

**CONTRACT #8**  
**RFS # 332.01-00112**  
**FA # 12-37114**  
**Edison # 26269**

**Tennessee Higher Education  
Commission (THEC)**

**VENDOR:**  
**SAS Institute, Inc.**

RICHARD G. RHODA  
Executive Director



BILL HASLAM  
Governor

STATE OF TENNESSEE  
TENNESSEE HIGHER EDUCATION COMMISSION  
PARKWAY TOWERS, SUITE 1900  
NASHVILLE, TENNESSEE 37243-0830  
(615) 741-3605  
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## MEMORANDUM

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

**FROM:** Scott Sloan, Associate Executive Director, Legal and Regulatory Affairs 

**DATE:** October 8, 2013

**RE:** Non-Competitive Contract Summary  
SAS Institute, Inc., Amendment Three

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The Tennessee Higher Education Commission (THEC) proposes to submit a non-competitive Amendment to its Contract with the SAS Institute, Inc., to assist teacher preparation programs in using the existing data to effectively evaluate and improve current teacher training. This objective will be accomplished by developing statistical analyses relative to teacher effect scores and program improvement as well as providing teacher value-added estimates and diagnostic reports to teacher training programs through a secure web application.

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

### Description of Services:

Background and Objective: The Contract is for the provision of integrating Tennessee Value-Added Assessment System (TVAAS) data into pre-service teacher training at higher education institutions as part of the State's First to the Top reforms. This is done in accordance with the provisions of the Race to the Top grant from the U.S. Department of Education.

In 2010, Tennessee was one of 41 states to submit an application and compete in the United States Department of Education's Race to the Top competition. Race to the Top is a \$4.35 billion incentive program designed to make drastic reforms and improvements in education and student performance.

After a rigorous competition, Tennessee emerged as one of two states awarded Race to the Top funding, receiving \$501 million over four years.

Tennessee's Race to the Top proposal concentrated on five areas of improvement: Great Teachers and Leaders; Standards and Assessments; Data Systems to Support Instruction; Turning Around Low-Performing Schools; and STEM (Science, Technology, Engineering, and Math) Education. This sweeping educational reform required collaboration from all educational stakeholders. The Tennessee

Department of Education, State Board of Education, Tennessee Higher Education Commission, and Governor's Office led the efforts in implementing the reforms associated with Race to the Top.

Explanation of the Need for or Requirement Placed on the Agency to Acquire the Service: The original contract with the SAS Institute, Inc., provided for the design of a pre-service, Tennessee Value-Added Assessment System (TVAAS) curriculum through the development of four interactive modules. The contract also required SAS to prepare instructional guides on the module uses, perform piloting of the curriculum and assessments developed, and thereafter conduct ancillary research regarding improvements in differentiated instruction and attitudes towards TVAAS.

Amendment One extended the date of Deliverable 3, *Piloting of the Curriculum*, through April 15, 2012, to ensure sufficient time and flexibility for the teachers' participation as several time constraints would have prevented teachers from participating in the project. There were no costs associated with this extension.

Amendment Two called for the SAS Institute, Inc., to provide higher education diagnostics, which included performing data collection, analysis, reporting, and training to the State and its forty-four institutions of higher education that serve as teacher training programs. The costs associated with this additional service increased the contract amount \$300,000 from the original contract costs of \$1,100,000.

Amendment Three is designed to further assist teacher preparation programs in using the data to effectively evaluate and improve programs, develop statistical analyses relative to teacher effect scores through the teacher value-added estimates, and provide diagnostic reports to teacher training programs via a secure web application. The costs associated with this amendment will increase the contract by an additional \$450,000.

Contract Term: The Contract term is November 8, 2011 through June 30, 2014.

Maximum Expenditure: One million, four hundred thousand dollars (\$1,400,000.00)  
 With proposed Amendment Deliverable Seven: One million, eight hundred fifty thousand dollars (\$1,850,000.00):

Expenditure by Deliverable:

Service Description	Amount (per compensable increment)
<p><b>Deliverable 1 - Pre-service TVAAS Curriculum Development and Implementation Support. A.3</b></p> <p>Module Development due on or before March 30,2012            SAS will deliver four (4) sub-modules under the Module Development for \$125,000.00 per module. SAS will send an invoice upon completion of each sub-module.</p>	<p>\$500,000 Deliverable 1 per Section A.3.a</p>

Forum due March 30, 2012	\$200,000 Deliverable 1 per Section A.3.b
<b>Deliverable 2 - Instructional Guides. Section A.4.</b>  Due June 30, 2012	\$200,000 per Deliverable 2
<b>Deliverable 3 - Piloting of the Curriculum and Assessment. A.5.</b>  Due March 30 through April 15, 2012	\$100,000 per Deliverable 3
<b>Deliverable 4 - Ancillary Research. A.6.</b>  Due June 30, 2014	\$150,000 per Deliverable 4
<b>Deliverable 6 - Higher Education Diagnostics. A.8.</b>  <b>Program Improvement Training. A.8.a.</b>  Due March 31, 2013 (with follow-up dates TBD by the Contractor, State, and Institution Availability)  <b>Web-based Data Collection for Completers A.8.b.</b>  Due November 1, 2013  <b>Advanced Analytics. A.8.c.</b>  Report Due March 31, 2014	\$200,000 per Deliverable A.8.a. and A.8.b.  To be invoiced December 31, 2013  \$50,000 per Deliverable A.8.c.
<b>Deliverable 7 Value-Added data to Higher Education Institutions A.9.</b>  <b>Web Application Available December 15, 2013</b>	\$450,000 per Deliverable 7

**Expenditure by Fiscal Year:**

	<b>SAS TVAAS</b>
FY2012	\$ 700,000.00
FY2013	\$ 300,000.00
FY2014	\$ 850,000.00
	<u>\$ 1,850,000.00</u>

**Justification for Non-Competitive Contract:**

Consideration for a non-competitive contract amendment is requested because TVAAS data is based upon a statistical methodology that is owned exclusively by the SAS Institute, Inc. The services procured through this contract will fulfill the requirements set forth in TCA Section § 49-1-606 to allow teacher preparation programs to receive teacher effect data as defined by the Tennessee Value Added Assessment System pertaining to the program graduates.

Supplemental Documentation Required for  
Fiscal Review Committee

<b>*Contact Name:</b>	Scott Sloan, Associate Executive Director, Legal and Regulatory Affairs  Marcie Mills, Contracts Administration Manager	<b>*Contact Phone:</b>	615.741.7571 <a href="mailto:Scott.Sloan@tn.gov">Scott.Sloan@tn.gov</a> , or  615.532.3500 <a href="mailto:Marcie.Mills@tn.gov">Marcie.Mills@tn.gov</a>
<b>*Original Contract Number:</b>	FA1237114	<b>*Original RFS Number:</b>	33201-00112
Edison Contract Number: <i>(if applicable)</i>	26269	Edison RFS Number: <i>(if applicable)</i>	33201-00112
<b>*Original Contract Begin Date:</b>	11/08/2011	<b>*Current End Date:</b>	06/30/2014
<b>Current Request Amendment Number:</b> <i>(if applicable)</i>		THREE	
<b>Proposed Amendment Effective Date:</b> <i>(if applicable)</i>		12/10/2013	
<b>*Department Submitting:</b>		Tennessee Higher Education Commission	
<b>*Division:</b>		First to the Top	
<b>*Date Submitted:</b>		10/10/2013	
<b>*Submitted Within Sixty (60) days:</b>		Yes	
<i>If not, explain:</i>		N/A	
<b>*Contract Vendor Name:</b>		SAS Institute, Inc.	
<b>*Current Maximum Liability:</b>		\$1,100,000.00	
<b>*Current Contract Allocation by Fiscal Year:</b> <i>(as Shown on Most Current Fully Executed Contract Summary Sheet)</i>			
FY: 2012	FY: 2013	FY: 2014	FY:
\$ 1,033,000.00	\$ 283,000.00	\$ 84,000.00	\$
<b>*Current Total Expenditures by Fiscal Year of Contract:</b> <i>(attach backup documentation from STARS or FDAS report – see Attachment A)</i>			
FY:12	FY:13	FY:	FY:
\$ 700,000	\$ 300,00	\$	\$
<b>IF</b> Contract Allocation has been greater than Contract Expenditures, please give the reasons and explain where surplus funds were spent:		Contract Allocations were greater than expenditures due to a realignment of several of the deliverables. Ancillary Research Reports, Deliverable 4, are intended to capture the impact of the use of the modules created on teacher performance once they leave higher education and enter the K-12 classroom. Due to the implementation timeline of the modules, SAS and THEC wanted to ensure a great enough sample size to make determinations on the effectiveness of	

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	<p>the modules in improving teachers' knowledge of data use and inform our decisions moving forward. SAS has just completed the first year of full integration into teacher pre-service programs and will begin collecting data on the effectiveness of the modules once those students enter the K-12 arena as a classroom teacher.</p> <p>Additionally, Amendment Three provides for the Higher Education Diagnostics, Deliverable 6, be extended through November 1, 2013. The development of the research questions and required data variables was done in collaboration with over forty higher education institutions throughout the state. This process took longer than anticipated as institutions evaluated their current data systems to determine the availability of the data to be collected on a statewide level. Once the institutions were able to develop the questions and confirm data availability, THEC and SAS worked together on the development of the web collection system. This allows THEC and SAS to ensure that all stakeholders are appropriately engaged and that the data demands of the institutions are not burdensome.</p>
<p><b>IF</b> surplus funds have been carried forward, please give the reasons and provide the authority for the carry forward provision:</p>	<p>Since SAS will be using a three-year cohort of graduates to complete the advanced analytics research, there will be no reason to repeat the research in the following year. As such, Amendment Three further provides for the \$50,000 originally allotted for annual reporting to provide for publicly available research reports on a statewide basis. Additionally, since the reports are being prepared using a three-year cohort, the individual reports at \$50,000 per report throughout FY13-14 will be combined into one summative set of reports due June 30, 2014, for a total of \$150,000.</p>

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<b>IF Contract Expenditures exceeded Contract Allocation, please give the reasons and explain how funding was acquired to pay the overage:</b>		NA	
<b>*Contract Funding Source/Amount:</b>	<b>State:</b>	<b>Federal:</b>	
<b>Interdepartmental:</b>	\$1,850,000	<i>Other:</i>	
If "other" please define:			
<b>Dates of All Previous Amendments or Revisions: (if applicable)</b>		<b>Brief Description of Actions in Previous Amendments or Revisions: (if applicable)</b>	
Amendment One Effective 03/30/2012		Amendment One extended the date of Deliverable 3, Piloting of the Curriculum, through April 15, 2012, to ensure sufficient time and flexibility for the teachers' participation since there were several time constraints that would have prevented teachers from participating in the project. There was no cost associated Amendment One.	
Amendment Two Effective 09/30/2012		Amendment Two called for SAS Institute to provide higher education diagnostics, which included performing data collection, analytics, reporting, and training to the State and its forty-four institutions of higher education that serve as teacher training programs in the state of Tennessee.	
<b>Method of Original Award: (if applicable)</b>		Non-Competitive Contract	
<b>*What were the projected costs of the service for the entire term of the contract prior to contract award?</b>		\$ 1,100,000.00	

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<p>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.</p>					
<p><b>Planned expenditures by fiscal year by deliverable<sup>1</sup>. Add rows as necessary to indicate all estimated contract expenditures.</b></p>					
Deliverable (#) description:	FY: 2011	FY: 2012	FY: 2013	FY: 2014	
Module Development		\$ 500,000			
Forum		\$ 200,000			
Instructional Guides		\$ 200,000			
Piloting of Curriculum and Assessment		\$ 100,000			
Ancillary Research					\$150,000
Program Improvement Training and Web-based Data Collection for Completers (Proposed Amendment)			\$200,000		
Advanced Analytics Report (Proposed Amendment)					\$50,000
Web Application					\$450,000
<p><b>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.<sup>2</sup></b></p>					
Deliverable description:	FY:	FY:	FY:	FY:	FY:
<p><b>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.</b></p>					
Proposed Vendor Cost: (name of vendor)	FY:	FY:	FY:	FY:	FY:

<sup>1</sup> As amended through Amendment Three

<sup>2</sup> TVAAS data is based upon a statistical methodology that is owned exclusively by the SAS Institute, Inc.; therefore, there is no procurement alternative available to the Tennessee Higher Education Commission.

Supplemental Documentation Required for  
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**TN\_PU\_POS\_AGAINST\_CONTRACT - Purchase Orders against a Contract**

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Contract Number: 0000026269

	Contract	PO No.	PO Date	UO M	Contract Max. Amt	PO Amount	Contract Remaining Amt
	00026269	0000001787	11/08/2011	EA	1,100,000	-	-
1	FY12	0000001787	02/13/2012	EA	1,400,000	\$125,000	\$1,275,000
2	FY12	0000002056	06/19/2012	EA	1,400,000	\$575,000	\$ 700,000
3	FY13	0000002612	02/28/2013	EA	1,400,000	\$300,000	\$ 400,000

# Non-Competitive Amendment Request

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

<b>APPROVED</b>
<b>COMMISSIONER OF FINANCE &amp; ADMINISTRATION</b>

<b>Request Tracking #</b>	<b>33201-00112</b>	
<b>1. Procuring Agency</b>	<b>Tennessee Higher Education Commission</b>	
<b>2. Contractor</b>	<b>SAS Institute, Inc.</b>	
<b>3. Contract #</b>	<b>FA1237114-02</b>	
<b>4. Proposed Amendment #</b>	<b>THREE</b>	
<b>5. Edison ID #</b>	<b>26269</b>	
<b>6. Contract Begin Date</b>		<b>11/08/2011</b>
<b>7. Current Contract End Date</b> <i>– with ALL options to extend exercised</i>		<b>06/30/2014</b>
<b>8. Proposed Contract End Date</b> <i>– with ALL options to extend exercised</i>		<b>06/30/2014</b>
<b>9. Current Maximum Contract Cost</b> <i>– with ALL options to extend exercised</i>		<b>\$ 1,400,000</b>
<b>10. Proposed Maximum Contract Cost</b> <i>– with ALL options to extend exercised</i>		<b>\$ 1,850,000</b>
<b>11. Office for Information Resources Endorsement</b> <i>– information technology service (N/A to THDA)</i>	<input type="checkbox"/> Not Applicable	<input checked="" type="checkbox"/> Attached
<b>12. eHealth Initiative Support</b> <i>– health-related professional, pharmaceutical, laboratory, or imaging</i>	<input checked="" type="checkbox"/> Not Applicable	<input type="checkbox"/> Attached
<b>13. Human Resources Support</b> <i>– state employee training service</i>	<input checked="" type="checkbox"/> Not Applicable	<input type="checkbox"/> Attached
<b>14. Explanation Need for the Proposed Amendment</b>		
<p>In the 2012 legislative session, Senate Bill No. 3024 was adopted by the General Assembly. This bill changed TCA Section § 49-1-606 to allow teacher preparation programs to receive teacher effect data as defined by the Tennessee Value Added Assessment System pertaining to the program graduates.</p> <p>SAS Institute developed training modules on the use of the Tennessee Value-Added Assessment System that are disbursed to initial preparation programs to instruct pre-service teachers on the use of TVAAS results to modify and improve classroom instruction and enhance student learning of the State's new curriculum standards.</p>		

<b>Request Tracking #</b>	<b>33201-00112</b>
<p>To further assist teacher preparation programs in using the data to effectively evaluate and improve programs, THEC is contracting with SAS Institute, Inc. to develop statistical analyses relative to teacher effect scores and program improvement by providing the teacher value-added estimates and supporting diagnostic reports to teacher training programs via a secure web application.</p> <p>The reports available to authorized users of the teacher training programs will include teacher reporting for Tennessee teachers who have completed a Tennessee teacher training program within the past three years and will include a "teacher value-added" report that includes an estimate or effect, index value, and effectiveness level designation; a "teacher diagnostic" report that reflects simple gains for subgroups of the teacher's students by their achievement level; a "program listing" report that lists the teacher, tested subject and grade, and effectiveness level for each subject and grade taught by the teacher in the current year, as well as the composite for applicable teachers in the teacher preparation program; a "teacher search" report that is an interactive query function that allows teacher preparation programs to search for an individual teacher who is linked to the specific preparation program; and a "program teaching effectiveness" summary that is an interactive query function to summarize the effectiveness levels of all teachers linked to a specific preparation program.</p> <p>SAS Institute, Inc. is the sole vendor for teacher effect scores because SAS owns the statistical methodology used to create the Tennessee Value Added Assessment System.</p>	
<p><b>15. Name &amp; Address of the Contractor's Principal Owner(s)</b>  <i>- NOT required for a TN state education institution</i></p> <p><b>SAS Institute, Inc.  SAS Campus Drive  Cary, NC 27513</b></p>	
<p><b>16. Evidence Contractor's Experience &amp; Length Of Experience Providing the Service</b></p> <p>SAS once stood for "statistical analysis system," and began at North Carolina State University as a project to analyze agricultural research. As demand for such software grew, SAS was founded in 1976 to assist various businesses - from pharmaceutical companies and banks to academic and governmental entities. Development of the software attained recognition throughout industry by being able to run across all platforms, using the multivendor architecture for which it is known today.</p> <p>The Tennessee Department of Education has utilized the services of SAS Institute, Inc. since 1991-1992, when the Tennessee Value-Added Assessment System (TVAAS) became required by state law.</p>	
<p><b>17. Efforts to Identify Reasonable, Competitive, Procurement Alternatives</b></p> <p>TVAAS data is based upon a statistical methodology that is owned exclusively by the SAS Institute, Inc.; therefore there is no procurement alternative available to the Tennessee Higher Education Commission.</p>	
<p><b>18. Justification</b> <i>- specifically explain why non-competitive negotiation is in the best interest of the state</i></p> <p>Consideration for a non-competitive contract amendment is requested because TVAAS data is based upon a statistical methodology that is owned exclusively by the SAS Institute, Inc. The services procured through this contract will fulfill the requirements set forth in TCA Section § 49-1-606 to allow teacher preparation programs to receive teacher effect data as defined by the Tennessee Value Added Assessment System pertaining to the program graduates.</p>	
<p><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></p> <p> <span style="float: right;">10.15.13</span></p> <p><b>RICHARD G. RHODA, EXECUTIVE DIRECTOR</b> <span style="float: right;"><b>DATE</b></span></p>	



## CONTRACT AMENDMENT

<b>Agency Tracking #</b> 33201-00112	<b>Edison ID</b> 26269	<b>Contract #</b> FA1237114	<b>Amendment #</b> THREE		
<b>Contractor Legal Entity Name</b> SAS INSTITUTE, INC.			<b>Edison Vendor ID</b> 0000000751		
<b>Amendment Purpose &amp; Effect(s)</b> Addition of higher education diagnostics					
<b>Amendment Changes Contract End Date:</b> <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		<b>End Date:</b> 06/30/2014			
<b>TOTAL Contract Amount INCREASE or DECREASE per this Amendment</b> (zero if N/A):			<b>\$ 450,000.00</b>		
<b>Funding —</b>					
<b>FY</b>	<b>State</b>	<b>Federal</b>	<b>Interdepartmental</b>	<b>Other</b>	<b>TOTAL Contract Amount</b>
FY12			\$ 700,000.00		\$ 700,000.00
FY13			\$ 300,000.00		\$ 300,000.00
FY14			\$ 850,000.00		\$ 850,000.00
<b>TOTAL:</b>			<b>\$1,850,000.00</b>		<b>\$1,850,000.00</b>
<b>American Recovery and Reinvestment Act (ARRA) Funding:</b> <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO					
<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.  <div style="text-align: center;">             Russ Deaton, Associate Executive Director for Fiscal Affairs            615.532.3860         </div>			<i>OCR USE</i>		
<b>Department</b> 332010052		<b>Program</b> 001250			

**AMENDMENT THREE  
OF CONTRACT FA1237114**

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

1. The following provision is added as Contract Section A.9. Deliverable 7. Value-Added for Higher Education Institutions:

A.9. Deliverable 7. Value-Added for Higher Education Institutions. Contractor will create a secure web application to allow the State access to TVAAS teacher reporting previously prepared by Contractor for certain eligible teacher program participants ("Teacher Reporting Website"). The State will be responsible for establishing and providing appropriate access to the Teacher Reporting Website. Authorized users of the Teacher Reporting Website will have access to reports for Tennessee teachers who have completed a Tennessee teacher training program within the past three years and which may include access to the following reports and search functions:

- a. Teacher value-added report;
- b. Teacher diagnostic report;
- c. Program listing report;
- d. Teacher search; and
- e. Program teaching effectiveness summary.

2. Contract Section A.9. is renumbered as Contract Section A.10. as follows:

A.10. Each party agrees to respond to the other in a timely fashion when acceptance of a deliverable is pending. After delivery, the State will accept or reject a deliverable within ten (10) business days. Failure to reject a deliverable within this time frame will constitute acceptance of the deliverable. Notice of the State's rejection of the deliverable shall be provided to the Contractor in writing and shall specify the nature and scope of the deficiencies. In the case of rejection of the deliverable, the parties agree to adhere to the following timeframes whenever reasonably possible in order to meet the schedule set forth above: The Contractor will use reasonable efforts to respond to the State within five (5) business days after receipt of the rejection notice describing the manner and timeframe in which the Contractor proposes to correct any deficiencies, or by actually correcting the deficiencies. In the former case, the State will accept the Contractor's proposal for correcting any deficiencies within five (5) business days after receipt of the Contractor's proposal. Upon the Contractor's delivery of the corrected deliverable, the State will accept the deliverable within five (5) business days.

3. Contract Section A.10. is renumbered as Contract Section A.11. as follows:

A.11. Requests by the State or the Contractor to change or modify the Scope of Services will be made in writing to the other party, which will contain the following information:

- a. A description of any additional work to be performed and/or any changes to the performance required of either party.

- b. A statement of the impact of the additional work or changes on the scope of services and the project schedule.
- c. The estimated timetable to complete the additional work or changes to the scope of services.
- d. The estimated time and cost of any additional work or changes to the scope of services.

The party proposing the additional work and/or changes to the scope of services shall provide the proposal to the other party pursuant to paragraph E.2., who shall respond in writing within five (5) business days. If both parties agree to the additional work and/or changes an amendment to this contract must be prepared and executed pursuant to paragraph D.2. of this contract.

4. Contract Section A.11. is renumbered as Contract Section A.12. as follows:

A.12. For the term of this contract and for such additional period as the Contractor provides TVAAS reports under a separate, written contract with the State of Tennessee, the Contractor grants the State a nonexclusive, nontransferable and nonassignable license to access and use the Contractor's Simulated Site, which is located on the Contractor's server, via the Internet for the purpose of educating pre-service teachers within the State of Tennessee via the use of the Pre-Service TVAAS Curriculum delivered by the Contractor under the terms of this contract. The Simulated Site may be accessed only by the State's employees, on-site contractors, teaching staff at Tennessee institutions of higher education and Tennessee pre-service teachers (i.e. students majoring in education at Tennessee institutions of higher education) (collectively, "Users") doing work in the State of Tennessee for the State relating to TVAAS education and use of the Pre-Service TVAAS Curriculum delivered by the Contractor hereunder. Without limiting the foregoing, the license granted to the State does not include any rights to alter the Simulated Site.

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

C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed One Million Eight Hundred Fifty Thousand Dollars (\$1,850,000.00). 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. However, the services described in Section A. of this contract are being requested by the State and upon delivery to, and acceptance of the services by the State as described in Section A., and upon submission of invoices by the Contractor pursuant to Sections C.3. and C.5. of this contract, the State shall be obligated to pay for such services.

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

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

- a. The Contractor's compensation shall be contingent upon the satisfactory completion of units, milestones, or increments of service defined in section A.
- b. The Contractor shall be compensated for said units, milestones, or increments of service based upon the following payment rates:

<b>Service Description with completion dates</b>	<b>Amount</b> (per compensable increment)
<p><b>Deliverable 1 - Pre-service TVAAS Curriculum Development and Implementation Support. A.3</b></p> <p>Module Development due on or before March 30,2012 SAS will deliver four (4) sub-modules under the Module Development for \$125,000.00 per module. SAS will send an invoice upon completion of each sub-module.</p> <p style="text-align: center;">Forum due March 30, 2012</p>	<p>\$500,000 Deliverable 1 per Section A.3.a</p> <p>\$200,000 Deliverable 1 per Section A.3.b</p>
<p><b>Deliverable 2 - Instructional Guides. Section A.4. Due June 30, 2012</b></p>	<p>\$200,000 per Deliverable 2</p>
<p><b>Deliverable 3 - Piloting of the Curriculum and Assessment. A.5.</b></p> <p style="text-align: center;">Due March 30 through April 15, 2012</p>	<p>\$100,000 per Deliverable 3</p>
<p><b>Deliverable 4 - Ancillary Research. A.6.</b></p> <p style="text-align: center;">Due June 30, 2014</p>	<p>\$150,000 per Deliverable 4</p>
<p><b>Deliverable 6 - Higher Education Diagnostics. A.8.</b></p> <p><b>Program Improvement Training. A.8.a.</b></p> <p style="text-align: center;">Due March 31, 2013 (with follow-up dates TBD by the Contractor, State, and Institution Availability)</p> <p><b>Web-based Data Collection for Completers A.8.b.</b></p> <p style="text-align: center;">Due November 1, 2013</p> <p><b>Advanced Analytics. A.8.c.</b></p> <p style="text-align: center;">Report Due March 31, 2014</p>	<p>\$200,000 per Deliverable A.8.a. and A.8.b.</p> <p>To be invoiced December 31, 2013 with payment due on February 28, 2014.</p> <p>\$ 50,000 per Deliverable A.8.c.</p> <p>To be invoiced April 15,</p>

	2014 with payment due on June 1, 2014.
<b>Deliverable 7 - Value-Added Data to Higher Education Institutions. A.9.</b>  Web Application Available December 15, 2013	\$450,000 per Deliverable 7

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

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

The State:

Katrina Miller, Director of THEC First to the Top  
Tennessee Higher Education Commission  
404 James Robertson Parkway, Suite 1900  
Nashville, TN 37243  
[Katrina.Miller@tn.gov](mailto:Katrina.Miller@tn.gov)  
Telephone: 615.532.7977  
FAX: 615.741.6230

The Contractor:

Lindia Harbaugh  
SAS Institute, Inc.  
100 SAS Campus Drive  
100 SAS Campus Drive Room C2132  
Cary, NC 27513-2414, USA  
[Lindia.Harbaugh@sas.com](mailto:Lindia.Harbaugh@sas.com)  
Telephone: 919.677.8000

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

6. The following is added as Contract section E.15. Tennessee Department of Revenue Registration.

E.15. Tennessee Department of Revenue Registration. The Contractor shall be registered with the Department of Revenue for the collection of Tennessee sales and use tax. This registration requirement is a material requirement of this Contract.

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

Amendment Effective Date. The revisions set forth herein shall be effective December 10, 2013. All other terms and conditions of this Contract not expressly amended herein shall remain in full force and effect.

**IN WITNESS WHEREOF,**

**SAS INSTITUTE, INC.:**

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**VICTORIA CLAYTON, SENIOR MANAGER**

**DATE**

**TENNESSEE HIGHER EDUCATION COMMISSION:**

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**RICHARD G. RHODA, EXECUTIVE DIRECTOR**

**DATE**

<b>Applicable RFS # 33201-00112</b>
<b>Information Systems Plan (ISP) Project Applicability</b> <input checked="" type="checkbox"/> Not Applicable to this Request  <input type="checkbox"/> Applicable- ISP Project# <b>Response Confirmed by IT Director/Staff (name): O.W. Higley</b>
<b>Required Attachments</b> (as applicable – copies without signatures acceptable) <input type="checkbox"/> RFP, Competitive Negotiation Request, Alternative Procurement Method Request, Non-Competitive Contract Request, Non-Competitive Amendment Request <input type="checkbox"/> Original Contract/Grant or Amendment <input checked="" type="checkbox"/> Proposed Contract/Grant or Amendment
<b>Subject Information Technology Service Description</b> (Brief summary of information technology services involved. Clearly identify included technologies such as system development/maintenance, security, networking, etc. As applicable, identify the contract & solicitation sections related to the IT services.)  This contract with SAS Institute, Inc. will not impact the state of Tennessee's network infrastructure. SAS Institute, Inc. will use its own computer systems, web page, and purchasing authority to fulfill the scope of the contract.  The contract outcomes proposed in this Contract relevant to this review are contained in the Scope of Services, A.2. and A.3.



GENERAL ASSEMBLY OF THE STATE OF TENNESSEE  
FISCAL REVIEW COMMITTEE

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

**Sen. Bill Ketron, Chairman**  
Senators

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

**Rep. Curtis Johnson, Vice-Chairman**  
Representatives

Tommie Brown            David Shepard  
Jim Coley                 Tony Shipley  
Charles Curtiss            Curry Todd  
Johnny Shaw                Mark White  
Charles Sargent, *ex officio*  
Speaker Beth Harwell, *ex officio*

**M E M O R A N D U M**

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

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

DATE:                 September 18, 2012

SUBJECT:            **Contract Comments**  
                          (Fiscal Review Committee Meeting 9/17/12)

**RFS# 332.01-00112 (Edison # 26269)**

**Department: Tennessee Higher Education Commission**

**Vendor: SAS Institute, Inc.**

**Summary: The vendor is responsible for the development of learning modules for the Tennessee Value-Added Assessment System (TVAAS) integration into pre-service teacher training. The proposed amendment revises the scope of services to include a higher education diagnostic deliverable with the associated payment rates, and increases the maximum liability by \$300,000.**

**Current maximum liability: \$1,100,000**

**Proposed maximum liability: \$1,400,000**

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

cc: Dr. Richard Rhoda, Executive Director

RICHARD G. RHODA  
*Executive Director*



BILL HASLAM  
*Governor*

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

## MEMORANDUM

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

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

**DATE:** August 16, 2012

**RE:** Non-Competitive Contract Amendment Two Summary  
Fiscal Analysis  
Race to the Top – SAS Institute, Inc.

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The Tennessee Higher Education Commission (THEC) proposes to submit a non-competitive Amendment to its Contract with SAS Institute. This Amendment is required for SAS Institute to provide higher education diagnostics, which shall include performing data collection, analytics, reporting and training to the State and its forty-four (44) institutions of higher education that serve as teacher training programs in the state of Tennessee.

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

### **Actual Expenditures Anticipated in Each Year of the Contract**

Background and Objective: The Contract is for the provision of integrating Tennessee Value-Added Assessment System (TVAAS) data into pre-service training at higher education institutions as part of the State's First to the Top reforms in accordance with the provisions of the Race to the Top grant from the U.S. Department of Education.

As a part of the American Recovery and Reinvestment Act of 2009, President Barack Obama and Secretary of Education Arne Duncan announced the United States Department of Education's Race to the Top competition. Race to the Top is a \$4.35 billion incentive program designed to make drastic reforms and improvements in education and student performance. Tennessee was one of 41 states to submit applications for the program in January of 2010. After a rigorous competition, Tennessee emerged as one of two states awarded Race to the Top funding and will receive \$501 million over the next four years.

Tennessee's Race to the Top proposal concentrated on five areas of improvement: Great Teachers and Leaders, Standards and Assessments, Data Systems to Support Instruction, Turning Around Low-Performing Schools, and STEM (Science, Technology, Engineering, and Math) Education. This sweeping

educational reform will require collaboration from all educational stakeholders. The Tennessee Department of Education, State Board of Education, Tennessee Higher Education Commission, and Governor’s Office of State Policy and Planning will lead the efforts in implementing the reforms proposed in Race to the Top.

Service: The SAS Institute, Inc. will design pre-service Tennessee Value-Added Assessment System (TVAAS) curriculum through the development of four interactive modules, produce instructional guides on the module uses, perform piloting of the curriculum and assessments developed, and conduct ancillary research regarding improvements in differentiated instruction and attitudes towards TVAAS for continued program improvement.

Contract Term: The Contract term is November 8, 2011 through June 30, 2014.

Maximum Expenditure: One million, one hundred thousand dollars (\$1,100,000.00)

With proposed Amendment Deliverable Six: One million, four hundred thousand dollars (\$1,400,000.00):

Service Description	Amount (per compensable increment)
<b>Deliverable 1 - Pre-service TVAAS Curriculum Development and Implementation Support. A.3</b> Module Development due March 30, 2012  Forum due March 30, 2012	\$ 500,000 Deliverable 1 per Section A.3.a \$ 200,000 Deliverable 1 per Section A.3.b
<b>Deliverable 2 - Instructional Guides. A.4.</b> Due June 30, 2012	\$ 200,000 per Deliverable 2
<b>Deliverable 3 - Piloting of the Curriculum and Assessment. A.5.</b> Due March 30 – April 15, 2012	\$ 100,000 per Deliverable 3
<b>Deliverable 4 - Ancillary Research. A.6.</b> Due November 30, 2012	\$ 100,000 per Deliverable 4
<b>Deliverable 6 - Higher Education Diagnostics. A.8.</b>  <b>Program Improvement Training. A.8.a.</b> Due November 30, 2012 (with follow-up dates TBD by the Contractor, State, and Institution Availability)  <b>Web-based Data Collection for Completers A.8.b.</b> Due February 15, 2013  <b>Advanced Analytics. A.8.c.</b> Report 1 Due May 15, 2013  Report 2 Due November 30, 2013 (Second Report based on latest data due November 30, 2013)	\$200,000 Deliverable A.8.a. and A.8.b. – To be invoiced February 15, 2013 with payment due on April 15, 2013.  \$ 50,000 per Report Report 1 – To be invoiced by May 15, 2013 with payment due on July 15, 2013. Report 2 – To be invoiced November 15, 2013 with payment due on January 15, 2014.

Expenditure by Fiscal Year

<b>SAS TVAAS</b>	
FY2012	\$ 1,033,000.00
FY2013	\$ 283,000.00
FY2014	\$ 84,000.00
	<b>\$ 1,100,000.00</b>

Del 1	Module Development	3/30/2012	FY12	\$ 500,000.00
Del 1	Forum	3/30/2012	FY12	\$ 200,000.00
Del 2	Instructional Guides	6/30/2012	FY12	\$ 200,000.00
Del 3	Piloting of the curriculum and Assessment	3/30/12 – 4/15/212	FY12	\$ 100,000.00
Del 4	Ancillary Research	11/30/2012	FY12	\$ 33,000.00
Del 4	Ancillary Research	11/30/2013	FY13	\$ 33,000.00
Del 4	Ancillary Research	6/30/2014	FY14	\$ 34,000.00
Proposed Del 6	Higher Ed Diagnostics Program Improvement Training and Web-based Data Collection for Completers	2/15/2013	FY13	\$ 200,000.00
Proposed Del 6	Advanced Analytics Report One	7/15/2013	FY13	\$ 50,000.00
Proposed Del 6	Advanced Analytics Report Two	11/15/13	FY14	\$ 50,000.00
<b>Contract Maximum Liability</b>				<b>\$ 1,400,000.00</b>

**Reason for Proposed Amendment**

In the 2012 legislative session, Senate Bill No. 3024/HB3469, was adopted by the General Assembly, enacted as enacted as Public Chapter 703. This bill amended TCA Section § 49-1-606 to allow teacher preparation programs to receive teacher effect data as defined by the Tennessee Value Added Assessment System pertaining to the program graduates. In order to assist teacher preparation programs in using the data to effectively evaluate and improve programs, THEC is contracting with the SAS Institute, Inc. to develop statistical analyses relative to teacher effect scores and program improvement. The SAS Institute, Inc. is the sole vendor for teacher effect scores because SAS owns the statistical methodology used to create the Tennessee Value Added Assessment System.

### **Justification for Non-Competitive Contract**

A non-competitive contract was required because TVAAS data is based upon a statistical methodology that is owned exclusively by the SAS Institute, Inc. The services procured through this contract support higher education initiatives, as outlined in the Race to the Top proposal.

### **Explanation for Submission within the Sixty-day Requirement**

In the 2012 legislative session, Senate Bill No. 3024/HB3469, was adopted by the General Assembly, enacted as enacted as Public Chapter 703. This bill amended TCA Section § 49-1-606 to allow teacher preparation programs to receive teacher effect data as defined by the Tennessee Value Added Assessment System pertaining to the program graduates. In order to assist teacher preparation programs in using the data to effectively evaluate and improve programs, THEC is contracting with the SAS Institute, Inc. to develop statistical analyses relative to teacher effect scores and program improvement.

Although THEC began the planning and development discussions with SAS upon the enactment of PC 703, due to the complexity of the request it took several weeks to develop the logistics, needs, and deliverable actions at the most cost-efficient value to the state with the action items to begin with the 2012-13 academic year.

Supplemental Documentation Required for  
Fiscal Review Committee

*Contact Name:	Will Burns, Associate Executive Director, Legal and Regulatory Affairs	*Contact Phone:	615.741.3605
*Original Contract Number:	FA1237114	*Original RFS Number:	33201-00112
Edison Contract Number: <i>(if applicable)</i>	26269	Edison RFS Number: <i>(if applicable)</i>	33201-00112
*Original Contract Begin Date:	11/08/2011	*Current End Date:	06/30/2014
Current Request Amendment Number: <i>(if applicable)</i>	TWO		
Proposed Amendment Effective Date: <i>(if applicable)</i>	09/30/2012		
*Department Submitting:	Tennessee Higher Education Commission		
*Division:	First to the Top		
*Date Submitted:	08/16/2012		
*Submitted Within Sixty (60) days:	No (45 Days)		
<i>If not, explain:</i>	<p>In the 2012 legislative session, Senate Bill No. 3024/HB3469, was adopted by the General Assembly, enacted as enacted as Public Chapter 703. This bill amended TCA Section § 49-1-606 to allow teacher preparation programs to receive teacher effect data as defined by the Tennessee Value Added Assessment System pertaining to the program graduates. In order to assist teacher preparation programs in using the data to effectively evaluate and improve programs, THEC is contracting with the SAS Institute, Inc. to develop statistical analyses relative to teacher effect scores and program improvement.</p> <p>Although THEC began the planning and development discussions with SAS upon the enactment of PC 703, due to the complexity of the request it took several weeks to develop the logistics, needs, and deliverable actions at the most cost-efficient value to the state with the action items to begin with the 2012-13 academic year.</p>		

Supplemental Documentation Required for  
Fiscal Review Committee

				SAS Institute, Inc.	
*Contract Vendor Name:					
*Current Maximum Liability:				\$1,100,000.00	
*Current Contract Allocation by Fiscal Year: (as Shown on Most Current Fully Executed Contract Summary Sheet)					
FY: 2012	FY: 2013	FY: 2014	FY:	FY	FY
\$ 1,033,000.00	\$ 33,000.00	\$ 34,000.00	\$	\$	\$
*Current Total Expenditures by Fiscal Year of Contract: (attach backup documentation from STARS or FDAS report)					
FY:2012	FY:	FY:	FY:	FY	FY
\$ 700,000	\$	\$	\$	\$	\$
IF Contract Allocation has been greater than Contract Expenditures, please give the reasons and explain where surplus funds were spent:			NA		
IF surplus funds have been carried forward, please give the reasons and provide the authority for the carry forward provision:			NA		
IF Contract Expenditures exceeded Contract Allocation, please give the reasons and explain how funding was acquired to pay the overage:			NA		
*Contract Funding Source/Amount:	State:		Federal:		
Interdepartmental:	\$1,100,000.00		Other:		
If "other" please define:					
Dates of All Previous Amendments or Revisions: (if applicable)			Brief Description of Actions in Previous Amendments or Revisions: (if applicable)		
03/30/2012			The Amendment was required to extend the date of Deliverable 3, Piloting of the Curriculum, through April 15, 2012, ensuring sufficient time and flexibility for the teachers' participation. Because there were several time constraints that would have prevented teachers from participating in the project, the extension was requested.		
Method of Original Award: (if applicable)				Non-Competitive Contract	
*What were the projected costs of the service for the entire term of the contract prior to contract award?				\$ 1,033,000.00	

Supplemental Documentation Required for  
Fiscal Review Committee

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

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

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

Deliverable (#) description:	FY: 2011	FY: 2012	FY: 2013	FY: 2014
Module Development		\$ 500,000		
Forum		\$ 200,000		
Instructional Guides		\$ 200,000		
Piloting of Curriculum and Assessment		\$ 100,000		
Ancillary Research		\$ 33,000	\$33,000	\$34,000
Program Improvement Training and Web-based Data Collection for Completers (Proposed Amendment)			\$200,000	
Advanced Analytics Report (Proposed Amendment)			\$50,000	
Advanced Analytics Report (Proposed Amendment)				\$50,000

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

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

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

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

\* TVAAS data is based upon a statistical methodology that is owned exclusively by the SAS Institute, Inc.; therefore, there is no procurement alternative available to the Tennessee Higher Education Commission.

Supplemental Documentation Required for  
Fiscal Review Committee

TN\_PU\_POS\_AGAINST\_CONTRACT - Purchase Orders against a  
Contract

Contract Number: 0000026269

00026269

Contract	Unit	PO No	Line	SetID	PO Date	Quantity	UOM	PO Amount
1 0000026269	33201	0000001787	1	SHARE	02/13/2012	1.0000	EA	\$125,000.00
0000026269	33201	0000001787	1	SHARE	06/19/2012	1.0000	EA	\$575,000.00

# Non-Competitive Amendment Request

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

**APPROVED**

**COMMISSIONER OF FINANCE & ADMINISTRATION**

<b>Request Tracking #</b>	33201-00112	
<b>1. Procuring Agency</b>	Tennessee Higher Education Commission	
<b>2. Contractor</b>	SAS Institute, Inc.	
<b>3. Contract #</b>	FA1237114	
<b>4. Proposed Amendment #</b>	TWO	
<b>5. Edison ID #</b>	26269	
<b>6. Contract Begin Date</b>	11/08/2011	
<b>7. Current Contract End Date</b> <i>- with ALL options to extend exercised</i>	06/30/2014	
<b>8. Proposed Contract End Date</b> <i>- with ALL options to extend exercised</i>	06/30/2014	
<b>9. Current Maximum Contract Cost</b> <i>- with ALL options to extend exercised</i>	\$ 1,100,000	
<b>10. Proposed Maximum Contract Cost</b> <i>- with ALL options to extend exercised</i>	\$ 1,400,000	
<b>11. Office for Information Resources Endorsement</b> <i>- information technology service (N/A to THDA)</i>	<input type="checkbox"/> Not Applicable <input checked="" type="checkbox"/> Attached	
<b>12. eHealth Initiative Support</b> <i>- health-related professional, pharmaceutical, laboratory, or imaging</i>	<input checked="" type="checkbox"/> Not Applicable <input type="checkbox"/> Attached	
<b>13. Human Resources Support</b> <i>- state employee training service</i>	<input checked="" type="checkbox"/> Not Applicable <input type="checkbox"/> Attached	
<b>14. Explanation Need for the Proposed Amendment</b>		
<p>In the 2012 legislative session, Senate Bill No. 3024 was adopted by the General Assembly. This bill changed TCA Section § 49-1-606 to allow teacher preparation programs to receive teacher effect data as defined by the Tennessee Value Added Assessment System pertaining to the program graduates. In order to assist teacher preparation programs in using the data to effectively evaluate and improve programs, THEC is contracting with the SAS Institute, Inc. to develop statistical analyses relative to teacher effect scores and program improvement. The SAS Institute, Inc. is the sole vendor for teacher effect scores because SAS owns the statistical methodology used to create the Tennessee Value Added Assessment System.</p>		





# CONTRACT AMENDMENT

<b>Agency Tracking #</b> 33201-00112	<b>Edison ID</b> 26269	<b>Contract #</b> FA1237114	<b>Amendment #</b> TWO
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<b>Contractor Legal Entity Name</b> SAS INSTITUTE, INC.	<b>Edison Vendor ID</b> 0000000751
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**Amendment Purpose & Effect(s)**  
 The SAS Institute, Inc. will design pre-service Tennessee Value-Added Assessment System (TVAAS) curriculum through the development of four interactive modules, produce instructional guides on the module uses, perform piloting of the curriculum and assessments developed, and conduct ancillary research for continued program improvement.

<b>Amendment Changes Contract End Date:</b> <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	<b>End Date:</b> 06/30/2014
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**TOTAL Contract Amount INCREASE per this Amendment** (zero if N/A): **\$ 300,000.00**

Funding —					
FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
FY12			\$1,033,000.00		\$1,033,000.00
FY13			\$ 283,000.00		\$ 283,000.00
FY14			\$ 84,000.00		\$ 84,000.00
<b>TOTAL:</b>			<b>\$1,400,000.00</b>		<b>\$1,400,000.00</b>

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

<p><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.</p> <p style="text-align: center;"></p> <p>Russ Deaton, Associate Executive Director for Fiscal Affairs 615.532.3860</p>	<p>OCR USE</p>
--	----------------

<b>Department</b> 332010052	<b>Program</b> 001250
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**AMENDMENT TWO  
OF CONTRACT FA1237114**

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

1. The following provision is added as Contract Section A.8, Deliverable 6. Higher Education Diagnostics:

A.8. Deliverable 6. Higher Education Diagnostics. The Contractor shall perform data collection, analytics, reporting and training to the State and its forty-four (44) institutions of higher education that serve as teacher training programs in the state of Tennessee. The services associated with this deliverable include:

- a. Program improvement training: The Contractor will design and implement standard training for the State and the forty-four (44) institutions. Delivered through a series of in-person and webinar sessions, this training will consist of an overview of TVAAS and the types of information this partnership can provide in relation to program improvement.
- b. Web-based data collection for completers: Based on institution-completer linkages and the list of specific programs by institution provided to the Contractor by the State, the Contractor will provide a secure, access-based web application where an authorized user from each institution can view the individual completers associated with his/her institution and then specify each completer's specific program. The additional data collected by this application will be provided to THEC and be used in the enhanced analytics.
- c. Advanced analytics: the Contractor and the State will determine a comprehensive set of standard reports (not to exceed ten (10) total reports) that can be made available to the forty-four (44) institutions. Due to the number of graduates from each institution or other unforeseen data constraints, some of the reports from the standard list may not be available to particular institutions. Each institution will receive a customized document based on the available analytics from the standard list, and this document will be delivered to the institution or to the State via a secure transfer process as a Portable Document Format (PDF).

2. Contract Section A.8. is renumbered as Contract Section A.9. as follows:

A.9. Each party agrees to respond to the other in a timely fashion when acceptance of a deliverable is pending. After delivery, the State will accept or reject a deliverable within ten (10) business days. Failure to reject a deliverable within this time frame will constitute acceptance of the deliverable. Notice of the State's rejection of the deliverable shall be provided to the Contractor in writing and shall specify the nature and scope of the deficiencies. In the case of rejection of the deliverable, the parties agree to adhere to the following timeframes whenever reasonably possible in order to meet the schedule set forth above: The Contractor will use reasonable efforts to respond to the State within five (5) business days after receipt of the rejection notice describing the manner and timeframe in which the Contractor proposes to correct any deficiencies, or by actually correcting the deficiencies. In the former case, the State will accept the Contractor's proposal for correcting any deficiencies within five (5) business days after receipt of the Contractor's proposal. Upon the Contractor's delivery of the corrected deliverable, the State will accept the deliverable within five (5) business days.

3. Contract Section A.9. is renumbered as Contract Section A.10. as follows:



A.10. Requests by the State or the Contractor to change or modify the Scope of Services will be made in writing to the other party, which will contain the following information:

- a. A description of any additional work to be performed and/or any changes to the performance required of either party
- b. A statement of the impact of the additional work or changes on the scope of services and the project schedule.
- c. The estimated timetable to complete the additional work or changes to the scope of services.
- d. The estimated time and cost of any additional work or changes to the scope of services.

The party proposing the additional work and/or changes to the scope of services shall provide the proposal to the other party pursuant to paragraph E.2., who shall respond in writing within five (5) business days. If both parties agree to the additional work and/or changes an amendment to this contract must be prepared and executed pursuant to paragraph D.2. of this contract.

4. Contract Section A.10. is renumbered as Contract Section A.11. as follows:

A.11. For the term of this contract and for such additional period as the Contractor provides TVAAS reports under a separate, written contract with the State of Tennessee, the Contractor grants the State a nonexclusive, nontransferable and nonassignable license to access and use the Contractor's Simulated Site, which is located on the Contractor's server, via the Internet for the purpose of educating pre-service teachers within the State of Tennessee via the use of the Pre-Service TVAAS Curriculum delivered by the Contractor under the terms of this contract. The Simulated Site may be accessed only by the State's employees, on-site contractors, teaching staff at Tennessee institutions of higher education and Tennessee pre-service teachers (i.e. students majoring in education at Tennessee institutions of higher education) (collectively, "Users") doing work in the State of Tennessee for the State relating to TVAAS education and use of the Pre-Service TVAAS Curriculum delivered by the Contractor hereunder. Without limiting the foregoing, the license granted to the State does not include any rights to alter the Simulated Site.

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

C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed One Million Four Hundred Thousand Dollars (\$1,400,000.00). 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. However, the services described in Section A. of this contract are being



requested by the State and upon delivery to, and acceptance of the services by the State as described in Section A., and upon submission of invoices by the Contractor pursuant to Sections C.3. and C.5. of this contract, the State shall be obligated to pay for such services.

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

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

- a. The Contractor's compensation shall be contingent upon the satisfactory completion of units, milestones, or increments of service defined in section A.
- b. The Contractor shall be compensated for said units, milestones, or increments of service based upon the following payment rates:

<b>Service Description with completion dates</b>	<b>Amount</b> (per compensable increment)
<p><b>Deliverable 1 - Pre-service TVAAS Curriculum Development and Implementation Support. A.3</b></p> <p>Module Development due on or before March 30,2012 SAS will deliver four (4) sub-modules under the Module Development for \$125,000.00 per module. SAS will send an invoice upon completion of each sub-module.</p> <p style="text-align: center;">Forum due March 30, 2012</p>	<p>\$500,000 Deliverable 1 per Section A.3.a</p> <p>\$200,000 Deliverable 1 per Section A.3.b</p>
<p><b>Deliverable 2 - Instructional Guides. Section A.4. Due June 30, 2012</b></p>	<p>\$200,000 per Deliverable 2</p>
<p><b>Deliverable 3 - Piloting of the Curriculum and Assessment. A.5.</b></p> <p style="text-align: center;">Due March 30 through April 15, 2012</p>	<p>\$100,000 per Deliverable 3</p>
<p><b>Deliverable 4 - Ancillary Research. A.6.</b></p> <p style="text-align: center;">Due November 30, 2012 Due November 30, 2013 Due June 30, 2014</p>	<p>\$33,000.00 \$33,000.00 \$34,000.00</p>
<p><b>Deliverable 6 - Higher Education Diagnostics. A.8.</b></p> <p><b>Program Improvement Training. A.8.a.</b> Due November 30, 2012 (with follow-up dates TBD by the Contractor, State, and Institution Availability)</p> <p><b>Web-based Data Collection for Completers A.8.b.</b> Due February 15, 2013</p>	<p>\$200,000 Deliverable A.8.a. and A.8.b. –</p> <p>To be invoiced February 15, 2013 with payment due on April 15, 2013.</p>





GENERAL ASSEMBLY OF THE STATE OF TENNESSEE  
FISCAL REVIEW COMMITTEE

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

**Sen. Bill Ketron, Chairman**  
Senators

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

**Rep. Curtis Johnson, Vice-Chairman**  
Representatives

Tommie Brown                      David Shepard  
Jim Coley                            Tony Shipley  
Charles Curtiss                      Curry Todd  
Johnny Shaw                        Mark White  
Charles Sargent, *ex officio*  
Speaker Beth Harwell, *ex officio*

**M E M O R A N D U M**

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

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

DATE:                    March 29, 2012

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

**RFS# 332.01-00112 (Edison # 26269)**

**Department: Tennessee Higher Education Commission (THEC)**

**Vendor: SAS Institute, Inc.**

**Summary: The vendor is responsible for the development of learning modules for the Tennessee Value-Added Assessment System (TVAAS) integration into pre-service teacher training. The proposed amendment extends the due date, from March 30 to April 15, 2012, of deliverable three which is piloting of the curriculum and assessment.**

**Current maximum liability: \$1,100,000**

**Proposed maximum liability: \$1,100,000**

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

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

RICHARD G. RHODA  
Executive Director



BILL HASLAM  
Governor

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

## MEMORANDUM

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

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

**DATE:** March 5, 2012

**RE:** Non-Competitive Contract Amendment Summary - Fiscal Analysis  
Race to the Top – SAS Institute, Inc.

---

The Tennessee Higher Education Commission (THEC) proposes to submit a non-competitive Amendment to its Contract with SAS Institute. This Amendment is required to extend the date of Piloting of the Curriculum, Deliverable 3, through April 15, 2012, ensuring sufficient time and flexibility for the teachers' participation. There is no additional cost associated with the request.

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

### **Actual Expenditures Anticipated in Each Year of the Contract**

Background and Objective: The Contract is for the provision of integrating Tennessee Value-Added Assessment System (TVAAS) data into pre-service training at higher education institutions as part of the State's First to the Top reforms in accordance with the provisions of the Race to the Top grant from the U.S. Department of Education.

As a part of the American Recovery and Reinvestment Act of 2009, President Barack Obama and Secretary of Education Arne Duncan announced the United States Department of Education's Race to the Top competition. Race to the Top is a \$4.35 billion incentive program designed to make drastic reforms and improvements in education and student performance. Tennessee was one of 41 states to submit applications for the program in January of 2010. After a rigorous competition, Tennessee emerged as one of two states awarded Race to the Top funding and will receive \$501 million over the next four years.

Tennessee's Race to the Top proposal concentrated on five areas of improvement: Great Teachers and Leaders, Standards and Assessments, Data Systems to Support Instruction, Turning Around Low-Performing Schools, and STEM (Science, Technology, Engineering, and Math) Education. This sweeping educational reform will require collaboration from all educational stakeholders. The Tennessee Department of Education, State Board of Education, Tennessee Higher Education Commission, and Governor's Office of State Policy and Planning will lead the efforts in implementing the reforms proposed in Race to the Top.

Service: The SAS Institute, Inc. will design pre-service Tennessee Value-Added Assessment System (TVAAS) curriculum through the development of four interactive modules, produce instructional guides on the module uses, perform piloting of the curriculum and assessments developed, and conduct ancillary research regarding improvements in differentiated instruction and attitudes towards TVAAS for continued program improvement.

Contract Term: The Contract term is November 8, 2011 through June 30, 2014.

Maximum Expenditure: One million, one hundred thousand dollars (\$1,100,00.00).

Service Description	Amount (per compensable increment)
<b>Deliverable 1 - Pre-service TVAAS Curriculum Development and Implementation Support. A.3</b> Module Development due March 30, 2012  Forum due March 30, 2012	\$ 500,000 Deliverable 1 per Section A.3.a \$ 200,000 Deliverable 1 per Section A.3.b
<b>Deliverable 2 - Instructional Guides. A.4.</b> Due June 30, 2012	\$ 200,000 per Deliverable 2
<b>Deliverable 3 - Piloting of the Curriculum and Assessment. A.5.</b> Due March 30 – April 15, 2012	\$ 100,000 per Deliverable 3
<b>Deliverable 4 - Ancillary Research. A.6.</b> Due November 30, 2012	\$ 100,000 per Deliverable 4

Expenditure by Fiscal Year

SAS TVAAS	
FY2012	\$ 1,033,000.00
FY2013	\$ 33,000.00
FY2014	\$ 34,000.00
	<u>\$ 1,100,000.00</u>

Del 1	Module Development	3/30/2012	FY12	\$ 500,000.00
Del 1	Forum	3/30/2012	FY12	\$ 200,000.00
Del 2	Instructional Guides	6/30/2012	FY12	\$ 200,000.00
Del 3	Piloting of the curriculum and Assessment	3/30/12 – 4/15/212	FY12	\$ 100,000.00
Del 4	Ancillary Research	11/30/2012	FY12	\$ 33,000.00
Del 4	Ancillary Research	11/30/2013	FY13	\$ 33,000.00
Del 4	Ancillary Research	6/30/2014	FY14	\$ 34,000.00
				<b>\$ 1,100,000.00</b>

### **Reason for Proposed Amendment**

This Amendment is required to extend the date of Deliverable 3, Piloting of the Curriculum, through April 15, 2012, ensuring sufficient time and flexibility for the teachers' participation. The Pilot requires participation of presently employed beginning teachers in Tennessee schools and the information gathered from this pilot will inform the curriculum guides and materials to be delivered prior to June 30. Because teachers will be compensated for their time in this pilot, their work in the pilot must occur outside the time of their regular employment and not during the regular school day. Additionally, the extension will include spring break for many potential participants, allowing the teachers time to complete the multiple on-line sessions and reporting requirements, benefiting those teachers who are willing to participate, but who might otherwise have scheduling constraints.

### **Justification for Non-Competitive Contract**

A non-competitive contract was required because TVAAS data is based upon a statistical methodology that is owned exclusively by the SAS Institute, Inc. The services procured through this contract support higher education initiatives, as outlined in the Race to the Top proposal.

Supplemental Documentation Required for  
Fiscal Review Committee

*Contact Name:	Will Burns, Associate Executive Director, Legal and Regulatory Affairs		*Contact Phone:	615.741.3605	
*Original Contract Number:	FA1237114		*Original RFS Number:	33201-00112	
Edison Contract Number: <i>(if applicable)</i>	26269		Edison RFS Number: <i>(if applicable)</i>	33201-00112	
*Original Contract Begin Date:	11/08/201		*Current End Date:	June 30, 201406/30/2014	
Current Request Amendment Number: <i>(if applicable)</i>			ONE		
Proposed Amendment Effective Date: <i>(if applicable)</i>			03/30/2012		
*Department Submitting:			Tennessee Higher Education Commission		
*Division:			First to the Top		
*Date Submitted:			03/05/2012		
*Submitted Within Sixty (60) days:			No		
If not, explain:			This Amendment is required to extend the date of Deliverable 3, Piloting of the Curriculum, through April 15, 2012, ensuring sufficient time and flexibility for the teachers' participation. It was not until the Contractor began contacting potential participants that they realized that an extension would be required to achieve optimum results of the Pilot, thus ensuring optimum results for the entire project.		
*Contract Vendor Name:			SAS Institute, Inc.		
*Current Maximum Liability:			\$1,100,000.00		
*Current Contract Allocation by Fiscal Year: <i>(as Shown on Most Current Fully Executed Contract Summary Sheet)</i>					
FY: 2012	FY: 2013	FY: 2014	FY:	FY	FY
\$ 1,033,000.00	\$ 33,000.00	\$ 34,000.00	\$	\$	\$
*Current Total Expenditures by Fiscal Year of Contract: <i>(attach backup documentation from STARS or FDAS report - see Attachment A)</i>					
FY:2012	FY:	FY:	FY:	FY	FY
\$ 125,000.00	\$	\$	\$	\$	\$
IF Contract Allocation has been greater than Contract Expenditures, please give the reasons and explain where surplus funds were spent:			NA		

Supplemental Documentation Required for  
Fiscal Review Committee

IF surplus funds have been carried forward, please give the reasons and provide the authority for the carry forward provision:		NA	
IF Contract Expenditures exceeded Contract Allocation, please give the reasons and explain how funding was acquired to pay the overage:		NA	
*Contract Funding Source/Amount:	State:		Federal:
Interdepartmental:	\$1,100,000.00		Other:
If "other" 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>	
-			
-			
-			
Method of Original Award: <i>(if applicable)</i>		Non-Competitive Contract	
*What were the projected costs of the service for the entire term of the contract prior to contract award?		\$ 1,033,000.00	

## Supplemental Documentation Required for Fiscal Review Committee

<p>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.</p> <p>If it is determined that the question is not applicable to your contract document attach detailed explanation as to why that determination was made.</p>					
<b>Planned expenditures by fiscal year by deliverable. Add rows as necessary to indicate all estimated contract expenditures.</b>					
Deliverable (#) description:	FY: 2011	FY: 2012	FY: 2013	FY:	
Module Development		\$ 500,000			
Forum		\$ 200,000			
Instructional Guides		\$ 200,000			
Piloting of Curriculum and Assessment		\$ 100,000			
Ancillary Research		\$ 33,000	\$33,000	\$34,000	
<b>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.</b>					
Deliverable description:	FY:	FY:	FY:	FY:	FY:
<b>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. *</b>					
Proposed Vendor Cost: (name of vendor)	FY:	FY:	FY:	FY:	FY:

**\* TVAAS data is based upon a statistical methodology that is owned exclusively by the SAS Institute, Inc.; therefore, there is no procurement alternative available to the Tennessee Higher Education Commission.**

## TN\_PU\_POS\_AGAINST\_CONTRACT - Purchase Orders against a Contract

Contract Number:

00026269

Contract	Unit	PO No.	Line	SetID	PO Date	Quantity	UOM	PO Amount
1 0000026269	33201	0000001787	1	SHARE	02/13/2012	1.0000	EA	\$125,000.000

# Non-Competitive Amendment Request

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

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

APPROVED

COMMISSIONER OF FINANCE & ADMINISTRATION

Request Tracking #	33201-00112	
1. Procuring Agency	Tennessee Higher Education Commission	
2. Contractor	SAS Institute, Inc.	
3. Contract #	FA1237114	
4. Proposed Amendment #	ONE	
5. Edison ID #	26269	
6. Contract Begin Date		11/08/2011
7. Current Contract End Date – with ALL options to extend exercised		06/30/2014
8. Proposed Contract End Date – with ALL options to extend exercised		06/30/2014
9. Current Maximum Contract Cost – with ALL options to extend exercised		\$ 1,100,000
10. Proposed Maximum Contract Cost – with ALL options to extend exercised		\$ 1,100,000
11. Office for Information Resources Endorsement – information technology service (N/A to THDA)	<input type="checkbox"/> Not Applicable	<input checked="" type="checkbox"/> Attached
12. eHealth Initiative Support – health-related professional, pharmaceutical, laboratory, or imaging	<input checked="" type="checkbox"/> Not Applicable	<input type="checkbox"/> Attached
13. Human Resources Support – state employee training service	<input checked="" type="checkbox"/> Not Applicable	<input type="checkbox"/> Attached
14. Explanation Need for the Proposed Amendment		
<p>This Amendment is required to extend the date of Deliverable 3, Piloting of the Curriculum, through April 15, 2012, ensuring sufficient time and flexibility for the teachers' participation. The Pilot requires participation of presently employed beginning teachers in Tennessee schools and the information gathered from this pilot will inform the curriculum guides and materials to be delivered prior to June 30. Because teachers will be compensated for their time in this pilot, their work in the pilot must occur outside the time of their regular employment and not during the regular school day. Additionally, the extension will include spring break for many potential participants, allowing the teachers time to complete the multiple on-line sessions and reporting requirements, benefiting those</p>		

Request Tracking #	33201-00112
teachers who are willing to participate, but who might otherwise have scheduling constraints.	
<b>15. Name &amp; Address of the Contractor's Principal Owner(s)</b> <i>- NOT required for a TN state education institution</i>  <b>SAS Institute, Inc.</b> <b>SAS Campus Drive</b> <b>Cary, NC 27513</b>	
<b>16. Evidence Contractor's Experience &amp; Length Of Experience Providing the Service</b>  The Tennessee Department of Education has utilized the services of SAS Institute, Inc. since 1991-1992, when the Tennessee Value-Added Assessment System (TVAAS) became required by state law.	
<b>17. Efforts to Identify Reasonable, Competitive, Procurement Alternatives</b>  TVAAS data is based upon a statistical methodology that is owned exclusively by the SAS Institute, Inc.; therefore there is no procurement alternative available to the Tennessee Higher Education Commission.	
<b>18. Justification</b> <i>- specifically explain why non-competitive negotiation is in the best interest of the state</i>  Consideration for a non-competitive contract is requested because TVAAS data is based upon a statistical methodology that is owned exclusively by the SAS Institute, Inc. The services procured through this contract will support higher education initiatives, as outlined in the Race to the Top proposal (Section C(3)(ii)).	
<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>  <div style="display: flex; justify-content: space-between;"> <div data-bbox="212 1081 743 1203">   <b>RICHARD G. RHODA, EXECUTIVE DIRECTOR</b> </div> <div data-bbox="1023 1113 1250 1203"> <p style="font-size: 1.5em;">3.07.12</p> <b>DATE</b> </div> </div>	



# CONTRACT AMENDMENT

Agency Tracking # 33201-00112	Edison ID 26269	Contract # FA1237114	Amendment # ONE
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Contractor Legal Entity Name SAS INSTITUTE, INC.	Edison Vendor ID 0000000751
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**Amendment Purpose & Effect(s)**  
This Amendment is required to extend the date of Deliverable 3, Piloting of the Curriculum, through April 15, 2012.

Amendment Changes Contract End Date:  YES  NO      End Date: 06/30/2014

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

Funding —					
FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
FY12			\$1,033,000.00		\$1,033,000.00
FY13			\$ 33,000.00		\$ 33,000.00
FY14			\$ 34,000.00		\$ 34,000.00
<b>TOTAL:</b>			<b>\$1,100,000.00</b>		<b>\$1,100,000.00</b>

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

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

*Russ Deaton*

Russ Deaton, Associate Executive Director for Fiscal Affairs  
615.532.3860

OCR USE

**FA1237114-01**

Department 332010052	Program 001250
-------------------------	-------------------



**AMENDMENT ONE  
OF CONTRACT FA1237114**

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

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

<b>Service Description with completion dates</b>	<b>Amount (per compensable increment)</b>
<p><b>Deliverable 1 - Pre-service TVAAS Curriculum Development and Implementation Support. A.3</b></p> <p>Module Development due on or before March 30, 2012 SAS will deliver four (4) sub-modules under the Module Development for \$125,000.00 per module. SAS will send an invoice upon completion of each sub-module.</p> <p align="center">Forum due March 30, 2012</p>	<p>\$500,000 Deliverable 1 per Section A.3.a</p> <p>\$200,000 Deliverable 1 per Section A.3.b</p>
<p><b>Deliverable 2 - Instructional Guides. Section A.4. Due June 30, 2012</b></p>	<p>\$200,000 per Deliverable 2</p>
<p><b>Deliverable 3 - Piloting of the Curriculum and Assessment. A.5.</b></p> <p align="center">Due March 30 through April 15, 2012</p>	<p>\$100,000 per Deliverable 3</p>
<p><b>Deliverable 4 - Ancillary Research. A.6.</b></p> <p align="center">Due November 30, 2012 Due November 30, 2013 Due June 30, 2014</p>	<p>\$33,000.00 \$33,000.00 \$34,000.00</p>

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 March 30, 2012. All other terms and conditions of this Contract not expressly amended herein shall remain in full force and effect.



IN WITNESS WHEREOF,

SAS INSTITUTE, INC.:



*Kevin Farrell*

*05 APR 12*

**SAS** Kevin Farrell  
Manager  
Contracts Administration  
SAS INSTITUTE INC. **DIRECTOR, STATE AND LOCAL**

DATE

TENNESSEE HIGHER EDUCATION COMMISSION:

*Richard G. Rhoda*

*4-9-12*

**RICHARD G. RHODA, EXECUTIVE DIRECTOR**

DATE



GENERAL ASSEMBLY OF THE STATE OF TENNESSEE  
FISCAL REVIEW COMMITTEE

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

Sen. Bill Ketron, Chairman  
Senators

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Tommie Brown            David Shepard  
Jim Coley                 Tony Shipley  
Charles Curtiss            Curry Todd  
Johnny Shaw                Mark White  
Charles Sargent, *ex officio*  
Speaker Beth Harwell, *ex officio*

MEMORANDUM

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

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

DATE:                September 21, 2011

SUBJECT:            **Contract Comments**  
                          (Fiscal Review Committee Meeting 9/20/11)

**RFS# 332.01-00112 (Edison # 26269)**

**Department: Tennessee Higher Education Commission (THEC)**

**Vendor: SAS Institute, Inc.**

**Summary: The proposed contract is for the design of pre-service Tennessee Value-Added Assessment System curriculum; production of interactive modules and user guides; piloting of curriculum; development of assessments; and research. The contract has a term beginning October 8, 2011, and ending June 30, 2014.**

**Proposed maximum liability: \$1,100,000**

After review, the Fiscal Review Committee voted to recommend approval of the contract with the stipulation that Paragraph E.13 be deleted from the contract.

cc: Dr. Richard Rhoda, Executive Director  
     Ms. Jessica Robertson, Chief Procurement Officer  
     Mr. Robert Barlow, Director, Office of Contracts Review

RICHARD G. RHODA  
*Executive Director*



BILL HASLAM  
*Governor*

STATE OF TENNESSEE  
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## MEMORANDUM

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

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

**DATE:** September 9, 2011

**RE:** Non-Competitive Contract Summary - Fiscal Analysis  
Race to the Top – SAS Institute, Inc.

---

The Tennessee Higher Education Commission (THEC) proposes to submit a non-competitive contract for the provision of integrating Tennessee Value-Added Assessment System (TVAAS) data into pre-service training at higher education institutions as part of the State's First to the Top reforms in accordance with the provisions of the Race to the Top grant from the U.S. Department of Education.

Pursuant to the request of the Fiscal Review Committee, THEC is providing the following information:

### **Actual Expenditures Anticipated in Each Year of the Contract**

Background and Objective: As a part of the American Recovery and Reinvestment Act of 2009, President Barack Obama and Secretary of Education Arne Duncan announced the United States Department of Education's Race to the Top competition. Race to the Top is a \$4.35 billion incentive program designed to make drastic reforms and improvements in education and student performance. Tennessee was one of 41 states to submit applications for the program in January of 2010. After a rigorous competition, Tennessee emerged as one of two states awarded Race to the Top funding and will receive \$501 million over the next four years.

Tennessee's Race to the Top proposal concentrated on five areas of improvement: Great Teachers and Leaders, Standards and Assessments, Data Systems to Support Instruction, Turning Around Low-Performing Schools, and STEM (Science, Technology, Engineering, and Math) Education. This sweeping educational reform will require collaboration from all educational stakeholders. The Tennessee Department of Education, State Board of Education, Tennessee Higher Education Commission, and Governor's Office of State Policy and Planning will lead the efforts in implementing the reforms proposed in Race to the Top.

Service: The SAS Institute, Inc. will design pre-service Tennessee Value-Added Assessment System (TVAAS) curriculum through the development of four interactive modules, produce instructional guides on the module uses, perform piloting of the curriculum and assessments developed, and conduct ancillary research regarding improvements in differentiated instruction and attitudes towards TVAAS for continued program improvement.

Contract Term: The Contract term is November 8, 2011 through June 30, 2014.

Maximum Expenditure: One million, one hundred thousand dollars (\$1,100,00.00).

Anticipated expenditures include:

Service Description	Amount (per compensable increment)
<b>Deliverable 1 - Pre-service TVAAS Curriculum Development and Implementation Support. A.3</b>  Module Development due March 30, 2012  Forum due March 30, 2012	\$ 500,000 Deliverable 1 per Section A.3.a  \$ 200,000 Deliverable 1 per Section A.3.b
<b>Deliverable 2 - Instructional Guides. A.4.</b> Due June 30, 2012	\$ 200,000 per Deliverable 2
<b>Deliverable 3 - Piloting of the Curriculum and Assessment. A.5.</b> Due March 30, 2012	\$ 100,000 per Deliverable 3
<b>Deliverable 4 - Ancillary Research. A.6.</b> Due November 30, 2012	\$ 100,000 per Deliverable 4

**Justification for Non-Competitive Contract**

Consideration for a non-competitive contract is requested because TVAAS data is based upon a statistical methodology that is owned exclusively by the SAS Institute, Inc. The services procured through this contract will support higher education initiatives, as outlined in the Race to the Top proposal (Section C(3)(ii)).

Supplemental Documentation Required for  
Fiscal Review Committee

*Contact Name:	Will Burns, Associate Executive Director, Legal and Regulatory Affairs		*Contact Phone:	615.741.3605	
*Original Contract Number:	NA		*Original RFS Number:	NA	
Edison Contract Number: <i>(if applicable)</i>	26269		Edison RFS Number: <i>(if applicable)</i>	33201-00112	
*Original Contract Begin Date:	November 8, 2011		*Current End Date:	June 30, 2014	
Current Request Amendment Number: <i>(if applicable)</i>			NA		
Proposed Amendment Effective Date: <i>(if applicable)</i>			NA		
*Department Submitting:			Tennessee Higher Education Commission		
*Division:			First to the Top		
*Date Submitted:			September 9, 2011		
*Submitted Within Sixty (60) days:			Yes		
<i>If not, explain:</i>					
*Contract Vendor Name:			SAS Institute, Inc.		
*Current Maximum Liability:			\$1,100,000.00		
*Current Contract Allocation by Fiscal Year: <i>(as Shown on Most Current Fully Executed Contract Summary Sheet)</i>					
FY: 2012	FY: 2013	FY: 2014	FY:	FY	FY
\$ 1,033,000.00	\$ 33,000.00	\$ 34,000.00	\$	\$	\$
*Current Total Expenditures by Fiscal Year of Contract: <i>(attach backup documentation from STARS or FDAS report)</i>					
FY:	FY:	FY:	FY:	FY	FY
\$	\$	\$	\$	\$	\$
IF Contract Allocation has been greater than Contract Expenditures, please give the reasons and explain where surplus funds were spent:			NA		
IF surplus funds have been carried forward, please give the reasons and provide the authority for the carry forward provision:			NA		
IF Contract Expenditures exceeded Contract Allocation, please give the reasons and explain how funding was acquired to pay the overage:			NA		

Supplemental Documentation Required for  
Fiscal Review Committee

*Contract Funding Source/Amount:	State:		Federal:	
Interdepartmental:		\$1,100,000.00	Other:	
If "other" 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>		
Method of Original Award: <i>(if applicable)</i>			Race to the Top funds	
*What were the projected costs of the service for the entire term of the contract prior to contract award?				

## Supplemental Documentation Required for Fiscal Review Committee

<p>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.</p> <p>If it is determined that the question is not applicable to your contract document attach detailed explanation as to why that determination was made.</p>					
<p><b>Planned expenditures by fiscal year by deliverable. Add rows as necessary to indicate all estimated contract expenditures.</b></p>					
Deliverable (#) description:	FY: 2012	FY: 2013	FY: 2014		
Module Development	\$ 500,000				
Forum	\$ 200,000				
Instructional Guides	\$ 200,000				
Piloting of Curriculum and Assessment	\$ 100,000				
Ancillary Research	\$ 33,000	\$33,000	\$34,000		
<p><b>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.</b></p>					
Deliverable description:	FY:	FY:	FY:	FY:	FY:
<p><b>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. *</b></p>					
Proposed Vendor Cost: (name of vendor)	FY:	FY:	FY:	FY:	FY:

\* TVAAS data is based upon a statistical methodology that is owned exclusively by the SAS Institute, Inc.; therefore, there is no procurement alternative available to the Tennessee Higher Education Commission.



# CONTRACT

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

Begin Date 11/08/11	End Date June 30, 2014	Agency Tracking # 33201-00112	Edison Record ID 26269
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Contractor Legal Entity Name SAS Institute Inc.	Edison Vendor ID 0000000751
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Service Caption (one line only)  
Development of learning modules for TVAAS integration into pre-service teacher training.

Subrecipient or Vendor <input type="checkbox"/> Subrecipient <input checked="" type="checkbox"/> Vendor	CFDA # 84.395A
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Funding --					
FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
FY12			\$1,033,000.00		\$1,033,000.00
FY13			\$33,000.00		\$33,000.00
FY14			\$34,000.00		\$34,000.00
<b>TOTAL:</b>			<b>\$1,100,000.00</b>		<b>\$1,100,000.00</b>

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

Ownership/Control

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

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

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

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

Russ Deaton, Associate Executive Director for Fiscal Affairs  
615.532.3860

OCR USE - FA

Department 332010052	Program 001250	Contract #
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# 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

Request Tracking #	33201-00112	
1. Contracting Agency	Tennessee Higher Education Commission	
2. Proposed Contractor	SAS Institute, Inc.	
3. Proposed Contract Period -- with ALL options to extend exercised The proposed contract start date shall follow the approval date of this request.	32 months	
4. Maximum Contract Cost -- with ALL options to extend exercised	\$ 1.1 Million	
5. Office for Information Resources Endorsement -- information technology (N/A to THDA)	<input type="checkbox"/> Not Applicable	<input checked="" type="checkbox"/> Attached
6. eHealth Initiative Support -- health-related professional, pharmaceutical, laboratory, or imaging	<input checked="" type="checkbox"/> Not Applicable	<input type="checkbox"/> Attached
7. Human Resources Support -- state employee training	<input checked="" type="checkbox"/> Not Applicable	<input type="checkbox"/> Attached
8. Has the contracting agency bought the subject service before?	<input checked="" type="checkbox"/> NO <input type="checkbox"/> YES, it was procured by... <input type="checkbox"/> RFP <input type="checkbox"/> Another Competitive Method <input type="checkbox"/> Non-Competitive Negotiation	
9. Service Description -- brief summary only -- do NOT restate the proposed scope of service	<p>The SAS Institute, Inc. will design pre-service Tennessee Value-Added Assessment System (TVAAS) curriculum through the development of four interactive modules, produce instructional guides on the module uses, perform piloting of the curriculum and assessments developed, and conduct ancillary research for continued program improvement.</p>	
10. Explanation of Need for or Requirement Placed on the State to Acquire the Service	<p>The modules, as described in the scope of services, support the initiatives outlined in the State's approved Race to the Top proposal. The deliverables outlined in the scopes of services will enable the Tennessee Higher Education Commission to implement training modules on the use of the Tennessee Value-Added Assessment System (TVAAS) that can be disbursed to initial preparation programs. The modules will enable initial preparation programs to train pre-service teachers on the use of TVAAS results to modify and improve classroom instruction and enhance student learning of the State's new curriculum standards.</p>	

Request Tracking #	33201-00112
<p>11. Name &amp; Address of the Contractor's Principal Owner(s)  <i>- NOT required for a TN state education institution</i></p> <p>SAS Institute, Inc.  SAS Campus Drive  Cary, NC 27513</p>	
<p>12. Evidence Contractor's Experience &amp; Length Of Experience Providing the Service</p> <p>The Tennessee Department of Education has utilized the services of SAS Institute, Inc. since 1991-1992, when the Tennessee Value-Added Assessment System (TVAAS) became required by state law.</p>	
<p>13. Efforts to Identify Reasonable, Competitive, Procurement Alternatives</p> <p>TVAAS data is based upon a statistical methodology that is owned exclusively by the SAS Institute, Inc.; therefore there is no procurement alternative available to the Tennessee Higher Education Commission.</p>	
<p>14. Justification - specifically explain why non-competitive negotiation is in the best interest of the state</p> <p>Consideration for a non-competitive contract is requested because TVAAS data is based upon a statistical methodology that is owned exclusively by the SAS Institute, Inc. The services procured through this contract will support higher education initiatives, as outlined in the Race to the Top proposal (Section C(3)(ii)).</p>	
<p>Agency Head Signature and Date - <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></p> <p> <span style="float: right;">9. 8. 11</span></p> <p>RICHARD G. RHODA, EXECUTIVE DIRECTOR <span style="float: right;">DATE</span></p>	



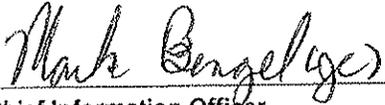
## OIR Pre-Approval Endorsement Request E-Mail Transmittal

**TO :** Jane Chittenden, OIR Procurement & Contract Management Director  
Department of Finance & Administration  
E-mail : [Jane.Chittenden@tn.gov](mailto:Jane.Chittenden@tn.gov)

**FROM :** Marcie Mills, Paralegal, Contracts Administration Manager for Will Burns,  
Associate Executive Director, Legal and Regulatory Affairs  
E-mail : [Marcie.Mills@tn.gov](mailto:Marcie.Mills@tn.gov)

**DATE :** 12/01/2010

**RE :** Request for OIR Pre-Approval Endorsement

<b>Applicable RFS #</b> 33201-00112
<b>OIR Endorsement Signature &amp; Date:</b>
 
<b>Chief Information Officer</b> <small>NOTE: Proposed contract/grant support is applicable to the subject IT service technical merit.</small>

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

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

<b>Contracting Agency</b>	Tennessee Higher Education Commission (THEC)
<b>Agency Contact</b> (name, phone, e-mail)	O.W. Higley, Assistant Executive Director of Fiscal Affairs and IT Director 615.532.9846 <a href="mailto:O.W.Higley@tn.gov">O.W.Higley@tn.gov</a>
<b>Subject Procurement Document</b> (mark one)	
<input type="checkbox"/> RFP	<input type="checkbox"/> Contract
<input type="checkbox"/> Competitive Negotiation Request	<input type="checkbox"/> Contract Amendment
<input type="checkbox"/> Alternative Procurement Method Request	<input checked="" type="checkbox"/> Grant
<input checked="" type="checkbox"/> Non-Competitive Contract Request	<input type="checkbox"/> Grant Amendment
<input type="checkbox"/> Non-Competitive Amendment Request	

<b>Applicable RFS #</b> 33201-00112
<b>Information Systems Plan (ISP) Project Applicability</b> <input checked="" type="checkbox"/> Not Applicable to this Request  <input type="checkbox"/> Applicable- ISP Project# <b>Response Confirmed by IT Director/Staff (name):</b> O.W. Higley
<b>Required Attachments</b> (as applicable - copies without signatures acceptable) <input type="checkbox"/> RFP, Competitive Negotiation Request, Alternative Procurement Method Request, Non-Competitive Contract Request, Non-Competitive Amendment Request <input type="checkbox"/> Original Contract/Grant or Amendment <input checked="" type="checkbox"/> Proposed Contract/Grant or Amendment
<b>Subject Information Technology Service Description</b> (Brief summary of information technology services involved. Clearly identify included technologies such as system development/maintenance, security, networking, etc. As applicable, identify the contract & solicitation sections related to the IT services.)  This contract with SAS Institute, Inc. will not impact the state of Tennessee's network infrastructure. SAS Institute, Inc. will use its own computer systems, web page, and purchasing authority to fulfill the scope of the contract.  The contract outcomes proposed in this Contract relevant to this review are contained in the Scope of Services, A.2. and A.3.

# Rule Exception Request

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

APPROVED

Mark A Embrey 24 Oct 2011

COMMISSIONER OF FINANCE & ADMINISTRATION

Request Tracking #	33201-00112	
1. Contract #	Pending	
2. Service Caption	Development of learning modules for TVAAS integration into pre-service teacher training.	
3. Contractor	SAS Institute Inc	
4. Contract Period <i>(with ALL options to extend exercised)</i>	32 months	
5. Contract Maximum Liability <i>(with ALL options to extend exercised)</i>	\$ 1,100,000.00	
6. Rule <i>(for which the exception is requested)</i>	<input type="checkbox"/> 0620-3-3-.03(2)(a) OR 0620-3-3-.05 requiring compliance with relevant model guidelines (only if required by oversight authorities) <input type="checkbox"/> 0620-3-3-.05(5) requiring the prescribed Nondiscrimination contract provision <input type="checkbox"/> 0620-3-3-.07(5) prohibiting a contract term greater than five (5) years <input type="checkbox"/> 0620-3-3-.07(8) prohibiting a contract with a former state employee in within six (6) months of termination <input type="checkbox"/> 0620-3-3-.07(22) requiring contractor travel reimbursement in accordance with state travel regulations <input checked="" type="checkbox"/> OTHER <i>(cite the relevant rule below)</i> 0620-3-3-.07(5) alternative termination language	
7. Explanation of Rule Exception Requested	The purpose of the rule exception is to provide additional options related to bilateral termination for convenience language. Specifically, it is proposed that the authorized language for bilateral termination for convenience in the model contract instructions be supplemented by adding new sub-paragraph a, to provide for exceptions to the section. The paragraph as amended would read as follows:	

**RECEIVED**

By OCR at 9:07 am, Oct 21, 2011

Request Tracking #	33201-00112
7. Continued	<p>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.</p> <p>Notwithstanding the provisions of this section to the contrary:</p> <p>a. The Contractor may immediately terminate this Contract upon notice to the State in the event the Federal government determines, in writing, that the Recovery Act referenced in section E.8., of this contract, requires the Contractor to report its executive compensation. In such event, the Contractor shall simultaneously give notice of termination and tender to the State any amounts paid by the State hereunder. Additionally, any license granted by the Contractor under this contract shall terminate. The State will, however retain any work product that had been delivered under the terms of this contract prior to notice of the termination.</p>
8. Justification	<p>The purpose for allowing immediate termination of the contract is to help accommodate a concern of the Contractor while protecting the interests of the State. Specifically, because the Contractor is a privately held company, it has consciously decided not to make certain information about itself public information, to include the compensation of its executives. There is concern that an unintended consequence of the drafting of the Recovery Act is that it includes language that could be interpreted to require Contractors receiving funds under the act to report its executives' compensation. This language was developed to ensure that if such an interpretation was made, the Contractor could return all funds received under the contract. The State will, however, retain whatever work product has been developed and delivered to that point.</p>
<p>Agency Head Signature and Date <i>(contracting agency head or authorized signatory)</i></p> <p>  RICHARD G. RHODA</p> <p style="text-align: right;">10.4.11  DATE</p>	



# CONTRACT

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

Begin Date 11/08/11	End Date June 30, 2014	Agency Tracking # 33201-00112	Edison Record ID 26269
Contractor Legal Entity Name SAS Institute Inc.			Edison Vendor ID 0000000751

Service Caption (one line only)  
Development of learning modules for TVAAS integration into pre-service teacher training.

Subrecipient or Vendor <input type="checkbox"/> Subrecipient <input checked="" type="checkbox"/> Vendor	CFDA # 84.395A
--	-------------------

Funding ---					
FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
FY12			\$1,033,000.00		\$1,033,000.00
FY13			\$33,000.00		\$33,000.00
FY14			\$34,000.00		\$34,000.00
TOTAL:			\$1,100,000.00		\$1,100,000.00

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

Ownership/Control

African American     Asian     Hispanic     Native American     Female

Person w/Disability     Small Business     Government     NOT Minority/Disadvantaged

Other:

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

RFP    The procurement process was completed in accordance with the approved RFP document and associated regulations.

Competitive Negotiation    The predefined, competitive, impartial, negotiation process was completed in accordance with the associated, approved procedures and evaluation criteria.

Alternative Competitive Method    The predefined, competitive, impartial, procurement process was completed in accordance with the associated, approved procedures and evaluation criteria.

Non-Competitive Negotiation    The non-competitive contractor selection was completed as approved, and the procurement process included a negotiation of best possible terms & price.

Other    The contractor selection was directed by law, court order, settlement agreement, or resulted from the state making the same agreement with all interested parties or all parties in a predetermined "class."

Budget Officer Confirmation: There is a balance in the appropriation from which obligations hereunder are required to be paid that is not already encumbered to pay other obligations.		OCR USE - FA
		<b>FA1237114</b>
Russ Deaton, Associate Executive Director for Fiscal Affairs 616.532.3860		
Department 332010052	Program 001250	Contract #



CONTRACT  
BETWEEN THE STATE OF TENNESSEE,  
TENNESSEE HIGHER EDUCATION COMMISSION  
AND  
SAS INSTITUTE INC.

This Contract, by and between the State of Tennessee, Tennessee Higher Education Commission (THEC), hereinafter referred to as the „State“ and SAS Institute Inc., hereinafter referred to as the “Contractor,” is for the provision of developing learning modules for Tennessee Value-Added Assessment System integration into pre-service teacher training, as further defined in the “SCOPE OF SERVICES.”

The Contractor is a For-Profit Corporation,  
Contractor Place of Incorporation or Organization: North Carolina  
Contractor Edison Registration ID: 0000000751

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. Tennessee Value-Added Assessment System. The Contractor shall work with the State to develop and implement training modules on the use of the Tennessee Value-Added Assessment System (TVAAS) that can be dispersed to teacher preparation programs. The purpose of this contract is to develop curriculum materials to enable teacher preparation programs to train pre-service teachers on the use of TVAAS results to modify and improve classroom instruction. Through TVAAS, pre-service teachers will be trained to use predictive data to modify classroom instruction and enhance student learning of the State’s new curriculum standards. The estimated time for pre-service teachers to successfully complete the training module is eight hours. The curriculum will integrate the simulated TVAAS individual reports (to be made available via Contractor’s simulated TVAAS website (the “Simulated Site”)) and the SAS interactivities (i.e. interactive videos) to be developed under this contract with the intention that that pre-service teachers experience a simulation of real-world observations and decision-making processes utilizing TVAAS results. Successful completers should demonstrate an understanding of the importance of appropriate academic progress for all students every year.

A.3. Deliverable 1: Pre-service TVAAS Curriculum. The Contractor shall design and develop a curriculum that will include four distinct learning modules as follows. The modules will integrate (1) the simulated reporting available on the TVAAS Data Dashboard previously developed for the Tennessee Department of Education (the “Existing TVAAS Simulated Reports”) made available via the Simulated Site, (2) a series of interactivities available via the internet that provide a conceptual understanding of real-world TVAAS usage, and (the “Existing Interactive Videos”) 3) an Internet-based forum for pre-service teachers to access information posted by current and former Tennessee educators that will enhance learning opportunities. The State warrants that it has the right to grant Contractor use of the Existing Interactive Videos.

a. Module 1 - The introductory module establishes an understanding of standardized testing scales and their use in multivariate, longitudinal analyses whereby students will learn the difference in individual year achievement measures and value-added results.; Module 2 – This module will explain how to access and interpret the school value-added results and diagnostic reports that will provide the basis for continuous improvement for individual schools.; Module 3 – This module will explain how to access and interpret the teacher value-added results and diagnostic reports that will provide the basis for a continuous improvement process for individual teachers.; Module 4 – In this module, participants will use the individual student projections in the Existing TVAAS Simulated Reports as the basis of current year educational planning for individual students to mitigate potential barriers for student academic progress through the integration of multiple TVAAS reports



in a simulation of the decision-making process necessary to develop continuous improvement plans.

- b. Forum – For the term of the Contract, the Contractor will establish, administer and host an Internet-based forum (the “forum”) for pre-service and beginning teachers to learn from current and former Tennessee educators. The authorized practitioners invited to share information through this forum will have demonstrated their effectiveness through TVAAS results. Such authorized practitioners will be identified by the Contractor. The State acknowledges and agrees that it is solely responsible for the content on the forum and that Contractor’s sole responsibility is to provide hosting and administration of the forum. The State agrees that the Contractor will include terms of use for the forum in such form as the Contractor deems necessary
- A.4. Deliverable 2. Instructional Guides. The Contractor shall develop at least one instructional guide that will include the curriculum content previously described , a description of the interactivities that support the curriculum, and recommendations for managing and assigning student work products throughout the educational delivery. The services associated with this deliverable include:
- a. Development of the guide(s) in consultation with the TVAAS Integration Committee convened by the Contractor.
  - b. Editing, formatting, and illustration requirements. and
  - c. Training sessions and webinars regarding use of the guide(s).
- A.5. Deliverable 3. Piloting of the Curriculum and Assessment. The Contractor shall pilot the four learning modules with a subset of beginning Tennessee teachers prior to the implementation of the pre-service curriculum. The Contractor shall incorporate feedback from teachers participating in the pilot program into the development of an assessment of student learning. The services associated with this deliverable include:
- a. Development of the student assessment in consultation with the TVAAS Integration Committee convened by the Contractor.
  - b. Teaching of the modules.
  - c. WebEx support. and
  - d. Communication materials.
- A.6 Deliverable 4 Ancillary Research Reports. The Contractor shall conduct research to measure the (1) improvements in differentiated instruction in beginning teachers who successfully complete the learning modules and (2) changes in beginning teachers’ attitudes toward TVAAS. The Contractor will deliver written Ancillary Research Reports to the State summarizing the results of the research. Such research and reporting will be conducted on a periodic basis of approximately once (1) per year of the term of this Contract. The services associated with this deliverable include:
- a. Research planning.
  - b. Data collection.
  - c. Data analyses.
  - d. Interpretation of analyses.



- e. Reporting of results to universities and the State, and
- f. One day of technical assistance per reporting cycle to explain results to participating universities and the State.

A.7 Deliverable 5. One-Year Work Plans. Within thirty (30) days of execution of this contract, the Contractor shall submit a one-year work plan for Year 1. All subsequent yearly work plans shall be submitted to Katrina Miller, Director of THEC First to the Top, on July 1 of said work year.

A.8. Each party agrees to respond to the other in a timely fashion when acceptance of a deliverable is pending. After delivery, the State will accept or reject a deliverable within ten (10) business days. Failure to reject a deliverable within this time frame will constitute acceptance of the deliverable. Notice of the State's rejection of the deliverable shall be provided to the Contractor in writing and shall specify the nature and scope of the deficiencies. In the case of rejection of the deliverable, the parties agree to adhere to the following timeframes whenever reasonably possible in order to meet the schedule set forth above: The Contractor will use reasonable efforts to respond to the State within five (5) business days after receipt of the rejection notice describing the manner and timeframe in which the Contractor proposes to correct any deficiencies, or by actually correcting the deficiencies. In the former case, the State will accept the Contractor's proposal for correcting any deficiencies within five (5) business days after receipt of the Contractor's proposal. Upon the Contractor's delivery of the corrected deliverable, the State will accept the deliverable within five (5) business days.

A.9. Requests by the State or the Contractor to change or modify the Scope of Services will be made in writing to the other party, which will contain the following information:

- a. A description of any additional work to be performed and/or any changes to the performance required of either party
- b. A statement of the impact of the additional work or changes on the scope of services and the project schedule.
- c. The estimated timetable to complete the additional work or changes to the scope of services.
- d. The estimated time and cost of any additional work or changes to the scope of services.

The party proposing the additional work and/or changes to the scope of services shall provide the proposal to the other party pursuant to paragraph E.2., who shall respond in writing within five (5) business days. If both parties agree to the additional work and/or changes an amendment to this contract must be prepared and executed pursuant to paragraph D.2. of this contract.

A.10. For the term of this contract and for such additional period as the Contractor provides TVAAS reports under a separate, written contract with the State of Tennessee, the Contractor grants the State a nonexclusive, nontransferable and nonassignable license to access and use the Contractor's Simulated Site, which is located on the Contractor's server, via the Internet for the purpose of educating pre-service teachers within the State of Tennessee via the use of the Pre-Service TVAAS Curriculum delivered by the Contractor under the terms of this contract. The Simulated Site may be accessed only by the State's employees, on site contractors, teaching staff at Tennessee institutions of higher education and Tennessee pre-service teachers (i.e. students majoring in education at Tennessee institutions of higher education) (collectively, "Users") doing work in the State of Tennessee for the State relating to TVAAS education and use of the Pre-Service TVAAS Curriculum delivered by the Contractor hereunder. Without limiting the foregoing, the license granted to the State does not include any rights to alter the Simulated Site.

**B. CONTRACT PERIOD:**



This Contract shall be effective for the period beginning November 8, 2011, and ending on June 30, 2014. 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 One Million One Hundred Thousand Dollars (\$1,100,000.00). 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. However, the services described in Section A. of this contract are being requested by the State and upon delivery to, and acceptance of the services by the State as described in Section A., and upon submission of invoices by the Contractor pursuant to Sections C.3. and C.5. of this contract, the State shall be obligated to pay for such services.

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 with estimated completion dates	Amount (per compensable increment)
Deliverable 1 - Pre-service TVAAS Curriculum Development and Implementation Support. A.3  Module Development due on or before March 30, 2012 SAS will deliver four (4) sub-modules under the Module Development for \$125,000.00 per module. SAS will send an invoice upon completion of each sub-module.  Forum due March 30, 2012	\$500,000 Deliverable 1 per Section A.3.a  \$200,000 Deliverable 1 per Section A.3.b
Deliverable 2 - Instructional Guides. Section A.4. Due June 30, 2012	\$200,000 per Deliverable 2



Deliverable 3 - Piloting of the Curriculum and Assessment, A.5. Due March 30, 2012	\$100,000 per Deliverable 3
Deliverable 4 - Ancillary Research, A.6. Due November 30, 2012 Due November 30, 2013 Due June 30, 2014	\$33,000.00 \$33,000.00 \$34,000.00

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:

Tennessee Higher Education Commission  
First to the Top  
404 James Robertson Parkway, Suite 1900  
Nashville, TN 37243-0830

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: Tennessee Higher Education Commission, First to the Top
- (5) Customer Account Number (assigned by the Contractor to the above-referenced Customer)
- (6) Contractor Name
- (7) Contractor Federal Employer Identification, Social Security, or 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. The State reserves the right to deduct from amounts, which are or shall become due and payable to the Contractor under this or any contract between the Contractor and the State of Tennessee any amounts, which are or shall become due and payable to the State of Tennessee by the Contractor.

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

- a. The Contractor shall complete, sign, and present to the State an "Authorization Agreement for Automatic Deposit (ACH Credits) Form" provided by the State. By doing so, the Contractor acknowledges and agrees that, once said form is received by the State, all payments to the Contractor, under this or any other contract the Contractor has with the State of Tennessee shall be made by Automated Clearing House (ACH).
- b. The Contractor shall complete, sign, and present to the State a "Substitute W-9 Form" provided by the State. The taxpayer identification number detailed by said form must agree with the Contractor's Federal Employer Identification Number or Tennessee Edison Registration ID referenced in this Contract.

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.



a. Notwithstanding the provisions of this section to the contrary, the Contractor may immediately terminate this Contract upon notice to the State in the event the Federal government determines, in writing, that the Recovery Act referenced in section E.8., of this contract, requires the Contractor to report its executive compensation. In such event, the Contractor shall simultaneously give notice of termination and tender to the State any amounts paid by the State hereunder. Additionally, any license granted by the Contractor under this contract shall terminate. The State will, however retain any work product that had been delivered under the terms of this contract prior to notice of the termination.

D.4. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor violates any terms of this Contract, the State shall have the right to immediately terminate the Contract and withhold payments in excess of fair compensation for completed services. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any breach of this Contract by the Contractor.

D.5. Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the services performed under this Contract without obtaining the prior written approval of the State. If such subcontracts are approved by the State, 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 A, hereto, semi-annually during the period of this Contract. Such attestations shall be maintained by the Contractor and made available to state officials upon request.



- b. Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the period of this Contract, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work relative to this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work relative to this Contract. Attestations obtained from such subcontractors shall be maintained by the Contractor and made available to state officials upon request.
  - c. The Contractor shall maintain records for all personnel used in the performance of this Contract. Said records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.
  - d. The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of *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, proposal, or bid to contract with the State of Tennessee to supply goods or services for a period of one year after a contractor is discovered to have knowingly used the services of illegal immigrants during the performance of this Contract.
  - e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not either a United States citizen, a Lawful Permanent Resident, or a person whose physical presence in the United States is authorized or allowed by the federal Department of Homeland Security and who, under federal immigration laws and/or regulations, is authorized to be employed in the U.S. or is otherwise authorized to provide services under the Contract.
- D.9. Records. The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, insofar as they relate to work performed or money received under this Contract, shall be maintained for a period of three (3) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.10. Prevailing Wage Rates. All contracts for construction, erection, or demolition or to install goods or materials that involve the expenditure of any funds derived from the State require compliance with the prevailing wage laws as provided in *Tennessee Code Annotated*, Section 12-4-401, *et seq.*
- D.11. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- D.12. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.13. Strict Performance. Failure by any party to this Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.
- D.14. Independent Contractor. The parties hereto, in the performance of this Contract, shall not act as employees, partners, joint venturers, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this



Contract shall be construed to create an employer/employee relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.

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

- D.15. State Liability. The State shall have no liability except as specifically provided in this Contract.
- D.16. Force Majeure. The obligations of the parties to this Contract are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, natural disasters, riots, wars, epidemics, or any other similar cause.
- D.17. State and Federal Compliance. The Contractor shall comply with all applicable State and Federal laws and regulations in the performance of this Contract.
- D.18. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Contractor agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Contract. The Contractor acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under *Tennessee Code Annotated*, Sections 9-8-101 through 9-8-407.
- D.19. Completeness. This Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions of the parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties relating hereto, whether written or oral.
- D.20. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Contract are declared severable.
- D.21. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.

E. SPECIAL TERMS AND CONDITIONS:

- E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, these special terms and conditions shall control.
- E.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by certified, first class mail, return receipt requested and postage prepaid, by overnight courier service with an asset tracking system, or by EMAIL or facsimile transmission with recipient confirmation. Any such communications, regardless of method of transmission, shall be addressed to the respective party at the appropriate mailing address, facsimile number, or EMAIL address as set forth below or to that of such other party or address, as may be hereafter specified by written notice.

The State:



Katrina Miller, Director of THEC First to the Top  
Tennessee Higher Education Commission  
404 James Robertson Parkway, Suite 1900  
Nashville, TN 37243  
Katrina.Miller@tn.gov  
Telephone: 615.532.7977  
FAX: 615.741.6230

The Contractor:

June Rivers, TVAAS Business Director  
SAS Institute, Inc.  
100 SAS Campus Drive  
Cary, NC 27513.2414  
June.Rivers@sas.com  
Telephone: 919.961.8503  
FAX: 919.677.4444

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. 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.

The parties agree that the degree of care applied to Contractor's obligations under this Section E.5. is a reasonable standard of care.

It is further agreed that review of Contractor's confidential records by the State is subject to the Contractor's reasonable security policies and procedures and execution of outlined Contractors Nondisclosure Agreement and shall be evidenced by the State submitting to the Contractor a completed and signed copy of the Nondisclosure Agreement which is Attachment B to this Contract.

- E.6. Printing Authorization. The Contractor agrees that no publication coming within the jurisdiction of *Tennessee Code Annotated*, Section 12-7-101, *et seq.*, shall be printed pursuant to this contract unless a printing authorization number has been obtained and affixed as required by *Tennessee Code Annotated*, Section 12-7-103 (d).
- E.7. State Ownership of Work Products. The State shall have ownership, right, title, and interest, including ownership of copyright, in all work products, including computer source code, created, designed, developed, derived, documented, installed, or delivered under this Contract subject to the next subsection and full and final payment for each "Work Product." The State shall have royalty-free and unlimited rights and license to use, disclose, reproduce, publish, distribute, modify, maintain, or create derivative works from, for any purpose whatsoever, all said Work Products.
- a. To the extent that the Contractor uses any of its pre-existing, proprietary or independently developed tools, materials or information ("Contractor Materials"), the Contractor shall retain all right, title and interest in and to such Contractor Materials, and the State shall acquire no right, title or interest in or to such Contractor Materials EXCEPT the Contractor grants to the State an unlimited, non-transferable license to use, copy and distribute internally, solely for the State's internal purposes, any Contractor Materials reasonably associated with any Work Product provided under the Contract.
  - b. The Contractor shall furnish such information and data as the State may request, including but not limited to computer code, that is applicable, essential, fundamental, or intrinsic to any Work Product and Contractor Materials reasonably associated with any Work Product, in accordance with this Contract and applicable state law.
  - c. Nothing in this Contract shall prohibit the Contractor's use for its own purposes of the general knowledge, skills, experience, ideas, concepts, know-how, and techniques obtained and used during the course of providing the services requested under this Contract.
  - d. Nothing in the Contract shall prohibit the Contractor from developing for itself, or for others, materials which are similar to and/or competitive with those that are produced under this Contract.
  - e. The parties acknowledge and agree that the Interactivities/Modules 1-4, Instructional Guides/Curriculum and Ancillary Research Reports are deemed to be Work Product.



E.8. Federal Economic Stimulus Funding. This Contract requires the Contractor to provide products and/or services that are funded in whole or in part under the American Recovery and Reinvestment Act of 2009, Public Law 111-5, (Recovery Act). The Contractor is responsible for ensuring that all applicable requirements, including but not limited to those set forth herein, of the Recovery Act are met and that the Contractor provides information to the State as required.

The Contractor (and any subcontractor) shall comply with the following:

- a. Federal Grant Award Documents, as applicable.
- b. Executive Office of the President, Office of Management and Budget (OMB) Guidelines as posted at [www.whitehouse.gov/omb/recovery\\_default/](http://www.whitehouse.gov/omb/recovery_default/), as well as OMB Circulars, including but not limited to A-102 and A-133 as posted at [www.whitehouse.gov/omb/financial\\_offm\\_circulars/](http://www.whitehouse.gov/omb/financial_offm_circulars/).
- c. Office of Tennessee Recovery Act Management Directives (posted on the Internet at [www.tnrecovery.gov](http://www.tnrecovery.gov)).
- d. The Recovery Act, including but not limited to the following sections of that Act:
  - (1) Section 1604 – Disallowable Use. No funds pursuant to this Contract may be used for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.
  - (2) Section 1512 – Reporting and Registration Requirements. The Contractor must report on use of Recovery Act funds provided through this Contract. Information from these reports will be made available to the public.
  - (3) Section 1553 – Recovery Act Whistleblower Protections. An employee of any non-Federal employer receiving covered funds under the Recovery Act may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing, including a disclosure made in the ordinary course of an employee's duties, to the Accountability and Transparency Board, an inspector general, the Comptroller General, a member of Congress, a State or Federal regulatory or law enforcement agency, a person with supervisory authority over the employee (or other person working for the employer who has the authority to investigate, discover or terminate misconduct), a court or grand jury, the head of a Federal agency, or their representatives, information that the employee believes is evidence of one or more of the following related to the implementation or use of covered funds:
    - i. gross mismanagement,
    - ii. gross waste,
    - iii. substantial and specific danger to public health or safety,
    - iv. abuse of authority, or
    - v. violation of law, rule, or regulation (including those pertaining to the competition for or negotiation of a Contract).

Non-enforceability of Certain Provisions Waiving Rights and Remedies or Requiring Arbitration: Except as provided in a collective bargaining agreement, the rights and remedies provided to aggrieved employees by this section may not be waived by any agreement, policy, form, or condition of employment, including any predispute arbitration agreement. No predispute arbitration agreement shall be valid or enforceable if it requires arbitration of a dispute arising out of this section.



Requirement to Post Notice of Rights and Remedies: The Contractor and any subcontractor shall post notice of the rights and remedies as required under Section 1553. (Refer to Section 1553 of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5 located at [www.recovery.gov](http://www.recovery.gov), for specific requirements of this section and prescribed language for the notices.)

- (4) Section 902 – Access of Government Accountability Office. The Contractor shall provide that the Comptroller General and his representatives are authorized:
- i. to examine any records of the Contractor or any of its subcontractors, that directly pertain to, and involve transactions relating to, this Contract or a subcontract; and
  - ii. to interview any officer or employee of the Contractor or any of its subcontractors regarding such transactions.
- (5) Section 1514 – Inspector General Reviews. Any inspector general of a federal department or executive agency has the authority to review, as appropriate, any concerns raised by the public about specific investments using such funds made available in the Recovery Act. In addition, the findings of such reviews, along with any audits conducted by any inspector general of funds made available in the Recovery Act, shall be posted on the inspector general's website and linked to the website established by Recovery Act Section 1526, except that portions of reports may be redacted to the extent the portions would disclose information that is protected from public disclosure under sections 552 and 552a of title 5, United States Code.
- (6) Section 1515 – Access of Offices of Inspector General to Certain Records and Employers. With respect to this Contract, any representative of an appropriate inspector general appointed under section 3 or 8G of the Inspector General Act of 1978 (5 U.S.C. App.), is authorized:
- i. to examine any records, of the Contractor or any of its subcontractors, that pertain to and involve transactions relating or pursuant to this Contract; and
  - ii. to interview any officer or employee of the Contractor or any subcontractors regarding such transactions.
- (7) Section 1606 – Wage Rate Requirements. All laborers and mechanics employed by pursuant to this Contract shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code. All rulings and interpretations of the Davis-Bacon Act and related acts contained in 29 CFR 1, 3, and 5 are herein incorporated by reference.
- For purposes of this Contract, laborer or mechanic includes at least those workers whose duties are manual or physical in nature (including those workers who use tools or who are performing the work of a trade), as distinguished from mental or managerial. The term laborer or mechanic includes apprentices, trainees, helpers, and, in the case of contracts subject to the Contract Work Hours and Safety Standards Act, watchmen or guards.
- (8) Section 1609 – Buy American Requirements for Construction Material – Buy American, Use of American Iron, Steel, and Manufactured Goods. None of the funds provided by this Contract may be used for a project for the construction, alteration, maintenance, or repair of a public building or public work unless all of



the iron, steel, and manufactured goods used in the project are produced in the United States.

- e. The Contractor agrees to comply with any modifications or additional requirements that may be imposed by law and future guidance and clarifications of Recovery Act requirements
  - f. If the Contractor enters into one or more subcontracts for any of the services performed under this Contract, each subcontract shall contain provisions specifically imposing on the subcontractor all requirements set forth in this Contract Section E.8., "Federal Economic Stimulus Funding."
- E.9. Services will be performed and deliverables delivered according to the description set forth in Section A. The services are being performed on a fixed price basis. The term "fixed price" means a pre-defined project model where Contractor provides services for a set fee within the estimated time period identified in Section A. The services will not include continued support or maintenance of any deliverable or Work Product beyond the term of the agreement unless such support or maintenance is detailed below.
- E.10. The State agrees to promptly notify the Contractor in writing of any claim made against the State for: (a) copyright, patent, trade secret or other intellectual property rights violation relating to the services hereunder, the Simulated Site, the Work Product or any deliverable provided hereunder; or (b) bodily injury, death or damage to tangible property, excluding damage to software, files or data, arising solely from actions for which the Contractor is legally responsible. Except as set forth below in this section, the State shall have the option of allowing the Contractor to control the litigation or settlement of any such claim and to cooperate with the Contractor in the investigation, defense and settlement thereof. Provided the State agrees to such an arrangement, the Contractor shall indemnify the State for such claim by paying for the costs and attorneys' fees the State incurs at the Contractor's direction and any judgment finally awarded against the State or settlement approved by the Contractor. This shall not preclude the State from participating at its own expense, provided that the State may, if required by applicable law, separately engage its own counsel to defend itself at the State's own expense and in that event the State and the Contractor shall jointly defend the State. However, if the State and the Contractor do not agree on such defense, the Contractor may withdraw its defense of the State. If the Contractor withdraws its defense of the State, the Contractor shall have no further obligation to pay any such costs, attorneys' fees or judgment finally awarded against the State for the applicable claim. If such claim in (a) above is made or, in the Contractor's opinion, is likely to be made, then the Contractor, at its option, may: (1) modify the intellectual property at issue; (2) obtain rights for the State to continue using the applicable intellectual property; or (3) terminate the license for the intellectual property at issue and refund the then-current fee paid therefor. The State agrees to abide by the Contractor's decision and, if appropriate, install a different version of the intellectual property or stop using the intellectual property. This obligation does not apply to the extent: (i) a claim is based on State's combination of the intellectual property with other intellectual property, or modification to the intellectual property, if such claim would not have been made but for the State's combination or modification; or (ii) as of the date the claim arose, the State had not installed the latest version of, or update to, the intellectual property as instructed by the Contractor prior to such date, if such claim would not have been made if the update or latest version had been installed. Notwithstanding any other term of this Contract, this provision does not apply to any Work Product owned by the State.
- E.11. The Contractor's obligations under the reporting requirements of Section E.8., is to provide information relating to the services to the State such that the State can meet applicable requirements of the Recovery Act. The parties agree that the Contractor is a vendor under the Recovery Act, not a recipient.
- E.12. The State will provide the Contractor with evidence of its tax-exempt status.



- E.13. Limitation of Liability. The parties agree that the Contractor's liability under this Contract shall be limited to an amount equal to two (2) times the Maximum Liability amount detailed in Section C.1, and as may be amended, PROVIDED THAT in no event shall this section limit the liability of the Contractor for intentional torts, criminal acts, or fraudulent conduct.
- E.14. Disclaimer of Warranties. The provisions of this Section E.14., are applicable to the extent permitted by and in accordance with the procedures of the Tennessee Claims Commission statutes, *Tennessee Code Annotated*, § 9-8-301, et seq. The Contractor warrants that it has the right to license the Simulated Site to the Customer. The exclusive remedy for breach of this warranty is set forth in the indemnity provision above. The Contractor also warrants that the services shall be provided by qualified personnel and in accordance with the requirements set forth in this Contract. The exclusive remedy for breach of this warranty is refund of fees paid for the services at issue. SAS disclaims all other warranties, express or implied, with respect to the Simulated Site, Work Product, deliverables or services provided hereunder or the results obtained, including without limitation any implied warranties or conditions of merchantability or fitness for a particular purpose and those arising by statute or otherwise in law or from a course of dealing.

IN WITNESS WHEREOF,

SAS INSTITUTE INC.:

  Victoria Clayton  
Senior Manager  
Contract Operations  
SAS Institute Inc.

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VICTORIA CLAYTON, SENIOR MANAGER OCT 25 2011 DATE



TENNESSEE HIGHER EDUCATION COMMISSION:



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RICHARD G. RHODA, EXECUTIVE DIRECTOR 11-20-11 DATE



ATTACHMENT A

ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE

SUBJECT CONTRACT NUMBER:	33201-00112
CONTRACTOR LEGAL ENTITY NAME:	SAS Institute Inc.
FEDERAL EMPLOYER IDENTIFICATION NUMBER: (or Social Security Number)	0000000751

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.



Victoria Clayton  
Senior Manager  
Contract Operations  
SAS Institute Inc.

OCT 26 2011

VICTORIA CLAYTON, SENIOR MANAGER

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.

OCT 26 2011

DATE OF ATTESTATION





8 BREACH. Recipient acknowledges and agrees that due to the nature of the property that is the subject of this Agreement, Discloser shall suffer irreparable harm should Recipient breach any obligation hereunder. Discloser shall, therefore, have the right to seek equitable relief to enforce any right arising hereunder or to prevent or cure any breach of any obligation undertaken, without in any way prejudicing any available legal relief. Such equitable relief may include, but is not limited to, the seeking of an injunction, restraining order or order for specific performance, and may be sought in any appropriate court. Recipient further agrees that such injunction or order shall be without prejudice to any other rights accruing to Discloser by reason of the breach of this Agreement. It is expressly agreed that the obligations of this paragraph survive any termination of this Agreement.

9 GENERAL. This Agreement sets forth the entire agreement between the parties with respect to the subject matter hereof. Headings included in this Agreement are for convenience only and are not to be used to interpret the agreement between the parties. If any part of this Agreement is held unenforceable or invalid, the remaining provisions shall continue in full force and effect. Neither party may assign its rights or delegate its duties or obligations under this Agreement without the prior written consent of the other party and any attempt to do so is void. Only a written agreement signed by authorized representatives of both parties can modify this Agreement. This Agreement shall be deemed to have been made in and shall be governed by and construed in accordance with the laws of the State of Tennessee without regard to choice of law provisions. The parties agree to abide by the export laws and regulations of the United States of America. The parties acknowledge that they have read this Agreement, understand it, and agree to be bound by its terms and conditions.

Accepted by  
Recipient: \_\_\_\_\_

Discloser: SAS INSTITUTE INC.

\_\_\_\_\_  
Authorized Signature  
\_\_\_\_\_  
Name (Type or print)  
\_\_\_\_\_  
Title  
\_\_\_\_\_  
Date

\_\_\_\_\_  
Authorized Signature  
\_\_\_\_\_  
Name (Type or print)  
\_\_\_\_\_  
Title  
\_\_\_\_\_  
Date

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