

**CONTRACT #6**  
**RFS # 337.10-75113**  
**FA # Pending**  
**Edison # Pending**

**Department of Labor &  
Workforce Development**

**VENDOR:**  
**University of Tennessee**

**STATE OF TENNESSEE**  
**DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT**

**BILL HASLAM**  
GOVERNOR

**220 French Landing Drive**  
**Nashville, TN 37243-1002**  
**(615) 741-2582**

**Karla Davis**  
COMMISSIONER

April 24, 2012

Lucian Geise, Director  
Fiscal Review Committee  
8<sup>th</sup> Floor, Rachel Jackson Building  
Nashville, TN 37243

REF: 337.10-75113 Non Competitive Contract

Dear Mr. Geise:

Outlined below is our justification for a Non Competitive Contract with The University of Tennessee, College of Business Administration.

The term of the contract is from July 1, 2012 through June 30, 2017.

This service is for evaluation and maintenance of the Tennessee Employment Security Insurance Model (TESIM).

The Center for Business and Economic Research (CBER) at the University of Tennessee, Knoxville has been directly involved with designing, implementing, and refining the quarterly projections for the trust fund balance since its inception over twenty five years ago. This projection is required by state law (Tennessee Code Annotated Section 50-7-506), which states that the Division of Employment Security "shall annually develop and submit to the general assembly an unemployment trust fund balance report not later than February 1. The report shall also include the projected unemployment trust fund balances for the eighteen-month period beginning January 1, and shall be prepared and documented in accordance with sound statistical methodology."

Based on the above justification, I am requesting your approval of this non-competitive contract.

Sincerely,

  
Karla Davis, Commissioner  
KD: RJ: mho

Supplemental Documentation Required for  
Fiscal Review Committee

*Contact Name:	Ron Jones		*Contact Phone:	(615) 532-8761	
*Original Contract Number:	NA		*Original RFS Number:	3371075113	
Edison Contract Number: <i>(if applicable)</i>	NA		Edison RFS Number: <i>(if applicable)</i>	NA	
*Original Contract Begin Date:	7/01/2012		*Current End Date:	6/30/2017	
Current Request Amendment Number: <i>(if applicable)</i>	NA				
Proposed Amendment Effective Date: <i>(if applicable)</i>	NA				
*Department Submitting:	Labor and Workforce Development				
*Division:	Employment Security				
*Date Submitted:	4/27/2012				
*Submitted Within Sixty (60) days: <i>If not, explain:</i>	Yes				
*Contract Vendor Name:	The University of Tennessee, Knoxville				
*Current Maximum Liability:	547,580.00				
<b>*Current Contract Allocation by Fiscal Year:</b> <i>(as Shown on Most Current Fully Executed Contract Summary Sheet)</i>					
FY:13	FY:14	FY:15	FY:16	FY17	FY
\$102,333.00	\$105,004.00	\$109,824.00	\$113,508.00	\$116,911.00	\$
<b>*Current Total Expenditures by Fiscal Year of Contract:</b> <i>(attach backup documentation from STARS or FDAS report)</i>					
FY:	FY:	FY:	FY:	FY	FY
\$ NA	\$	\$	\$	\$	\$
IF Contract Allocation has been greater than Contract Expenditures, please give the reasons and explain where surplus funds were spent:			NA		
IF surplus funds have been carried forward, please give the reasons and provide the authority for the carry forward provision:			NA		
IF Contract Expenditures exceeded Contract Allocation, please give the reasons and explain how funding was acquired to pay the overage:			NA		
*Contract Funding	State:		Federal:	547,580.00	

Supplemental Documentation Required for  
Fiscal Review Committee

Source/Amount:			
Interdepartmental:		<i>Other:</i>	
If " <i>other</i> " please define:			
Dates of All Previous Amendments or Revisions: <i>(if applicable)</i>		Brief Description of Actions in Previous Amendments or Revisions: <i>(if applicable)</i>	
NA		NA	
Method of Original Award: <i>(if applicable)</i>		NA	
*What were the projected costs of the service for the entire term of the contract prior to contract award?		NA	

## Supplemental Documentation Required for Fiscal Review Committee

C.3. Payment Methodology. The Contractor shall be compensated based on the payment

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

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

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

Deliverable description:	FY:13	FY:14	FY:15	FY:16	FY:17
Attachment 1	102,333.00	105,004.00	109,824.00	113,508.00	116,911.00

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

Deliverable description:	FY:13	FY:14	FY:15	FY:16	FY:17
	None	None	None	None	None

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

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

# Supplemental Documentation Required for Fiscal Review Committee

**Attachment 1**

- C.3. Payment Methodology. The Contractor shall be compensated based on the payment rates herein for units of service authorized by the State in a total amount not to exceed the Contract Maximum Liability established in section C.1.
- a. The Contractor's compensation shall be contingent upon the satisfactory completion of units, milestones, or increments of service defined in section A.
  - b. The Contractor shall be compensated for said units, milestones, or increments of service based upon the following payment rates:

<b>Service Description</b>	<b>Amount</b> (per compensable increment)
Research and services for the evaluation and maintenance of the Tennessee Employment Security Insurance Model (TESIM) for Fiscal Year 2012-2013.	\$ 8,527.75 Monthly
Research and services for the evaluation and maintenance of the Tennessee Employment Security Insurance Model (TESIM) for Fiscal Year 2013-2014.	\$ 8,750.33 Monthly
Research and services for the evaluation and maintenance of the Tennessee Employment Security Insurance Model (TESIM) for Fiscal Year 2014-2015.	\$ 9,152.00 Monthly
Research and services for the evaluation and maintenance of the Tennessee Employment Security Insurance Model (TESIM) for Fiscal Year 2015-2016.	\$ 9,459.00 Monthly
Research and services for the evaluation and maintenance of the Tennessee Employment Security Insurance Model (TESIM) for Fiscal Year 2016-2017.	\$ 9,742.58 Monthly

# Non-Competitive Contract Request

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

Route a completed request, as one file in PDF format, via e-mail attachment sent to: [AgSprs.Agsprs@state.tn.us](mailto:AgSprs.Agsprs@state.tn.us)

APPROVED

COMMISSIONER OF FINANCE & ADMINISTRATION

<b>Request Tracking #</b>	33710-75113	
<b>1. Contracting Agency</b>	Labor and Workforce Development	
<b>2. Proposed Contractor</b>	The University of Tennessee, Knoxville, Office of Research	
<b>3. Proposed Contract Period</b> – with ALL options to extend exercised <i>The proposed contract start date shall follow the approval date of this request.</i>	60 months	
<b>4. Maximum Contract Cost</b> – with ALL options to extend exercised	\$ 547,580.00	
<b>5. Office for Information Resources Endorsement</b> – information technology (N/A to THDA)	<input checked="" type="checkbox"/> Not Applicable <input type="checkbox"/> Attached	
<b>6. eHealth Initiative Support</b> – health-related professional, pharmaceutical, laboratory, or imaging	<input checked="" type="checkbox"/> Not Applicable <input type="checkbox"/> Attached	
<b>7. Human Resources Support</b> – state employee training	<input checked="" type="checkbox"/> Not Applicable <input type="checkbox"/> Attached	
<b>8. Has the contracting agency bought the subject service before?</b>		
<input type="checkbox"/> NO <input checked="" type="checkbox"/> YES, it was procured by... <input type="checkbox"/> RFP <input type="checkbox"/> Another Competitive Method <input checked="" type="checkbox"/> Non-Competitive Negotiation		
<b>9. Service Description</b> – brief <u>summary</u> only – do NOT restate the proposed scope of service		
The Contractor will serve as a consultant on a variety of issues related to the economics, research, and statistics. The contractor will provide updated economic forecasts in a format appropriate for use in the insurance (TESIM) model.		
<b>10. Explanation of Need for or Requirement Placed on the State to Acquire the Service</b>		
The projection (insurance Model) is required by state law (Tennessee Code Annotated Section 50-7-506), which states that the Division of Employment Security "shall annually develop and submit to the general assembly an unemployment trust fund balance report not later than February 1. Attachment A		
<b>11. Name &amp; Address of the Contractor's Principal Owner(s)</b> – NOT required for a TN state education institution		
N/A		
<b>12. Evidence Contractor's Experience &amp; Length Of Experience Providing the Service</b>		

<b>Request Tracking #</b>	<b>33710-75113</b>
The University of Tennessee has been providing this service since its inception, for more than twenty five years.	
<b>13. Efforts to Identify Reasonable, Competitive, Procurement Alternatives</b>	
None	
<b>14. Justification</b> – specifically explain why non-competitive negotiation is in the best interest of the state	
It would not be in the best interest of the state to change providers since some of the data used in the TESIM model goes back more than thirty years and could not easily be duplicated.	
<b>Agency Head Signature and Date</b> – <i>MUST be signed by the ACTUAL agency head as detailed on the current Signature Certification. Signature by an authorized signatory is acceptable only in documented exigent circumstances</i>	
 4/23/12	

## Attachment A

TESIM, the Tennessee Employment Security Insurance Model, was developed in 1982 at the urging of then Commissioner Thomas Yount. His recommendation followed the recession of the previous year when the Unemployment Insurance trust fund, in our state, went bankrupt and this department was forced to borrow monies from the Federal government (with interest) to pay unemployment claims by Tennessee workers.

A multiple regression model was developed to project the trust fund balance and to track the revenues and expenses so that this state would not have the expense of borrowing monies to pay UI claims again. For over twenty years this has proved to be a valuable investment.

TESIM consists of statewide raw economic data, national information, and the state econometric model wrapped into large equations to predict the future 18 months economic growth and/or decline of the workforce (in terms of unemployment insurance demand). Much of the raw data is provided by our department. The national economic variables are purchased from national vendors, including those from the Wharton School. It is the data from state econometric model that gives these equations their unique ability to project Tennessee's economic future.

This model was developed over years of work and refining equations by the Center for Business and Economic Research (CBER) at the University of Tennessee, Knoxville. Dr. William F. Fox, CBER Director and his CBER staff are and were the developers of the TESIM model and the state econometric model which is the primary data variable for these projections. The econometric model is also used as the product for An Economic Report to the Governor of the State of Tennessee. This yearly publication gives the states economic outlook and the TESIM projections match that outlook.



# CONTRACT

(fee-for-service contract with the University of Tennessee or a Board of Regents college or university)

<b>Begin Date</b> 7/01/2012	<b>End Date</b> 6/30/2017	<b>Agency Tracking #</b> 33710-75113	<b>Edison Record ID</b>
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<b>Contractor Legal Entity Name</b> The University of Tennessee, Knoxville	<b>Edison Vendor ID</b> 2802
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<b>Subrecipient or Vendor</b> <input type="checkbox"/> Subrecipient <input checked="" type="checkbox"/> Vendor	<b>CFDA #</b> 17.225
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**Service Caption (one line only)**  
Provide TDLWD with the research and services necessary for the evaluation and maintenance of the Tennessee Employment Security Model (TESIM).

Funding —					
FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
13		102,333.00			102,333.00
14		105,004.00			105,004.00
15		109,824.00			109,824.00
16		113,508.00			113,508.00
17		116,911.00			116,911.00
<b>TOTAL:</b>		<b>547,580.00</b>			<b>547,580.00</b>

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

<b>Selection Method &amp; Process Summary</b> (mark the correct response to confirm the associated summary)	
<input type="checkbox"/> RFP	The procurement process was completed in accordance with the approved RFP document and associated regulations.
<input type="checkbox"/> Competitive Negotiation	The predefined, competitive, impartial, negotiation process was completed in accordance with the associated, approved procedures and evaluation criteria.
<input type="checkbox"/> Alternative Competitive Method	The predefined, competitive, impartial, procurement process was completed in accordance with the associated, approved procedures and evaluation criteria.
<input checked="" type="checkbox"/> Non-Competitive Negotiation	The non-competitive contractor selection was completed as approved, and the procurement process included a negotiation of best possible terms & price.
<input type="checkbox"/> Other	The contractor selection was directed by law, court order, settlement agreement, or resulted from the state making the same agreement with <u>all</u> interested parties or <u>all</u> parties in a predetermined "class."

<b>Budget Officer Confirmation:</b> 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.	<i>OCR USE - ED</i>
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<b>Speed Chart (optional)</b> 210	<b>Account Code (optional)</b> 70803000
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**CONTRACT  
BETWEEN THE STATE OF TENNESSEE,  
DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT  
AND  
THE UNIVERSITY OF TENNESSEE.  
CENTER FOR BUSINESS AND ECONOMIC RESEARCH  
COLLEGE OF BUSINESS ADMINISTRATION**

This Contract, by and between the State of Tennessee, Department of Labor and Workforce Development, hereinafter referred to as the "State" and The University of Tennessee, hereinafter referred to as the "Contractor," is for the provision of evaluation and maintenance of the Tennessee Employment Security Insurance Model (TESIM), as further defined in the "SCOPE OF SERVICES."

Contractor Edison Registration ID # 2802

**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. Contractor agrees:

- a. To provide the research and services for the evaluation and maintenance of the Tennessee Employment Security Insurance Model (TESIM). Center for Business and Economic Research (CBER) will serve as consultant on a variety of issues related to the economics, research, and statistics. As requested, CBER will seek to provide such consultations directly or arrange assistance as necessary from other faculty of The University of Tennessee, Knoxville, and College of Business Administration. CBER will initiate discussions on the topics of interest related to the Research and Statistics (R&S) issues that are identified during staff research activities. CBER also will continue to provide data resource services to R&S for Census and other Public-access data as requested. CBER will continue to support and provide other enhancements to the TESIM. This model has generally been an effective tool for forecasting components of the trust fund balance and simulating the effects of policy changes.

CBER will assist R&S staff in preparing forecasts as requested during 2012-2013, 2013-2014, 2014-2015, 2015-2016 and 2016-2017 fiscal years. For each forecast, CBER will provide to R&S updated economic forecasts in a format appropriate for the use in the TESIM model. CBER will also prepare simulations of policy alternatives as requested. Assistance will be provided in analyzing TESIM output and in making adjustments as necessary.

The equations that comprise TESIM will be reestimated by CBER, using the latest available national and state economic data. Structural relationships between TESIM variables will be monitored as shifts in underlying data are uncovered or as it becomes apparent that new conceptualization is necessary.

Statistical evaluation of the accuracy of the previous forecast will be undertaken, and an analysis will be made of significant variability from actual experience. Assistance will also be provided to help R&S staff incorporate judgment and institutional/administrative knowledge into TESIM forecasts. In addition, CBER will assist R&S staff in utilizing the simulation capabilities of TESIM.

- b. To complete, in total, all of its duties and obligations under this Contract and do so within the term of this Contract.
- c. All notices, informational pamphlets, press releases, research reports, signs and similar public notices prepared and released by the Contractor shall include the statement, "This

project is funded (in part) under an agreement with the Tennessee Department of Labor and Workforce Development, Employment Security Division.”

- d. The State will designate, in writing, an individual whose responsibility will be to represent Employment Security Division as Project Manager for this Contract.

**B. CONTRACT PERIOD:**

This Contract shall be effective for the period beginning 7/01/2012, and ending on 6/30/2017. The Contractor hereby acknowledges and affirms that the State shall have no obligation for services rendered by the Contractor which were not performed within this specified contract period.

**C. PAYMENT TERMS AND CONDITIONS:**

- C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed five hundred forty seven thousand five hundred eighty dollars (\$547,580.00). The payment rates in section C.3 shall constitute the entire compensation due the Contractor for all service and Contractor obligations hereunder regardless of the difficulty, materials or equipment required. The payment rates include, but are not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by the Contractor.

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

- C.2. Compensation Firm. The payment rates and the maximum liability of the State under this Contract are firm for the duration of the Contract and are not subject to escalation for any reason unless amended.
- C.3. Payment Methodology. The Contractor shall be compensated based on the payment rates herein for units of service authorized by the State in a total amount not to exceed the Contract Maximum Liability established in section C.1.
  - a. The Contractor's compensation shall be contingent upon the satisfactory completion of units, milestones, or increments of service defined in section A.
  - b. The Contractor shall be compensated for said units, milestones, or increments of service based upon the following payment rates:

Service Description	Amount (per compensable increment)
Research and services for the evaluation and maintenance of the Tennessee Employment Security Insurance Model (TESIM) for Fiscal Year 2012-2013.	\$ 8,527.75 Monthly
Research and services for the evaluation and maintenance of the Tennessee Employment Security Insurance Model (TESIM) for Fiscal Year 2013-2014.	\$ 8,750.33 Monthly
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Research and services for the evaluation and maintenance of the Tennessee Employment Security Insurance Model (TESIM) for Fiscal Year 2015-2016.	\$ 9,459.00 Monthly
Research and services for the evaluation and maintenance of the Tennessee Employment Security Insurance Model (TESIM) for Fiscal Year 2016-2017.	\$ 9,742.58 Monthly

C.4. Travel Compensation. The Contractor shall not be compensated or reimbursed for travel, meals, or lodging.

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

220 French Landing Drive, 4 A, Nashville, TN 37243-1002

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

- (1) Invoice Number (assigned by the Contractor)
- (2) Invoice Date
- (3) Contract Number (assigned by the State)
- (4) Customer Account Name: Labor and Workforce Development, Employment Security Division
- (5) Customer Account Number (assigned by the Contractor to the above-referenced Customer)
- (6) Contractor Name
- (7) Contractor Tennessee Edison Registration ID Number Referenced in Preamble of this Contract
- (8) Contractor Contact for Invoice Questions (name, phone, and/or fax)
- (9) Contractor Remittance Address
- (10) Description of Delivered Service
- (11) Complete Itemization of Charges, which shall detail the following:
  - i. Service or Milestone Description (including name & title as applicable) of each service invoiced
  - ii. Number of Completed Units, Increments, Hours, or Days as applicable, of each service invoiced
  - iii. Applicable Payment Rate (as stipulated in Section C.3.) of each service invoiced
  - iv. Amount Due by Service
  - v. Total Amount Due for the invoice period

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

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

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 matter in relation thereto. A payment by the State shall not be

construed as acceptance of any part of the work or service 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 theretofore made which are determined by the State, on the basis of audits conducted in accordance with the terms of this Contract, not to constitute proper remuneration for compensable services.
- C.8. Deductions. Pursuant to *Tennessee Code Annotated*, Section 9-4-604, the State may not issue warrants for payments to persons who are in default to the State until such arrearages are paid. If applicable to the Contractor, the Contractor agrees that, should such an arrearage exist during the term of this Contract, the State shall have the right to deduct from payments due and owing to the Contractor any and all amounts as are necessary to satisfy the arrearage. Should a dispute arise concerning payments due and owing to the Contractor under this Contract, the State reserves the right to withhold said disputed amounts pending final resolution of the dispute.

**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 Commissioner of Finance and Administration, 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 Commissioner of Finance and Administration, the Commissioner of Human Resources, and the Comptroller of the Treasury).
- D.3. Termination for Convenience. The Contract may be terminated by either party by giving written notice to the other, at least thirty (30) days before the effective date of termination. Should the State exercise this provision, the Contractor shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Should the Contractor exercise this provision, the State shall have no liability to the Contractor except for those units of service which can be effectively used by the State. The final decision as to what these units of service are, shall be determined by the State. In the event of disagreement, the Contractor may file a claim with the Tennessee Claims Commission to seek redress.
- D.4. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor violates any terms of this Contract, the State shall have the right to immediately terminate the Contract and withhold payments in excess of fair compensation for completed services. Any liability of the Contractor to the State and third parties for any claims, losses, or costs arising out of or related to acts performed by the Contractor under this agreement shall be governed by the Tennessee Claims Commission Act, *Tennessee Code Annotated*, Section 9-8-301, *et seq.*
- 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 "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. 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.7. 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.8. Prevailing Wage Rates. All contracts for construction, erection, or demolition or to install goods or materials that involve the expenditure of any funds derived from the State require compliance with the prevailing wage laws as provided in *Tennessee Code Annotated, Section 12-4-401 et seq.*
- D.9. 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.10. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- 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 a 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.
- D.13. State Liability. The State shall have no liability except as specifically provided in this Contract.
- D.14. 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.15. State and Federal Compliance. The Contractor shall comply with all applicable State and Federal laws and regulations in the performance of this Contract.
- D.16. 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.17. 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:

Melvin O'Neal, Contract Coordinator  
Department of Labor and Workforce Development  
220 French Landing Drive, 4 A  
Nashville, Tennessee 37243-1002  
Email Address: melvin.oneal@tn.gov  
Telephone Number 615 532-1071  
Facsimile Number 615 741-3002

The Contractor:

Beth Eflick, Office of Research  
The University of Tennessee, Knoxville  
1534 White Avenue  
Knoxville, TN 37993-1529  
Email Address  
Telephone # (865) 974-4808 (865) 974-4827  
FAX # (865) 974-2805

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. Act of 2009)), and the contract will provide for the expenditure of \$25,000 or more in federal funds.
- E.4. Federal Funding Accountability and Transparency Act (FFATA). This Contract requires the Contractor to provide supplies and/or services that are funded in whole or in part by federal funds that are subject to FFATA. The Contractor is responsible for ensuring that all applicable requirements, including but not limited to those set forth herein, of FFATA are met and that the Contractor provides information to the State as required.

The Contractor shall comply with the following:

- a. Reporting of Total Compensation of the Contractor's Executives.
- (1) The Contractor shall report the names and total compensation of each of its five

most highly compensated executives for the Contractor's preceding completed fiscal year, if in the Contractor's preceding fiscal year it received:

- i. 80 percent or more of the Contractor's annual gross revenues from Federal procurement contracts and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
- ii. \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and
- iii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/excomp.htm>.)

Executive means officers, managing partners, or any other employees in management positions.

(2) Total compensation means the cash and noncash dollar value earned by the executive during the Contractor's preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)):

- i. Salary and bonus.
  - ii. Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
  - iii. Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
  - iv. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
  - v. Above-market earnings on deferred compensation which is not tax qualified.
  - vi. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.
- b. The Contractor must report executive total compensation described above to the State by the end of the month during which this Contract is awarded.
  - c. If this Contract is amended to extend its term, the Contractor must submit an executive total compensation report to the State by the end of the month in which the amendment to this Contract becomes effective.
  - d. The Contractor will obtain a Data Universal Numbering System (DUNS) number and maintain its DUNS number for the term of this Contract. More information about obtaining a DUNS Number can be found at: <http://fedgov.dnb.com/webform/>

The Contractor's failure to comply with the above requirements is a material breach of this Contract for which the State may terminate this Contract for cause. The State will not be obligated to pay any outstanding invoice received from the Contractor unless and until the

Contractor is in full compliance with the above requirements.

**IN WITNESS WHEREOF,**

**THE UNIVERSITY OF TENNESSEE:**

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**CONTRACTOR SIGNATURE** **DATE**

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**PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)**

**DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT:**

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**Karla Davis, Commissioner** **DATE**