

CONTRACT #16
RFS # 337.10-74512
FA # 12-38965
Edison # 31858

**Department of Labor and
Workforce Development**

VENDOR:
Bank of America, N.A.



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

**220 French Landing Drive
Nashville, TN 37243
(615) 741-6642**

**BILL HASLAM
GOVERNOR**

**BURNS PHILLIPS
COMMISSIONER**

November 1, 2013

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

REP: 337.10-74512 Contract Amendment 1 Edison ID 31858

Dear Mr. Geise:

The Department of Labor and Workforce Development, Unemployment Insurance Division is submitting for your consideration by the Fiscal Review Committee, Amendment # 1 to the Bank of America, N.A. Contract.

Amendment # 1 to the Bank of America, N.A. contract is for an additional service which was not included in the original contract. The new service for Payment Collection Gateway ("PCG") ACH debit receipt transactions to the Clearing Account and shall provide the State with reporting, data recovery, return and correction services related to such ACH debit receipt transactions.

Employers have been requesting that the Agency provide the means to be able to pay their tax premiums electronically and to be able to pay the same time they are filing quarterly wages. This has also been identified as one of the initiatives of Top-To-Bottom-Review.

Currently, the Employers file the reports online (through TNPAWS application). They are then required to print a coupon off in the application and mail the coupon and their check/payment to the Agency. There is a need to automate the payment process and provide this as an additional option to the Employer while retaining the ability to file and pay by using the current file/print coupon/mail payment process.

The PCG, ACH Debit Payments process has been created to improve the employer tax premium payment timeliness. This process will reduce cost by replacing the manual process like opening envelopes, reviewing the documents for accuracy, batching the docs, scanning the docs, keying the batches, preparing deposit information for the bank and processing paper check with a less labor intensive process.

The Business objectives for this process are in direct support of our corporate strategic plan.

- To increase the Employer premium payment timeliness by 5%
- By reducing manual processes for processing paper checks
- To speed up the processing time by reducing the manual intervention of validating the errors in the file coming from other systems.

The Department of Labor and Workforce Development would greatly appreciate the consideration and approval of amendment 1 by the Fiscal Review Committee.

Sincerely,

A handwritten signature in black ink that reads "Burn P. Phillips III" with a small flourish at the end.

Burn P. Phillips III, Commissioner

BPP: MB: mho

Supplemental Documentation Required for
Fiscal Review Committee

*Contact Name:	Melvin O'Neal	*Contact Phone:	615 532-1071		
*Original Contract Number:	FA1238965	*Original RFS Number:	337-1074512		
Edison Contract Number: <i>(if applicable)</i>	31858	Edison RFS Number: <i>(if applicable)</i>	N/A		
*Original Contract Begin Date:	6/01/2012	*Current End Date:	5/30/2017		
Current Request Amendment Number: <i>(if applicable)</i>	One (1)				
Proposed Amendment Effective Date: <i>(if applicable)</i>	7/01/2013				
*Department Submitting:	Labor and Workforce Development				
*Division:	Unemployment Insurance				
*Date Submitted:	11/01/2013				
*Submitted Within Sixty (60) days:	No				
<i>If not, explain:</i>	See; Attachment 1				
*Contract Vendor Name:	Bank of America, N.A				
*Current Maximum Liability:	372,420.55				
*Current Contract Allocation by Fiscal Year: <i>(as Shown on Most Current Fully Executed Contract Summary Sheet)</i>					
FY:12	FY:13	FY:14	FY:15	FY:16	FY:17
\$6,207.01	\$74,484.12	\$74,484.12	\$74,484.12	\$74,484.12	\$66,277.06
*Current Total Expenditures by Fiscal Year of Contract: <i>(attach backup documentation from STARS or FDAS report)</i>					
FY:12	FY:13	FY:14	FY:15	FY:16	FY:17
\$0	\$26,702.36	\$1,903.96	\$	\$	\$
IF Contract Allocation has been greater than Contract Expenditures, please give the reasons and explain where surplus funds were spent:			The award of the RFP award was delayed expenditures were paid out of a Non-competitive one year contract.		
IF surplus funds have been carried forward, please give the reasons and provide the authority for the carry forward provision:			Surplus funds remain available under the contract		
IF Contract Expenditures exceeded Contract Allocation, please give the reasons and explain how funding was acquired to pay the overage:			N/A		
*Contract Funding	State:		Federal:	372,420.55	

Supplemental Documentation Required for
Fiscal Review Committee

Source/Amount:				
Interdepartmental:			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>		
None				
Method of Original Award: <i>(if applicable)</i>		RFP		
*What were the projected costs of the service for the entire term of the contract prior to contract award?		N/A		

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:14	FY:15	FY:16	FY:17	FY:
Banking Services	74,484.12	74,484.12	74,484.12	68,277.06	
See C.3. of Contract					

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:
N/A					

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:
N/A					
Other Vendor Cost: (name of vendor)	FY:	FY:	FY:	FY:	FY:
N/A					
Other Vendor Cost: (name of vendor)	FY:	FY:	FY:	FY:	FY:
N/A					

The Bank of America (BOA) contract was approved in June 2012 and included the processing of ACH Debits. As part of the top-to-bottom review, it was recommended by information technology staff and employer accounts staff (tax staff) that a Payment Collection Gateway (PCG) was the best option to allow employers to submit their tax payments. Since the department already had a contract with BOA, it was assumed that this processing would be covered. Most of this internal work occurred late fall and winter. BOA representatives joined the team in March 2013.

The assumption that the PCG would be covered in the ACH debit part of the contract should have been checked with contract staff and approved by management. Unfortunately, that was not done.

On the positive side, the cost of this improvement does not require an increase in the overall contract cost. It will be covered under the original contract amount. In addition, this is an improvement that has been very successful since implementation on July 17, 2013. We have already had over 13,000 transactions and collected \$12 million via this method.

Total P		Payment form Edison									
Unit	Voucher	Invoice	Remit Vndr	Name	Gross Amt	Reference	Pymnt Date	Recon Sta	Reconciled Dt	Method	
33701	00106997	12110091023	0000070802	Bank of America	3571.350	0002897122	6/24/2013	REC	7/2/2013	CHK	
33701	00107002	13010090571	0000070802	Bank of America	5204.380	0002897122	6/24/2013	REC	7/2/2013	CHK	
33701	00107005	13020090304	0000070802	Bank of America	3564.980	0002897122	6/24/2013	REC	7/2/2013	CHK	
33701	00107007	13040089039	0000070802	Bank of America	6416.390	0002897122	6/24/2013	REC	7/2/2013	CHK	
33701	00107008	13050088177	0000070802	Bank of America	4423.790	0002897122	6/24/2013	REC	7/2/2013	CHK	
33701	00107000	12120092560	0000070802	Bank of America	1858.050	0002893259	6/20/2013	REC	6/25/2013	CHK	
33701	00107006	13030090488	0000070802	Bank of America	1663.420	0002893259	6/20/2013	REC	6/25/2013	CHK	
33701	00110015	13060089505	0000070802	Bank of America	1903.960	0002982059	8/12/2013	REC	8/19/2013	CHK	
					28606.320						
					-1903.960	Payments in FY 14					
					26702.360						



OIR Pre-Approval Endorsement Request E-Mail Transmittal

TO : Jane Chittenden, OIR Procurement & Contract Management Director
Department of Finance & Administration
E-mail : Jane.Chittenden@tn.gov

FROM : Melvin O'Neal
E-mail : Melvin.oneal@tn.gov

DATE : 10/04/2013

RE : Request for OIR Pre-Approval Endorsement

Applicable RFS # 3371074512
OIR Endorsement Signature & Date:
 Chief Information Officer
10/17/13
<i>NOTE: Proposed contract/grant support is applicable to the subject IT service technical merit.</i>

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.

Contracting Agency	Labor and Workforce Development
Agency Contact (name, phone, e-mail)	Melvin O'Neal
Subject Procurement Document (mark one)	
<input type="checkbox"/> RFP	<input type="checkbox"/> Contract
<input type="checkbox"/> Competitive Negotiation Request	<input checked="" type="checkbox"/> Contract Amendment
<input type="checkbox"/> Alternative Procurement Method Request	<input type="checkbox"/> Grant
<input type="checkbox"/> Non-Competitive Contract Request	<input type="checkbox"/> Grant Amendment
<input type="checkbox"/> Non-Competitive Amendment Request	
Information Systems Plan (ISP) Project Applicability	
<input checked="" type="checkbox"/> Not Applicable to this Request	
<input type="checkbox"/> Applicable- ISP Project#	
Response Confirmed by IT Director/Staff (name): Tyrone Sullivan	

Applicable RFS # 3371074512

Required Attachments (as applicable – copies without signatures acceptable)

- RFP, Competitive Negotiation Request, Alternative Procurement Method Request, Non-Competitive Contract Request, Non-Competitive Amendment Request
- Original Contract/Grant or Amendment
- Proposed Contract/Grant or Amendment

Subject Information Technology Service Description

(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.)

Additional services as described in Section A.17.

Rule Exception Request

Route completed request, as one file in PDF format, via e-mail attachment sent to: Agsprrs.Agsprsr@state.tn.us

APPROVED

COMMISSIONER OF FINANCE & ADMINISTRATION

Request Tracking #	3371074512_ amendment 1	
1. Contract #	31858	
2. Service Caption	To Provide Banking Services	
3. Contractor	Bank of America, N.A.	
4. Contract Period <i>(with ALL options to extend exercised)</i>	60 months	
5. Contract Maximum Liability <i>(with ALL options to extend exercised)</i>	\$ 372,420.55	
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> The Effective date of the amendment one 7/01/2013	
7. Explanation of Rule Exception Requested	The start date of amendment 1 needs to be 7/01/2013 due to the enhancements to the ACH Debit processing allows Employer payment of taxes directly to the Agency's bank account.	

Request Tracking #	3371074512_ amendment 1
8. Justification	<p>The Bank of America (BOA) contract was approved in June 2012 and included the processing of ACH Debits. As part of the top-to-bottom review, it was recommended by information technology staff and employer accounts staff (tax staff) that a Payment Collection Gateway (PCG) was the best option to allow employers to submit their tax payments. Since the department already had a contract with BOA, it was assumed that this processing would be covered. Most of this internal work occurred late fall and winter. BOA representatives joined the team in March 2013.</p> <p>The assumption that the PCG would be covered in the ACH debit part of the contract should have been checked with contract staff and approved by management. Unfortunately, that was not done.</p> <p>On the positive side, the cost of this improvement does not require an increase in the overall contract cost. It will be covered under the original contract amount. In addition, this is an improvement that has been very successful since implementation on July 17, 2013. We have already had over 13,000 transactions and collected \$12 million via this method.</p>
<p>Agency Head Signature and Date <i>(contracting agency head or authorized signatory)</i></p> <p></p>	

Non-Competitive Amendment Request

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

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

APPROVED

COMMISSIONER OF FINANCE & ADMINISTRATION

Request Tracking #	337-1074512	
1. Procuring Agency	Labor and Workforce Development	
2. Contractor	Bank of America, N.A.	
3. Contract #	FA1238965	
4. Proposed Amendment #	1	
5. Edison ID #	31858	
6. Contract Begin Date		6/01/2012
7. Current Contract End Date – with ALL options to extend exercised		6/30/2017
8. Proposed Contract End Date – with ALL options to extend exercised		6/30/2017
9. Current Maximum Contract Cost – with ALL options to extend exercised		\$ 372,420.55
10. Proposed Maximum Contract Cost – with ALL options to extend exercised		\$ 372,420.00
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		
Implementation of new process; Payment Collection Gateway. Payment collection by ACH Debit receipt transaction.		
15. Name & Address of the Contractor's Principal Owner(s) – NOT required for a TN state education institution		
Bank of America, N.A., Thomas Boyd, Senior Vice President, 414 Union Street, Nashville, TN 37219		

Request Tracking #	337-1074512
16. Evidence Contractor's Experience & Length Of Experience Providing the Service Bank of America has provided the agencies bank services for the past 10 years	
17. Efforts to Identify Reasonable, Competitive, Procurement Alternatives None. The contract was awarded from a Request for Proposal	
18. Justification – <i>specifically explain why non-competitive negotiation is in the best interest of the state</i> <p>The PCG, ACH Debit Payments process has been created to improve the employer tax premium payment timeliness. This process will reduce cost by replacing the manual process like opening envelopes, reviewing the documents for accuracy, batching the docs, scanning the docs, keying the batches, preparing deposit information for the bank and processing paper check with a less labor intensive process.</p> <p>The ACH Debit Payment process is an enhancement of the current banking contract and therefore in the best interest of the state to continue with the current Contractor.</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> 	



CONTRACT AMENDMENT

Agency Tracking # 337-1074512	Edison ID 31858	Contract # FA1238965	Amendment # 1		
Contractor Legal Entity Name Band of America, N.A.			Edison Vendor ID 70802		
Amendment Purpose & Effect(s) Add new paragraph in the scope of service and update the payment methodology for additional services.					
Amendment Changes Contract End Date: <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		End Date: 5/30/2017			
TOTAL Contract Amount INCREASE or DECREASE per this Amendment (zero if N/A):			\$ 0		
Funding —					
FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
FY12		6,207.01			6,207.01
FY13		74,484.12			74,484.12
FY14		74,484.12			74,484.12
FY15		74,484.12			74,484.12
FY16		74,484.12			74,484.12
FY17		68,277.06			68,277.06
TOTAL:		372,420.55			372,420.55
American Recovery and Reinvestment Act (ARRA) Funding: <input type="checkbox"/> YES <input checked="" type="checkbox"/> 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.				<i>OCR USE</i>	
Speed Chart (optional)		Account Code (optional)			

**AMENDMENT ONE
OF CONTRACT 31858**

This Amendment is made and entered by and between the State of Tennessee, Department of Labor and Workforce Development, hereinafter referred to as the "State" and Bank of America, N.A., 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 is added as Contract section A.17.
 - A.17. Payment Collection Gateway. The Contractor shall post and process Payment Collection Gateway ("PCG") ACH debit receipt transactions to the Clearing Account and shall provide the State with reporting, data recovery, return and correction services relating to such ACH debit receipt transactions, subject to and in accordance with the terms and conditions as provided in that certain Property Management Customer-Initiated Payments Service (CIP) Amendment to the Treasury Services Terms and Conditions executed by the State as of June 21, 2013, a copy of which is attached hereto as Exhibit A and made a part hereof by this incorporating reference. In addition, the Contractor shall timely provide the entry detail and rejects or return information for ACH transactions. The employer provides Bank of America with the ACH detail entry specifications to remit their premium payments to the Clearing Account. The Contractor shall provide the daily electronic file via internet or other acceptable transfer process. The State monitors the PCG ACH debit transactions provided by the Contractor daily through the online communication service.

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

3. 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:

Service Description	Amount (per compensable increment)
1. cost per deposit service charge:	
a. Deposit credited	\$ 1.000/each
b. Check deposited (on-us)	\$ 0.060/each
c. Check deposited (local)	\$ 0.060/each
d. Check deposited (RCPC)	\$ 0.060/each
e. Check deposited (foreign)	\$ 0.060/each
2. Wire transfer charges:	
a. Incoming wire	\$ 12.000/each
b. Outgoing wire	\$ 12.000/each

3. ACH charges:	
a. Incoming ACH credit	\$ 0.055/each
b. Incoming ACH debit	\$ 0.055/each
c. Outgoing ACH credit	\$ 0.055/each
d. Outgoing ACH debit	\$ 0.055/each
e. ACH return/correction	\$ 3.500/each
f. ACH data communications (per month)	\$ 50.000/month
4. Account maintenance (per month)	\$ 50.000/month
5. Deposit item returned	\$ 6.000/each
6. Intra-bank transfer	\$ 6.000/each
7. Remote deposit (Check 21) charges:	
a. Initial implementation fee for establishing Check 21 capability	\$ 0.000/each
b. Deposited item/Image cash letter	\$ 0.050/each
c. Image transmission fee (per month)	\$ 0.000/month
d. Maintenance fee (per month)	\$ 200.000/month
8. MICR encoding charges:	
a. Allowable rate of MICR encoding errors at no charge	% 100 /month
b. Check re-MICR'd over allowable rate	\$ 0.000/each
c.. Check re-MICR'd (temporary basis)	\$ 0.000/each
9. Internet services:	
a. Previous day account statement	\$ 100.000/month
b. Maintenance fee (per month)	\$ 200.000/month
c. Per account fee (per month)	\$ 100.000/month
10. Payment Collection Gateway	
PCG Transactions Volume range 1-25000	\$ 0.30 each
b. PCG Transactions Volume range 25001-	\$ 0.26 each
c. PCG Transactions Volume range 50001-	\$ 0.22 each
d. PCG Transactions Volume range 100001+	\$ 0.18 each
e. PCG Maintenance	\$ 100.00 per month
f. PCG V+Link Maintenance	\$ 150.00 per month
g. PCG V+Link Implementation	\$ 600.00/ Waived no charge
11. Technical/Development Support	
a. Customized Technical/Development Support	\$175.00 Per Hour

* NOTICE: The amount(s) per compensable increment detailed above shall be contingent upon the State's receipt of an invoice (as required in section C.5., below) for said service(s) within thirty (30) days after the end of the calendar month in which the service(s) were rendered. At the sole discretion of the State, the amount per compensable increment of any service for which the State receives an invoice later than prescribed herein shall be subject to a reduction in amount of up to 100%. In the case of an untimely invoice, before any payment will be considered by the State, the Contractor must submit a written request regarding the untimely invoice, which shall detail the

reason the invoice is untimely as well as the Contractor's plan for submitting all future invoices no later than prescribed herein, and it must be signed by an individual empowered to bind the Contractor to 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 12/01/2013. All other terms and conditions of this Contract not expressly amended herein shall remain in full force and effect.

IN WITNESS WHEREOF,

BANK OF AMERICA, N.A.:

SIGNATURE

DATE

Thomas Boyd, Senior Vice President

DUNS # 00-691-1747

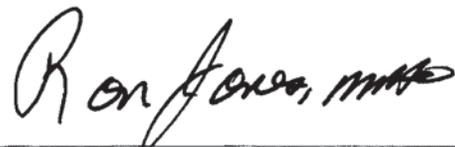
PRINTED NAME AND TITLE OF SIGNATORY (above)

DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT:

Burns P. Phillips III, Commissioner

DATE



 <h2 style="text-align: center;">CONTRACT</h2> <p style="text-align: center;">(fee-for-service contract with an individual, business, non-profit, or governmental entity of another state)</p>					
Begin Date 6/01/2012		End Date 5/30/2017		Agency Tracking # 3371074512	Edison Record ID 31858
Contractor Legal Entity Name Bank of America, N.A.				Edison Vendor ID 70802	
Service Caption (one line only) To Provide Banking Services					
Subrecipient or Vendor <input type="checkbox"/> Subrecipient <input checked="" type="checkbox"/> Vendor			CFDA # 17.255		
Funding —					
FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
12		6,207.01			6,207.01
13		74,484.12			74,484.12
14		74,484.12			74,484.12
15		74,484.12			74,484.12
16		74,484.12			74,484.12
17		68,277.06			68,277.06
TOTAL:		372,420.55			372,420.55
American Recovery and Reinvestment Act (ARRA) Funding: <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO					
Ownership/Control					
<input type="checkbox"/> African American <input type="checkbox"/> Asian <input type="checkbox"/> Hispanic <input type="checkbox"/> Native American <input type="checkbox"/> Female <input type="checkbox"/> Person w/Disability <input type="checkbox"/> Small Business <input type="checkbox"/> Government <input type="checkbox"/> NOT Minority/Disadvantaged <input type="checkbox"/> Other:					
Selection Method & Process Summary (mark the correct response to confirm the associated summary)					
<input checked="" type="checkbox"/> RFP		The procurement process was completed in accordance with the approved RFP document and associated regulations.			
<input type="checkbox"/> Competitive Negotiation		The predefined, competitive, impartial, negotiation process was completed in accordance with the associated, approved procedures and evaluation criteria.			
<input type="checkbox"/> Alternative Competitive Method		The predefined, competitive, impartial, procurement process was completed in accordance with the associated, approved procedures and evaluation criteria.			
<input type="checkbox"/> Non-Competitive Negotiation		The non-competitive contractor selection was completed as approved, and the procurement process included a negotiation of best possible terms & price.			
<input type="checkbox"/> Other		The contractor selection was directed by law, court order, settlement agreement, or resulted from the state making the same agreement with <u>all</u> interested parties or <u>all</u> parties in a predetermined "class."			
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		
			FA1238965		
Speed Chart (optional)		Account Code (optional)			



**CONTRACT
BETWEEN THE STATE OF TENNESSEE,
DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT
AND
BANK OF AMERICA, N.A.**

This Contract, by and between the State of Tennessee, Department of Labor and Workforce Development, hereinafter referred to as the "State" and Contractor Bank of America, N.A., hereinafter referred to as the "Contractor," is for the provision of providing certain banking services, as further defined in the "SCOPE OF SERVICES."

The Contractor is a/an Individual, For-Profit Corporation.
Contractor Place of Incorporation or Organization: DE
Contractor Edison Registration ID # 70802

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. Times of Day. All times of day referred to throughout this Contract shall be Central Standard or Central Daylight Time, as applicable.
- A.3. Business Day. The term "Business day" as used herein shall mean a day on which the Federal Reserve Bank is open for the transaction of public business.
- A.4. Establishment of Account. The Contractor shall establish and maintain an account in the name of the State of Tennessee Department of Labor and Workforce Development for the State's deposit and transaction activity, referred to herein as the "Clearing Account".
- A.5. Earnings. The Contractor agrees the State will receive credit monthly for the earnings on the Clearing Account's average available balance using a rate equal to the average 90-day U. S. Treasury Bill rate. Each weekly U. S. Treasury Bill rate for the prior month shall be averaged to calculate the next month's earnings rate.
- A.6. Internet Access to Previous Day Bank Account Activity. The Contractor shall provide online internet access to all previous day activity (and any related costs) occurring in the Clearing Account available to the State prior to 8:00 a.m. This includes the opening ledger balance in addition to the available balance. It also includes all previous day deposits, money transfers, returned check memos, and any miscellaneous bank adjustments (listing each one separately), and the closing ledger balance. The Contractor must protect the data by means of an authentication system requiring proper identification to obtain access.
- A.7. Remote Deposits: Check Clearing for the 21st Century ("Check 21"). The Contractor shall provide the ability to remotely accept and process uploads of check data and images as prescribed by laws pertaining to Check 21. Deposits transmitted by the State via "Check 21" shall be given same-day credit until 6:00 p.m. The Contractor shall be able to supply legible copies of any deposited item, detailing bank name, routing transit number, and bank account number.
- A.8. On-site Deposits at a Local Branch Office. The Contractor will also provide on-site deposit availability for same-day credit Monday through Friday until 4:00 p.m. at a local branch office located within ten (10) miles of the State's offices at 220 French Landing Drive in Nashville, Tennessee. The Contractor shall, upon request by the State, provide photocopies of a deposited check. The amount of all checks physically presented by the State for deposit will be MICR (Magnetic Ink Character Recognition) encoded at the bottom of the check. In the event the



State's MICR encoding equipment malfunctions, the Contractor will MICR encode all checks physically presented for deposit until the State's equipment is operational.

- A.9. Correction of Errors. The Contractor shall notify the State of any debit, credit or MICR encoding error within 24 hours after discovery of such error(s) by the Contractor. Debit and credit errors include checks included in the deposit total but not present in the actual deposit (debits) and, conversely, any checks not included in the deposit total but which are present in the actual deposit (credits).
- A.10. Returned Item Processing. The Contractor shall automatically reprocess all insufficient and uncollected Funds returns. Returns for reasons such as account closed, stop payment, or discrepancy in signature shall not be reprocessed and shall be debited to the Clearing Account on the day of receipt. The chargeable notice and items not reprocessed shall be mailed directly to the State Treasurer's Office, Division of Cash Management **at no additional cost to the State.**
- A.11. Wire Transfer Services.
- a. Transfer to United States Treasury.
On each business day, the Contractor shall determine the amount of available funds in the Clearing Account in accordance with the Schedule attached hereto and marked Attachment 6.7., funds Availability Worksheet. The Contractor shall automatically transfer all such funds after 11:00 a.m. on each business day via the Federal Reserve System's wire network to the United States Treasury in Washington, D.C., transit routing number 021030004, or to such other routing transit number of which the State will have notified the Contractor in writing; provided, the Contractor has not received notice from the State to hold any such funds subject to the order of the State as provided in Subsection A.11.b. below. The Contractor shall notify the State in writing should the Contractor acquire the ability to make said funds available sooner. One business day after receipt of such notice by the State, the Schedule shall be deemed amended to include such time enhancements. A copy of each wire transfer, along with adequate documentation, will be provided to the State.
- b. Transfer to State Trust of Tennessee.
Upon receipt of appropriate instructions from the State, the Contractor shall hold any such amounts of available funds as directed by the State. The Contractor shall transfer such amounts via the Federal Reserve System's wire network to the State Trust of Tennessee, transit routing number 064000266, upon approval from an authorized employee of the State Treasurer's Office, Division of Cash Management. A copy of each wire transfer, along with adequate documentation, will be provided to the State.
- c. In the event the Contractor fails to transfer all available funds in accordance with Section A.11., the Contractor shall be assessed a late charge equal to twice the daily earnings rate in effect on the day of such failure. The late charge shall be assessed on the amount not transferred for each day of failure and shall be applied against any compensation to which the Contractor is entitled receive under this contract.
- d. The Contractor shall accept for deposit in the Clearing Account all funds transferred from employers via the Federal Reserve System's wire network and shall provide the State a copy of each wire advice within 48 hours after receipt of such funds. A copy of each wire transfer, along with adequate documentation, will be provided to the State.
- A.12. Automated Clearing House Services. The Contractor shall post and process ACH credit and debit receipt transactions to the Clearing Account and shall provide the State with reporting, data recovery, return and correction services relating to ACH credit and debit receipt transactions. In addition, the Contractor shall timely provide the entry detail and Addenda record information for ACH transactions. The State currently has an electronic transfer program that allows employers to remit funds to the State via ACH credit. The employer provides their bank with the ACH detail entry and Addenda specifications to remit their premium payments to the Clearing Account. The Contractor shall provide the daily electronic file via internet or other acceptable transfer process. The State monitors the ACH credit transactions provided by the Contractor daily through the



online communication service. The State intends to offer employers the option of remitting premiums by means of ACH debit in the near future.

- A.13. Collateral. Any funds remaining in the Clearing Account overnight shall be collateralized in accordance with the State Depository Agreement between the Tennessee State Treasurer and the Contractor.
- A.14. Bank Statements. By the fifth (5th) business day of each month, the contractor shall provide duplicate bank statements of all transactions for the previous calendar month. One copy shall be furnished to the State Treasurer's Office, Division of Cash Management and the other copy shall be furnished directly to the State **at no additional cost to the State**.
- A.15. Account Analysis Statements. By the fifth (5th) business day of each month, the contractor shall provide duplicate account analysis statements with supporting schedule(s) of daily funds availability. One copy shall be furnished to the State Treasurer's Office, Division of Cash Management and the other copy shall be furnished directly to the State **at no additional cost to the State**.
- A.16. Disaster Recovery Plan. The Contractor shall maintain a contingency plan for systems backup in the event of a disaster or malfunction. The Contractor shall resume services within forty-eight (48) hours **at no additional cost to the State**.

B. CONTRACT PERIOD:

This Contract shall be effective for the period beginning 6/01/2012, and ending on 5/30/2017. The Contractor hereby acknowledges and affirms that the State shall have no obligation for services rendered by the Contractor which were not performed within this specified contract period.

C. PAYMENT TERMS AND CONDITIONS:

- C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed three hundred seventy two thousand four hundred twenty dollars and fifty five cents (\$372,420.55). The payment rates in section C.3 shall constitute the entire compensation due the Contractor for all service and Contractor obligations hereunder regardless of the difficulty, materials or equipment required. The payment rates include, but are not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by the Contractor.

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

- C.2. Compensation Firm. The payment rates and the maximum liability of the State under this Contract are firm for the duration of the Contract and are not subject to escalation for any reason unless amended.
- C.3. Payment Methodology. The Contractor shall be compensated based on the payment rates herein for units of service authorized by the State in a total amount not to exceed the Contract Maximum Liability established in section C.1.



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

Service Description	Amount (per compensable increment)
1. cost per deposit service charge:	
a. Deposit credited	\$ 1.000/each
b. Check deposited (on-us)	\$ 0.060/each
c. Check deposited (local)	\$ 0.060/each
d. Check deposited (RCPC)	\$ 0.060/each
e. Check deposited (foreign)	\$ 0.060/each
2. Wire transfer charges:	
a. Incoming wire	\$ 12.000/each
b. Outgoing wire	\$ 12.000/each
3. ACH charges:	
a. Incoming ACH credit	\$ 0.055/each
b. Incoming ACH debit	\$ 0.055/each
c. Outgoing ACH credit	\$ 0.055/each
d. Outgoing ACH debit	\$ 0.055/each
e. ACH return/correction	\$ 3.500/each
f. ACH data communications (per month)	\$ 50.000/month
4. Account maintenance (per month)	\$ 50.000/month
5. Deposit item returned	\$ 6.000/each
6. Intra-bank transfer	\$ 6.000/each
7. Remote deposit (Check 21) charges:	
a. Initial implementation fee for establishing Check 21 capability	\$ 0.000/each
b. Deposited item/Image cash letter	\$ 0.050/each
c. Image transmission fee (per month)	\$ 0.000/month
d. Maintenance fee (per month)	\$ 200.000/month
8. MICR encoding charges:	
a. Allowable rate of MICR encoding errors at no charge	% 100 /month
b. Check re-MICR'd over allowable rate	\$ 0.000/each
c. Check re-MICR'd (temporary basis)	\$ 0.000/each
9. Internet services:	
a. Previous day account statement	\$ 100.000/month
b. Maintenance fee (per month)	\$ 200.000/month
c. Per account fee (per month)	\$ 100.000/month

* NOTICE: The amount(s) per compensable increment detailed above shall be contingent upon the State's receipt of an invoice (as required in section C.5., below) for said service(s) within thirty



(30) days after the end of the calendar month in which the service(s) were rendered. At the sole discretion of the State, the amount per compensable increment of any service for which the State receives an invoice later than prescribed herein shall be subject to a reduction in amount of up to 100%. In the case of an untimely invoice, before any payment will be considered by the State, the Contractor must submit a written request regarding the untimely invoice, which shall detail the reason the invoice is untimely as well as the Contractor's plan for submitting all future invoices no later than prescribed herein, and it must be signed by an individual empowered to bind the Contractor to this Contract.

- C.4. Travel Compensation. The Contractor shall not be compensated or reimbursed for travel, meals, or lodging.
- C.5. Invoice Requirements. The Contractor shall invoice the State only for completed increments of service and for the amount stipulated in section C.3, above, and present said invoices no more often than monthly, with all necessary supporting documentation, to:

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

- a. Each invoice shall clearly and accurately detail all of the following required information (calculations must be extended and totaled correctly).
- (1) Invoice Number (assigned by the Contractor)
 - (2) Invoice Date
 - (3) Contract Number (assigned by the State)
 - (4) Customer Account Name: Labor and Workforce Development, Employment Security
 - (5) Customer Account Number (assigned by the Contractor to the above-referenced Customer)
 - (6) Contractor Name
 - (7) Contractor Tennessee Edison Registration ID Number Referenced in Preamble of this Contract
 - (8) Contractor Contact for Invoice Questions (name, phone, and/or fax)
 - (9) Contractor Remittance Address
 - (10) Description of Delivered Service
 - (11) Complete Itemization of Charges, which shall detail the following:
 - i. Service or Milestone Description (including name & title as applicable) of each service invoiced
 - ii. Number of Completed Units, Increments, Hours, or Days as applicable, of each service invoiced
 - iii. Applicable Payment Rate (as stipulated in Section C.3.) of each service invoiced
 - iv. Amount Due by Service
 - v. Total Amount Due for the invoice period
- b. The Contractor understands and agrees that an invoice under this Contract shall:
- (1) include only charges for service described in Contract Section A and in accordance with payment terms and conditions set forth in Contract Section C;
 - (2) only be submitted for completed service and shall not include any charge for future work;
 - (3) not include sales tax or shipping charges; and
 - (4) initiate the timeframe for payment (and any discounts) only when the State is in receipt of the invoice, and the invoice meets the minimum requirements of this section C.5.
- C.6. Payment of Invoice. A payment by the State shall not prejudice the State's right to object to or question any payment, invoice, or matter in relation thereto. A payment by the State shall not be construed as acceptance of any part of the work or service provided or as approval of any amount invoiced.



- C.7. Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by the State, on the basis of audits conducted in accordance with the terms of this Contract, not to constitute proper remuneration for compensable services.
- C.8. Deductions. 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 State may terminate this Contract without cause for any reason. Said termination shall not be deemed a breach of contract by the State. The State shall give the Contractor at least thirty (30) days written notice before the effective termination date. The Contractor shall be entitled to compensation for satisfactory, authorized service completed as of the termination date, but in no event shall the State be liable to the Contractor for compensation for any service which has not been rendered. Upon such termination, the Contractor shall have no right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- D.4. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor violates any terms of this Contract, the State shall have the right to 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:

Melvin O'Neal, Contract Coordinator
Department of Labor and Workforce Development
220 French Landing Drive, 4-A
Nashville, TN 37243-1002
rfp.labor@tn.gov
Telephone # 615 532-1071
FAX # 615 741-3002

The Contractor:

Thomas Boyd, Senior Vice President
Bank of America Merrill Lynch
Bank of America, N. A.
TN1-100-03-05
414 Union Street
Nashville, TN 37219
Thomas.boyd@baml.com
Telephone # (615) 749-3618
FAX # (615) 749-3908

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. Insurance. The Contractor shall carry adequate liability and other appropriate forms of insurance.
- a. The Contractor shall maintain, at minimum, the following insurance coverage:
 - (1) Workers' Compensation/ Employers' Liability (including all states coverage) with a limit not less than the relevant statutory amount or one million dollars (\$1,000,000) per occurrence for employers' liability whichever is greater.
 - (2) Comprehensive Commercial General Liability (including personal injury & property damage, premises/operations, independent contractor, contractual liability and completed operations/products) with a bodily injury/property damage combined single limit not less than one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) aggregate.
 - b. At any time State may require the Contractor to provide a valid Certificate of Insurance detailing Coverage Description; Insurance Company & Policy Number; Exceptions and Exclusions; Policy Effective Date; Policy Expiration Date; Limit(s) of Liability; and Name and Address of Insured. Failure to provide required evidence of insurance coverage shall be a material breach of this Contract.
- E.6. Debarment and Suspension. The Contractor certifies, to the best of its knowledge and belief, that it, its current and future principals, its current and future subcontractors and their principals:
- a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency;
 - b. have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offence in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
 - c. are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed in section b. of this certification; and
 - d. have not within a three (3) year period preceding this Contract had one or more public transactions (federal, state, or local) terminated for cause or default.



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

- E.7. Contractor Commitment to Diversity. The Contractor shall comply with and make reasonable business efforts to exceed the commitment to diversity represented by the Contractor's proposal responding to RFP-33710-74512 (Attachment 6.2, Section B.15) and resulting in this Contract.

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

- E.8. Confidentiality of Records. Strict standards of confidentiality of records and information shall be maintained in accordance with applicable state and federal law. All material and information, regardless of form, medium or method of communication, provided to the Contractor by the State or acquired by the Contractor on behalf of the State shall be regarded as confidential information in accordance with the provisions of applicable state and federal law, state and federal rules and regulations, departmental policy, and ethical standards. Such confidential information shall not be disclosed, and all necessary steps shall be taken by the Contractor to safeguard the confidentiality of such material or information in conformance with applicable state and federal law, state and federal rules and regulations, departmental policy, and ethical standards.

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

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

- E.9. Incorporation of Additional Documents. Each of the following documents is included as a part of this Contract by reference. In the event of a discrepancy or ambiguity regarding the Contractor's duties, responsibilities, and performance under this Contract, these items shall govern in order of precedence below.
- a. this Contract document with any attachments or exhibits (excluding the items listed at subsections b. through e., below);
 - b. any clarifications of or addenda to the Contractor's proposal seeking this Contract;
 - c. the State solicitation, as may be amended, requesting proposals in competition for this Contract;
 - d. any technical specifications provided to proposers during the procurement process to award this Contract;
 - e. the Contractor's proposal seeking this Contract.



- E.10. Changes in Ownership. If at any time during the term of this contract the Contractor merges with another financial institution or a change of ownership is effected as permitted under Tennessee law, the Contractor shall give written notice of such merger or change to the State Treasurer's Office, Division of Cash Management within five (5) business days of receiving approval for such merger or change from the appropriate regulatory authorities. The Contractor also agrees to give the State Treasurer's Office, Division of Cash Management written notice within five (5) business days of filing for applicable regulatory approval if the status or viability of this contract will be affected by such merger or change. The Contractor agrees to cooperate with the State and the State Treasurer in the closing of the Clearing Account upon receipt of such notice.
- E.11. Federal Funding Accountability and Transparency Act (FFATA). This Contract requires the Contractor to provide supplies and/or services that are funded in whole or in part by federal funds that are subject to FFATA. The Contractor is responsible for ensuring that all applicable requirements, including but not limited to those set forth herein, of FFATA are met and that the Contractor provides information to the State as required.

The Contractor shall comply with the following:

- a. Reporting of Total Compensation of the Contractor's Executives.
- (1) The Contractor shall report the names and total compensation of each of its five most highly compensated executives for the Contractor's preceding completed fiscal year, if in the Contractor's preceding fiscal year it received:
- i. 80 percent or more of the Contractor's annual gross revenues from Federal procurement contracts and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
 - ii. \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and
 - iii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)
- Executive means officers, managing partners, or any other employees in management positions.
- (2) Total compensation means the cash and noncash dollar value earned by the executive during the Contractor's preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)):
- i. Salary and bonus.
 - ii. Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
 - iii. Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
 - iv. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.



- v. Above-market earnings on deferred compensation which is not tax qualified.
 - vi. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.
- b. The Contractor must report executive total compensation described above to the State by the end of the month during which this Contract is awarded.
 - c. If this Contract is amended to extend its term, the Contractor must submit an executive total compensation report to the State by the end of the month in which the amendment to this Contract becomes effective.
 - d. The Contractor will obtain a Data Universal Numbering System (DUNS) number and maintain its DUNS number for the term of this Contract. More information about obtaining a DUNS Number can be found at: <http://fedgov.dnb.com/webform/>

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

IN WITNESS WHEREOF,
BANK OF AMERICA, N.A.:

	<i>June 4, 2012</i>
_____ CONTRACTOR SIGNATURE	_____ DATE
Thomas Boyd, Senior Vice President	DUNS # <u>00-691-1747</u>
_____ PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)	

DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT:

	<i>6/5/12</i>
_____ Karla Davis, Commissioner	_____ DATE



ATTACHMENT A

ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE

SUBJECT CONTRACT NUMBER:	
CONTRACTOR LEGAL ENTITY NAME:	BANK OF AMERICA, N.A.
FEDERAL EMPLOYER IDENTIFICATION NUMBER: (or Social Security Number)	

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.

Thomas R. Boyd

CONTRACTOR SIGNATURE

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

Thomas R. Boyd, Senior Vice President

PRINTED NAME AND TITLE OF SIGNATORY

5-4-12

DATE OF ATTESTATION