennessee Code Annotated*, Sections 9-8-101 through 9-8-407.

D.21. Completeness. This Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions of the parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties relating hereto, whether written or oral.

D.22. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Contract are declared severable.

D.23. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.

E. SPECIAL TERMS AND CONDITIONS:

E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, these special terms and conditions shall control.

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

The State:

Deborah Gilliam,
State of Tennessee
Department of Education
10th Floor Andrew Johnson Tower
710 James Robertson Parkway
Nashville, TN 37243
Debbie.Gilliam@tn.gov
Telephone # (615) 253-1637
FAX # (615) 532-5303

The Vendor:

Robert Mignanelli, Vice President & Assistant General Counsel
NCS Pearson, Inc.
3075 W. Ray Rd. Ste 200
Chandler, AZ 85226
robert.mignanelli@pearson.com
Telephone # 480-457-7770
FAX # 480-457-7610

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

E.3. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State and/or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate the Contract upon written notice to the Contractor. Said termination shall not be deemed a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. Should such an event occur, the Contractor shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

E.4. Tennessee Consolidated Retirement System. The Contractor acknowledges and understands that, subject to statutory exceptions contained in *Tennessee Code Annotated*, Section 8-36-801, *et. seq.*, the law governing the Tennessee Consolidated Retirement System (TCRS), provides that if a retired member of TCRS, or of any superseded system administered by TCRS, or of any local retirement fund established pursuant to *Tennessee Code Annotated*, Title 8, Chapter 35, Part 3 accepts state employment, the member's retirement allowance is suspended during the period of the employment. Accordingly and notwithstanding any provision of this Contract to the contrary, the Contractor agrees that if it is later determined that the true nature of the working relationship between the Contractor and the State under this Contract is that of "employee/employer" and not that of an independent contractor, the Contractor, 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 period of this Contract.

E.5. 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 offence 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 or disqualified.

E.6. Contractor Commitment to Diversity. The Contractor shall comply with and make reasonable business efforts to exceed the commitment to diversity represented by the Contractor's response to RFQ-**33111-00214** (Attachment B) and resulting in this Contract.

The Contractor shall assist the State in monitoring the Contractor's performance of this commitment by providing, as requested, a quarterly report of participation in the performance of this Contract by small business enterprises and businesses owned by minorities, women, and persons with a disability. Such reports shall be provided to the state of Tennessee Governor's Office of Diversity Business Enterprise in form and substance as required by said office.

E.7. Confidentiality of Records. Strict standards of confidentiality of records and information shall be maintained in accordance with applicable state and federal law. All material and information, regardless of form, medium or method of communication, provided to the Contractor by the State or acquired by the Contractor on behalf of the State shall be regarded as confidential information in accordance with the provisions of applicable state and federal law, state and federal rules and regulations, departmental policy, and ethical standards. Such confidential information shall not be disclosed, and all necessary steps shall be taken by the Contractor to safeguard the confidentiality of such material or information in conformance with applicable state and federal law, state and federal rules and regulations, departmental policy, and ethical standards.

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

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

E.8. 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 written amendments to this Contract with the latest amendment taking precedence over any prior written amendments;

b. this Contract document with any attachments or exhibits (excluding the items listed at subsections b. through e., below);

c. Software Licensing Agreement

d. any clarifications of or addenda to the Contractor's response seeking this Contract;

e. the State solicitation, as may be amended, requesting responses in competition for this Contract;

f. any technical specifications provided to Respondents during the procurement process to award this Contract;

g. the Contractor's response seeking this Contract.

E.9 HIPAA Compliance. The State and the Grantee shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and its accompanying regulations.

a. The Grantee warrants to the State that it is familiar with the requirements of HIPAA and its accompanying regulations, and will comply with all applicable HIPAA requirements in the course of this contract.

b. The Grantee warrants that it will cooperate with the State, including cooperation and coordination with State privacy officials and other compliance officers required by HIPAA and its regulations, in the course of performance of the grant so that both parties will be in compliance with HIPAA.

c. The State and the Grantee will sign documents, including but not limited to business associate agreements, as required by HIPAA and that are reasonably necessary to keep the State and the Grantee in compliance with HIPAA. This provision shall not apply if information received by the State under this grant is NOT "protected health information" as defined by HIPAA, or if HIPAA permits the State to receive such information without entering into a business associate agreement or signing another such document.

E.10. Participation Permitted by Participating Entities. The Contractor agrees to permit Tennessee local education agencies or state special school districts (each of which is a "Participating Entity") to receive services from the state pursuant to this master contract. The Contractor agrees to extend its terms and configuration-specific pricing under this Contract to a Participating Entity that executes a Participating Addendum. A Participating Entity shall enter into a Participating Addendum with the State setting forth a Participating Entity's specific terms and conditions, if any. Payment obligation for all orders placed by a Participating Entity shall be the sole responsibility of the Participating Entity and not the State of Tennessee. The Participating Addendum shall be in a form agreed upon by the State and the Participating Entity.

RD
12.19.13

KH/HK
12/20/13

E.11 ISO/IEC 27000 Series Compliance. Contractor shall have measures in place that ensure that all data records are transported, stored, and accessed in a secure manner. All data shall be property of the State of Tennessee. The system provided by the Contractor shall be compliant with best practices for secure application development as defined in ISO/IEC 27000 series, as found in policies found at http://www.tn.gov/finance/oir/security/docs/PUBLIC-Enterprise-Information-Security-Policies-v1-6.pdf.

E.12 FERPA Compliance. The State and Contractor shall comply with the Family Education Rights and Privacy Act of 1974 (20 U.S.C. § 1232g) (FERPA) and its accompanying regulations (34 C.F.R. 99). Contractor warrants that it is familiar with requirements of FERPA and its accompanying regulations and that it will comply with all applicable FERPA requirements in the performance of its duties in this contract. Contractor agrees to cooperate with the State as required by FERPA and its regulations in the performance of its duties in this contract. Contractor agrees to maintain the confidentiality of all education records and student information and use such records and information for the exclusive purpose of performing its duties in this contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the Authorization and Acknowledgement of Compliance document at Attachment C.

E.13 National School Lunch Act Compliance. The State and Contractor shall comply with the National School Lunch Act (79 P.L. 396, 60 Stat. 230) and accompanying regulations. Contractor

warrants that it is familiar with requirements of National School Lunch Act and its accompanying regulations and that it will comply with all applicable National School Lunch Act requirements in the performance of its duties in this contract. Contractor agrees to cooperate with the State as required by National School Lunch Act and its regulations in the performance of its duties in this contract. Contractor agrees to maintain the confidentiality of all education records and student information and use such records and information for the exclusive purpose of performing its duties in this contract.

AF 10/30/2013

E.14 Please see Attachment D for Tennessee Department of Revenue Registration Clause.

IN WITNESS WHEREOF,

NCS PEARSON, INC.:

10/24/2013

CONTRACTOR SIGNATURE **DATE**

Doug Evans, VP Finance,

PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)

DEPARTMENT OF EDUCATION

10/31/13

KEVIN HUFFMAN, COMMISSIONER **DATE**

Pearson (PowerSchool)

Feature	Period	Unit Pricing	Cost
SIS Package			
New PowerSchool District to State Hosted			
Application Licensing, Maintenance and Support	Annual	Per ADM	$4.50 ($4.75 with Distance Learning)
Implementation, Data Conversion and Training	One Time	Per District/ School	**Implementation** $3,500 per district, plus $300/school **Data conversion** $1,200/school StarBase Data Conversion $300/school
PowerSchool or Local Hosted to State Hosted			
Implementation, Data Conversion and Training - PowerSchool Server Migration to State Server	One Time	Per Server	$500 (first server) $250 (each additional server)
Daily Training Rates			
Remote Training	Per Day	Per Day	$1,500
On Site Training	Per Day	Per Day	$1,875
Add on/Extended Service Options			
Instructional Management System (IMS) – Schoolnet for PowerSchool	Annual	Per ADM	$6.00

ATTACHMENT B

ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE

SUBJECT CONTRACT NUMBER:	
CONTRACTOR LEGAL ENTITY NAME:	NCS PEARSON INC
FEDERAL EMPLOYER IDENTIFICATION NUMBER: (or Social Security Number)	[redacted]

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

CONTRACTOR SIGNATURE

NOTICE: This attestation MUST be signed by an individual empowered to contractually bind the Contractor. If said individual is not the chief executive or president, this document shall attach evidence showing the individual's authority to contractually bind the Contractor.

DOUG EVANS, VP FINANCE

PRINTED NAME AND TITLE OF SIGNATORY

10/24/2013

DATE OF ATTESTATION

ATTACHMENT C
AUTHORIZATION AND ACKNOWLEDGEMENT OF COMPLIANCE

Whereas, State has contracted with **Contractor/Grantee** on **Start Date** through **End Date** (**Agency Tracking #**), for **Description of Services**, and

Whereas, The above referenced contract may require the disclosure by the State to **Contractor/Grantee** of certain personally identifiable student information that is confidential under the Family Educational Rights and Privacy Act (FERPA), and

Whereas, 34 C.F.R. 99.31(2), authorizes an educational agency or institution to disclose personally identifiable information from an education record of a student without the consent required by Sec. 99.30 to a contractor, consultant, volunteer, or other party to whom an agency or institution has outsourced institutional services.

Therefore, the State and **Contractor/Grantee** hereby agree as follows:

1. **Contractor/Grantee** is authorized to maintain certain student information for the sole purpose of compliance with the requirements of the above referenced contract. This student information may include: Specific Student Information the Contractor/Grantee has information to.
2. **Contractor/Grantee** agrees to comply fully with FERPA by maintaining the confidentiality of all student information and to use the information solely to fulfill its obligations under the above referenced contract with the state.
3. **Contractor/Grantee** agrees to destroy all confidential student information when it is no longer needed for purposes of fulfilling its obligations under the above referenced contract.

10/24/2013
Contractor/Grantee **DATE**

10/31/13
TENNESSEE DEPARTMENT OF EDUCATION **DATE**

ATTACHMENT D

10/30/2013

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

CONTRACT AMENDMENT COVER SHEET

Agency Tracking #	Edison ID	Contract #	Amendment #
331111-00414	NV39620	NV39620	1

Contractor Legal Entity Name	Edison Vendor ID
Severin Intermediate Holdings LLC dba PowerSchool Group LLC	0000197223

Amendment Purpose & Effect(s)

Revise scope of services, extend term, and decrease maximum liability.

Amendment Changes Contract End Date: ☒ YES ☐ NO **End Date:** 06/30/2017

TOTAL Contract Amount INCREASE or DECREASE per this Amendment (zero if N/A): **($21,721,615.25)**

Funding —

FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2014	$0.00	$0.00	$0.00	$0.00	$0.00
2015	$82,075.22	$0.00	$0.00	$0.00	$82,075.22
2016	$89,260.80	$0.00	$0.00	$0.00	$89,290.80
2017	$2,530,508.71	$0.00	$0.00	$0.00	$2,530,478.71
TOTAL:	**$2,701,844.73**	**$0.00**	**$0.00**	**$0.00**	**$2,701,844.73**

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

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

8/30/16

Speed Chart (optional)	Account Code (optional)
ED0000000458	84510000

CPO USE

CONTRACT AMENDMENT COVER SHEET

Agency Tracking #	Edison ID	Contract #	Amendment #
331111-00414	NV39620	NV39620	1

Contractor Legal Entity Name	Edison Vendor ID
Severin Intermediate Holdings LLC dba PowerSchool Group LLC	0000197223

Amendment Purpose & Effect(s)

Vendor name change, revise scope of services, extend term, and decrease maximum liability.

Amendment Changes Contract End Date: ☒ YES ☐ NO **End Date:** 06/30/2017

TOTAL Contract Amount INCREASE or DECREASE per this Amendment (zero if N/A): **($21,721,615.25)**

Funding —

FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2014	$0.00	$0.00	$0.00	$0.00	$0.00
2015	$82,075.22	$0.00	$0.00	$0.00	$82,075.22
2016	$89,260.80	$0.00	$0.00	$0.00	$89,260.80
2017	$2,530,508.71	$0.00	$0.00	$0.00	$2,530,508.71
TOTAL:	**$2,701,844.73**	**$0.00**	**$0.00**	**$0.00**	**$2,701,844.73**

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

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

Chris Foley 8/2/16

CPO USE

Speed Chart (optional)	Account Code (optional)
ED0000000458	84510000

AMENDMENT 1
OF CONTRACT NV39620

This Amendment is made and entered by and between the State of Tennessee, Department of Education, hereinafter referred to as the "State" and Severin Intermediate Holdings LLC dba PowerSchool Group LLC, hereinafter referred to as the "Contractor". For good and valuable consideration, the sufficiency of which is hereby acknowledged, it is mutually understood and agreed by and between said, undersigned contracting parties that the subject contract is hereby amended as follows:

1. Contract section A.15 is deleted in its entirety and replaced with the following:

A.15 The Contractor shall provide a free hosting service option to districts who are designated "State Hosted Districts". The no cost hosting option may be either:

a. A data center operated by the Contractor that has been approved by the State for annexure as a State hosting facility, or
b. The State Microsoft Azure hosting platform

2. Contract section A.16 is deleted in its entirety and replaced with the following:

A.16. The Contractor may provide a paid hosting option to districts designated either "State Hosted" or "Non State Hosted", subject to the following:

a. The location of the paid hosting service must be a data center operated by the Contractor that has been approved by the State and cannot be the State Microsoft Azure hosting platform, and
b. The Contractor must maintain a no cost hosting option per A.15 above with a fidelity of user experience, functionality and performance greater than or equal to that which was provided in the preceding billing period, and
c. All costs associated with the paid hosting service must be communicated to districts in writing a minimum of six months prior to the commencement of the school year in which the hosting is to occur.

3. Contract section A.17 is deleted in its entirety and replaced with the following:

A.17. If the Contractor takes advantage of the State's Microsoft Azure hosting platform, it must do so in accordance with the following:

a. Systems deployed to Microsoft Azure must be consistent with best practice guidelines for Azure Infrastructure as a Service (IaaS) as published by Microsoft, and
b. Contractor agrees to work with State staff on the development of processes and configurations aimed at supporting business continuity, disaster recovery, cost reduction, security and performance and agrees to comply with all reasonable requests and accommodations in this regard, and
c. Contactor must strive to reduce the cost to the State for the provision of Azure compute resources needed to support the Contractor's system. In support of this, the Contractor is required to reduce the compute requirements of its product by 10% over the course of the renewal period by leveraging improved platform technologies offered by the Azure platform since first deployment. The State reserves the right to withhold commensurate payment if Contractor failed to show good faith efforts towards this cost reduction goal after three months of the commencement of this renewal period.

4. The following is added as Contract section A.21.

A.21. The Contractor agrees to the following:

a. The data must remain in the United States.
b. Confidential data must be encrypted at rest and in transit.
c. At the termination of the Contract confidential data must be destroyed in accordance with NIST pub 800-88.

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

B.1. This Contract shall be effective for the period beginning on November 1, 2013 ("Effective Date") and ending on June 30, 2017, ("Term"). The State shall have no obligation for goods delivered or services provided by the Contractor prior to the Effective Date.

6. Contract section C.1.a.(1) is deleted in its entirety and replaced with the following:

(1) The State shall be invoiced annually, on or after September 1, for the annual cost of licensing, maintenance and support described in the purchase order/contract, and as required below prior to any payment. The Contractor shall submit an invoice, with all necessary supporting documentation, to the State contact person.

7. Contract section C.1.a.(2) is deleted in its entirety and replaced with the following:

(2) The Participating Entity shall be invoiced annually, on or after August 1, for all services provided with the exception of the state share of the annual cost of licensing, maintenance and support which shall be paid by the State as stated above. Such invoice shall be submitted by Contractor only after completion of the work described in the purchase order/contract, and as required below prior to any payment. The Contractor shall submit an invoice, with all necessary supporting documentation, to the Participating Entity contact person.

8. Contract section C.1.a.(3) is deleted in its entirety and replaced with the following:

(3) Invoices shall clearly and accurately detail the following required information:

Invoice/reference number (assigned by the Contractor)
Invoice date
Contract number (Edison Record ID – from contract summary sheet)
Account name: TN Dept. of Education Statewide Student Management System
Contractor name (vendor legal name)
Contractor FEI number or SS (Edison Vendor ID - from contract summary sheet)
Contractor remittance address and contact information
Description of delivered item or service: 20xx-xx <SIS product name> Annual license, maintenance and support fees (include period of services July 1 – June 30, total ADM count & rate $2.55/ADM)
Total amount due for delivered item or service (combined total costs for respective districts)

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

C.2. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed two million, seven hundred one thousand eight hundred forty-four dollars and seventy-three cents ($2,701,844.73). The payment rates in Attachment A shall constitute the entire compensation due the Contractor for all service and Contractor obligations hereunder regardless of the difficulty, materials or equipment required. The payment rates include, but are not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by the Contractor.

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

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

E.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by certified, first class mail, return receipt requested and postage prepaid, by overnight courier service with an asset tracking system, or by email or facsimile transmission with recipient confirmation. 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:

Cliff Lloyd
Department of Education
Andrew Johnson Tower, 10th Floor
710 James Robertson Parkway
Nashville, TN 37243
Cliff.Lloyd@tn.gov
Telephone # (615) 626-0020
FAX # (615) 532-5942

The Contractor:

Mark Oldemeyer
PowerSchool Group, LLC
150 Parkshore Drive
Folsom, CA 95630
mark.oldemeyer@powerschool.com
Telephone (916) 288-1600

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

11. Contract section E.12 is deleted in its entirety and replaced with the following:

E.12. Federal Educational Rights and Privacy Act & Tennessee Data Accessibility, Transparency and Accountability Act. The Contractor shall comply with the Federal 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 Contractor shall also comply with Tenn. Code Ann. § 49-1-701, *et seq.*, known as the "Data Accessibility, Transparency and Accountability Act," and any accompanying administrative rules or regulations (collectively "DATAA"). The Contractor agrees to maintain the confidentiality of all records containing student and de-identified data, as this term is defined in DATAA, in any databases, to which the State has granted the Contractor access, and to only use such data for the exclusive purpose of performing its duties under this Contract.

Any instances of unauthorized disclosure of data containing personally identifiable information in violation of FERPA or DATAA that come to the attention of the Contractor shall be reported to the

State within twenty-four (24) hours. Contractor shall indemnify and hold harmless State, its employees, agents and representatives, from and against any and all claims, liabilities, losses, or causes of action that may arise, accrue, or result to any person or entity that is injured or damaged as a result of Contractor's failure to comply with this section.

12. The following is added as Contract section E.14:

E.14. Contractor Name. All references to "NCS Pearson, Inc." shall be deleted and replaced with "Severin Intermediate Holdings LLC dba PowerSchool Group LLC."

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

Amendment Effective Date. The revisions set forth herein shall be effective October 1, 2016. All other terms and conditions of this Contract not expressly amended herein shall remain in full force and effect.

IN WITNESS WHEREOF,

SEVERIN INTERMEDIATE HOLDINGS LLC DBA POWERSCHOOL GROUP LLC:

DocuSigned by:
Mark Oldemeyer
E462E928DBCE46E

August 15, 2016

SIGNATURE **DATE**

Mark Oldemeyer, Chief Financial Officer

PRINTED NAME AND TITLE OF SIGNATORY (above)

DEPARTMENT OF EDUCATION:

Candice McQueen

8/17/16

CANDICE MCQUEEN, COMMISSIONER **DATE**

CONTRACT AMENDMENT COVER SHEET

Agency Tracking #	Edison ID	Contract #	Amendment #
33111-00414	NV39620		2

Contractor Legal Entity Name	Edison Vendor ID
Severin Intermediate Holdings, LLC dba PowerSchool Group LLC	0000197223

Amendment Purpose & Effect(s)

Exercising the second extension option on existing contract to enable school districts to continue to use their current student information system (SIS) without disruption

Amendment Changes Contract End Date: ☒ YES ☐ NO **End Date:** 06/30/2018

TOTAL Contract Amount INCREASE or DECREASE per this Amendment (zero if N/A): **$0.00**

Funding —

FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2014	0.00				0.00
2015	79,388.52				79,388.52
2016	89,290.80				89,290.80
2017	67,396.50				67,396.50
2018	2,465,768.91				2,465,768.91
TOTAL:	**2,701,844.73**				**2,701,844.73**

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

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

Chris Foley 5/9/17

Speed Chart (optional)	Account Code (optional)
ED00000458	84510000

CPO USE

DocuSign Envelope ID: 20FD6FAF-9529-45FE-964F-899BD182E79E

AMENDMENT 2
OF CONTRACT 39620

This Amendment is made and entered by and between the State of Tennessee Department of Education, hereinafter referred to as the "State" and Severin Intermediate Holdings, LLC dba PowerSchool Group LLC, hereinafter referred to as the "Contractor." For good and valuable consideration, the sufficiency of which is hereby acknowledged, it is mutually understood and agreed by and between said, undersigned contracting parties that the subject contract is hereby amended as follows:

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

B.1. This Contract shall be effective for the period beginning on November 1, 2013 ("Effective Date") and ending on June 30, 2018, ("Term"). The State shall have no obligation for goods delivered or services provided by the Contractor prior to the Effective Date.

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

Amendment Effective Date. The revisions set forth herein shall be effective June 30, 2017. All other terms and conditions of this Contract not expressly amended herein shall remain in full force and effect.

IN WITNESS WHEREOF,

SEVERIN INTERMEDIATE HOLDINGS LLC

DBA POWERSCHOOL GROUP LLC

DocuSigned by:
Mark Oldemeyer
2402F926BBC240F...

6/6/2017

SIGNATURE **DATE**

Mark Oldemeyer — Chief Financial Officer

PRINTED NAME AND TITLE OF SIGNATORY (above)

DEPARTMENT OF EDUCATION:

Candice McQueen 6/15/17

Candice McQueen, Commissioner

CONTRACT AMENDMENT COVER SHEET

Agency Tracking #	Edison ID	Contract #	Amendment #
33111-00414	39620		3

Contractor Legal Entity Name	Edison Vendor ID
Severin Intermediate Holdings, LLC dba PowerSchool Group LLC	0000197223

Amendment Purpose & Effect(s)

Extend the contract term and update the renewal and extension clauses.

Amendment Changes Contract End Date: ☒ YES ☐ NO **End Date:** 06/30/2019

TOTAL Contract Amount INCREASE or DECREASE per this Amendment (zero if N/A): **$0.00**

Funding —

FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2014	0.00				0.00
2015	79,388.52				79,388.52
2016	89,290.80				89,290.80
2017	67,396.50				67,396.50
2018	67,177.20				67,177.20
2019	2,398,591.71				2,398,591.71
TOTAL:	**2,701,844.73**				**2,701,844.73**

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

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

CPO USE

Speed Chart (optional)	Account Code (optional)
ED00000458	84510000

AMENDMENT 3
OF CONTRACT 39620

This Amendment is made and entered by and between the State of Tennessee Department of Education, hereinafter referred to as the "State" and Severin Intermediate Holdings, LLC dba PowerSchool Group LLC, hereinafter referred to as the "Contractor." For good and valuable consideration, the sufficiency of which is hereby acknowledged, it is mutually understood and agreed by and between said, undersigned contracting parties that the subject contract is hereby amended as follows:

1. After consulting with CPO, we are seeking a rule exception request to update/strike the highlighted language to provide for extensions beyond 5 years.

B.1. This Contract shall be effective for the period beginning on November 1, 2013 ("Effective Date") and ending on June 30, 2019, ("Term"). The State shall have no obligation for goods delivered or services provided by the Contractor prior to the Effective Date.

B.2. Renewal Options. This Contract may be renewed upon satisfactory completion of the Term. The State reserves the right to execute up to five (5) 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-eight (68) months.

B.3. Term Extension. The State may extend the Term an additional period of time, not to exceed one hundred-eighty (180) days beyond the expiration date of this Contract, under the same terms and conditions, at the State's sole option. In no event, however, shall the maximum Term, including all renewals or extensions, exceed a total of sixty-eight (68) months.

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

Amendment Effective Date. The revisions set forth herein shall be effective June 30, 2018. All other terms and conditions of this Contract not expressly amended herein shall remain in full force and effect.

IN WITNESS WHEREOF,

SEVERIN INTERMEDIATE HOLDINGS LLC DBA POWERSCHOOL GROUP LLC

SIGNATURE **DATE**

PRINTED NAME AND TITLE OF SIGNATORY (above)

DEPARTMENT OF EDUCATION:

Candice McQueen, Commissioner