



AUSTIN PEAY STATE UNIVERSITY  
 Purchasing Department  
 681 Summer Street, Shasteen Building  
 P.O. Box 4638  
 Clarksville, Tennessee 37040  
 Telephone (931) 221-7434  
 Fax (931) 221-6300

**REQUEST FOR QUOTATION**

1. FILE NUMBER: 12-007
2. DUE DATE – BID OPENING AT: 4:00 PM Central, Thursday, September 22, 2011
3. FOR THE PURCHASE OF: Web Based Ticket Management System
4. FOR DELIVERY TO: Austin Peay State University, Clarksville, Tennessee
5. I (We) propose to furnish the goods and/or services specified herein, at the price(s) quoted opposite each item listed in this Request for Quotation.
6. It is understood and agreed that this quotation shall constitute an offer to sell which when accepted in writing by Austin Peay State University’s Purchasing Department, and subject to the terms and conditions of such acceptance, will constitute a valid and binding contract between the undersigned and APSU.
7. Institution is exempt from state, federal, and local taxes; do not include taxes in quotation. Quote F.O.B., Austin Peay, Clarksville, Tennessee. Minimum terms: Net 30 days. Prepayment not allowed.
8. **IMPORTANT:** This quotation must be manually signed by Seller’s person with proper signature authority. Failure to sign and submit **original signature** on this document will result in **REJECTION** of your quotation. **Quotation must be received in the Purchasing Department by the designated time or bid will be REJECTED. Faxed bids will NOT be accepted.**
9. These prices \_\_\_\_\_ will be extended \_\_\_\_\_ will not be extended to other state institutions of higher education.
10. If accepted within \_\_\_\_\_ days of bid opening (above), the undersigned offers and agrees to honor this quotation.

|   |   |
|---|---|
| (Name of Corporation, Firm or Person)               | (Number of Days to Make Delivery)                               |
| (Mailing Address – PO Box or Street)                | (Payment Terms/Cash or Time Discounts)                          |
| (City, State, ZIP Code)                             | (Telephone/Fax Numbers)   |
| (Authorized Signature for the Bidder)               | (Date Signed)   |
| (Typed or Printed Name and Title of Person Signing) | (F.O.B. Point)<br>Austin Peay State University, Clarksville, TN |



**QUOTATION CERTIFICATION FORM**

**THIS FORM MUST BE RETURNED WITH THE REQUEST FOR QUOTATION**

I certify that this quotation is not made in connection with any other bidder submitting a quotation for the same commodity(s) and this quotation is in all other respects fair and without collusion, raid or conflict of interest.

I additionally certify, by signature below and submission of this quotation, that neither my principals nor I are presently disbarred, suspended, proposed for disbarment, declared ineligible or voluntarily excluded from participation in this transaction by any Federal department or agency.

Concerning the certification above, if you are unable to certify to any of the statements in that certifications, an explanation must be attached to your quotation.

I further certify that I received, as part of this bid document, Austin Peay's Minimum Bid Terms and Conditions

|                                 |                       |
|---------------------------------|-----------------------|
| Authorized Signature for Bidder | Printed or Typed Name |
| Title                           |                       |

|   |                                    |  |                                    |
|---|------------------------------------|--|------------------------------------|
| TYPE OF BUSINESS: (Check Only One)                        |                                    | ANNUAL SALES: (Check Only One)                           |                                    |
| <input type="checkbox"/> Agriculture, Forestry or Fishing |                                    | <input type="checkbox"/> Less than \$499,999             |                                    |
| <input type="checkbox"/> Mining                           |                                    | <input type="checkbox"/> \$500,000 through \$999,999     |                                    |
| <input type="checkbox"/> Construction Services            |                                    | <input type="checkbox"/> \$1,000,000 through \$1,499,999 |                                    |
| <input type="checkbox"/> Wholesale Trade                  |                                    | <input type="checkbox"/> \$1,500,000 or More             |                                    |
| <input type="checkbox"/> Retail Trade                     |                                    |  |                                    |
| <input type="checkbox"/> Service Industry                 |                                    |  |                                    |
| <input type="checkbox"/> Manufacturing                    |                                    |  |                                    |
| BUSINESS OWNERSHIP: (Check Only One)                      |                                    | OWNERSHIP ETHNICITY (Check Only One)                     |                                    |
| <input type="checkbox"/> Non-Minority                     | <input type="checkbox"/> Minority* | <input type="checkbox"/> African American                | <input type="checkbox"/> Caucasian |
| <input type="checkbox"/> Government                       | <input type="checkbox"/> Woman     | <input type="checkbox"/> Asian American                  | <input type="checkbox"/> Other     |
| <input type="checkbox"/> Non-Profit                       | <input type="checkbox"/> Small     | <input type="checkbox"/> Native American                 |                                    |
| <input type="checkbox"/> Other                            |                                    | <input type="checkbox"/> Hispanic American               |                                    |

\*MINORITY OWNERSHIP CLARIFICATION: "Minority-owned business" means a business which is solely owned, or at least 51% of the assets or outstanding stock of which is owned, by an individual who personally manages and controls the daily operations of such business and who is impeded from normal entry into the economic mainstream because of: a) Past practices of discrimination based on race, religion ethnic background or sex; )b A disability defined as a physical impairment that, in the written opinion of a person's licensed physician, substantially limits one or more than five years, (as herein, "major life activities" means caring for oneself, and performing manual task – which includes writing, walking, seeing, hearing, speaking and breathing, (T.C.A. 4-26-102); or c) Past parties or racial discrimination against African Americans (T.C.A. 12-3.802).

**AUSTIN PEAY STATE UNIVERSITY  
MINIMUM GENERAL BID CONDITIONS**

**1. PREPARATION AND SUBMISSION OF BID.**

- a. Failure to examine any drawings, specifications, or instructions will be at the bidder's risk.
- b. **BID SUBMITTAL / SIGNATURE:** Bid shall give the full name and business address of the bidder. If the bidder is a corporation, the name shall be stated as it is in the corporate charter. Bids must be signed in ink by the bidder's authorized agent. Unsigned bids will be rejected. Bids are to be sealed and the outside of the envelope is to reference the bid number. The person signing the bid must show his title, and if requested by the institution, must furnish satisfactory proof of his or her authority to bind his or her company in contract. Bidder understands that by submitting a bid with an authorized signature, it shall constitute an offer to the institution. Bids must be typewritten or in ink; otherwise they may not be considered. Purchase orders will be issued to the firm name appearing on the bid.
- c. Bids are to be received in the location designated on the bid no later than the specified date and time. Late bids will NOT be opened or considered.
- d. No erasures permitted. Errors may be crossed out and corrections printed in ink or typewritten adjacent to error and must be initialed in ink by person signing bid.
- e. Discounts other than "Time" or "Cash" offered should be deducted from the unit price.
- f. **Specifications:** Reference to available specifications shall be sufficient to make the terms of the specifications binding on the bidder. The use of the name of a manufacturer, or any special brand or make in describing an item does not restrict the bidder to that manufacturer or specific article, unless specifically stated. Comparable products of other manufacturers will be considered if proof of compatibility is contained in the bid. Bidders are required to notify the Institution's RFQ Coordinator whenever specifications/procedures are not perceived to be fair and open. All suggestions or objections shall be made in writing and received by the RFQ Coordinator at least three (3) working days prior to the bid opening. **The articles on which the bids are submitted must be equal or superior to that specified.** **Informative and Descriptive Literature:** The bidder must show brand or trade names of the articles bid, when applicable. It shall be the responsibility of the vendor, including vendors whose product is referenced; to furnish with the bid such specifications, catalog pages, brochures or other data as will provide an adequate basis for determining the quality and functional capabilities of the product offered. Failure to provide this data may be considered valid justification for rejection of bid.
- g. **Samples:** Samples of items when called for, must be furnished free of expense, and if not destroyed will, upon vendor's request within ten (10) days of bid opening, be returned at the bidder's expense. Each sample must be labeled with the bidder's name, manufacturer's brand name and number, bid number and item reference.
- h. **Time of Performance:** The number of calendar days in which delivery is to be made after receipt of order shall be stated in the bid and may be a factor in making an award, price notwithstanding. If no delivery time is stated in the bid, bidder agrees that delivery is to be made within two weeks (10 business days) of order.
- i. Transportation and delivery charges should be included in the price and be fully prepaid by the vendor to the destination specified in the bid. Bid prices shall include delivery of all items F.O.B. destination.
- j. New materials and supplies must be delivered unless otherwise specifically stated in the bid.
- k. Alternate/multiple bids will not be considered unless specifically called for in the bid.
- l. **Bond requirements.** The institution reserves the right to require that the selected vendor post a performance and/or payment bond in such amount as deemed reasonable by the institution. Any bond requirement should be included in the bid, itemized separately.
- m. Only bids submitted on bid forms furnished by the Institution will be considered, except that the Institution reserves the right to consider telephone, faxed or electronically submitted bids for purchases totaling less than \$25,000 if received by the deadline and confirmed in writing within five (5) days on Institution forms.
- n. By signing this bid where indicated, the bidder agrees to strictly abide by all state and federal statutes and regulations. The bidder further certifies that this bid is made without collusion or fraud.
- o. **Failure to Bid/Error in Bid.** Failure to bid without advising the Institution that future invitations for bids are desirable may result in removal from Institution's bidders' list covering this category of items. In case of error in the extension of prices in the bid, the unit price will govern. Late bids will NOT be opened or considered. Bidders are cautioned to verify their bids before submission, as amendments received after the bid deadline will not be considered. No bid shall be altered, amended or withdrawn after opening. After bid opening, a bidder may withdraw a bid only when there is obvious clerical error such as a misplaced decimal point, or when enforcement of the bid would impose unconscionable hardship due to an error in the bid resulting in a quotation substantially below the other bids received. Bid withdrawals will be considered only upon written request of the bidder.

**2. INSPECTION.** All bids will be publicly opened and are subject to public inspection after the award. Bidders may be present at bid opening.

**3. ACCEPTANCE AND AWARD.** The Institution reserves the right to reject any and all bids and to waive any informality in bids and, unless otherwise specified by the bidder to accept any item in the bid. Action to reject all bids shall be taken for unreasonably high prices, errors in the bid documents, cessation of need, unavailability of funds, or any other reason approved by the Tennessee Board of Regents.

- a. Contracts and purchases will be made with the lowest, responsible, qualified bidder. The quality of the articles to be supplied, their conformity with the specifications, their suitability to the requirements of the Institution, cash discount offered and the delivery terms will be taken into consideration.
- b. The Institution reserves the right to order up to 10% more or less than the quantity listed in the bid.
- c. If a bidder fails to state a time within which a bid must be accepted, it is understood and agreed that the Institution shall have sixty (60) days to accept.
- d. A written purchase order mailed or otherwise furnished, to the successful bidder within the time period specified in the bid results in a binding contract without further action by either party. The contract may not be assigned without written Institution consent.
- e. If the appropriate space is marked on the bid, other state institutions of higher education may purchase off the contract during the same period as the Institution.

**4. DISCOUNT PERIOD.** Time in connection with discount offered will be computed from the date of delivery at destination, or from the date correct invoices are received, whichever is later.

**5. DEFAULT OF SELECTED VENDOR.** In case of vendor default, the Institution may procure the articles or services from other sources and hold the defaulting vendor responsible for any resulting cost.

**6. INSPECTION OF PURCHASES.** Articles received which are not equivalent will not be accepted and will be picked up by the vendor or returned to vendor, shipping charges collect. Institution shall have a reasonable period in which to inspect and accept or reject materials without liability. If necessity requires Institution to use nonconforming materials, an appropriate reduction in payment may be made.

**7. TAXES.** Institution is tax exempt; do not include taxes in quotation. Vendors making improvements or additions to, or performing repair work on real property for Institution are liable for any applicable sales or use tax on tangible personal property used in connection with the contract or furnished to vendors by the state for use under the contract.

**8. NONDISCRIMINATION.** The Institution and bidder agree to comply with Titles VI and VII of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, Executive Order 11,246, the Americans with Disabilities Act of 1990 and the related regulations to each. Each party assures that it will not discriminate against any individual including, but not limited to employees or applicants for employment and/or students, because of race, religion, creed, color, sex, age, disability, veteran status or national origin.

**9. PROHIBITIONS/NO VENDOR CONTRACT FORM/TENNESSEE LAW/AUDIT.** Acceptance of gifts from vendors is prohibited. TCA §12-3-106. Bidding by state employees is prohibited. TCA §12-4-103. The bidder warrants that no part of the total contract amount shall be paid directly or indirectly to any officer or employee of the State of Tennessee. The contract documents for purchase under this bid request shall consist of the successful bidder's bid and the Institution's purchase order. **Bidders may not require any other written contract terms or conditions, nor may any other terms and conditions be imposed by means of subsequent documents, such as invoices, warranty agreements, license agreements, etc. Should the bidder request exceptions to terms and conditions and/or those proposed by the bidder vary from the bid and TBR Policies and Guidelines, Institution may render the bid unresponsive and subject the bid to rejection. The contract shall be governed by Tennessee law.** For all awards other than for a firm, fixed price, vendor shall maintain books and records for a period of three (3) years from final payment, and these records shall be subject to audit by the State.

**10. PURCHASING POLICIES/BID PROTESTS.** This bid request and any award made hereunder are subject to the policies and guidelines of the Tennessee Board of Regents ([www.tbr.state.tn.us](http://www.tbr.state.tn.us)) and Institution (available upon request). Bid protest procedures are available at:

[http://www.tbr.state.tn.us/policies\\_guidelines/business\\_policies/4-02-10-00.htm](http://www.tbr.state.tn.us/policies_guidelines/business_policies/4-02-10-00.htm)

**AUSTIN PEAY STATE UNIVERSITY**  
**RFQ 12-007**  
**Web Based Ticket Management System**

**1. SCHEDULE OF EVENTS**

The following Schedule of Events represents the Institution's best estimate of the schedule that will be followed. Unless otherwise specified, the time of day for the following events will be between 8:00 a.m. and 4:30 p.m., (CST).

| <b>RFQ SCHEDULE OF EVENTS</b>   |                |   |
|---|----------------|---|
| <b>NOTICE: The Institution reserves the right, at its sole discretion, to adjust this schedule as it deems necessary. The Institution will communicate any adjustment to the Schedule of Events to the potential Bidders.</b> |                |   |
| <b>EVENT</b>  | <b>TIME</b>    | <b>DATE</b><br><b>(all dates are Institution business days)</b> |
| 1. Institution Issues RFQ   |                | <b>August 30, 2011</b>  |
| 2. Written Questions Deadline   | <b>4:00 PM</b> | <b>September 7, 2011</b>  |
| 3. Institution Responds to Written Questions  |                | <b>September 15, 2011</b>                                       |
| 4. Bid Deadline   | <b>4:00 PM</b> | <b>September 22, 2011</b>                                       |
| 5. Institution Evaluations  |                | <b>September 29, 2011</b>                                       |
| 6. Institution Issues Intent to Award Letter <u>and</u> Opens Files for Public Inspection   |                | <b>October 10, 2011</b>   |
| 7. Award of Contract  |                | <b>October 18, 2011</b>   |
| 8. Contract Effective Date  |                | <b>November 15, 2011</b>  |

## **2 INTRODUCTION**

### **2.1 Scope of Purpose, Service, Agreement Period, and Required Terms and Conditions**

Austin Peay State University hereinafter Institution, has issued this Request for Quotation (RFQ) to define the Institution's minimum service requirements; solicit quotations; detail quotation requirements; and, outline the Institution's process for selecting the contractor.

Through this RFQ, Institution seeks to buy the best services at the most favorable, competitive prices and to give ALL qualified businesses, including those that are small, minority, or women-owned an opportunity to do business with the Institution as contractors and subcontractors.

The Institution intends to secure a contract for a Web Based ticket management system (hosted solution software) designed to be used in a collegiate environment for ticket management to include but not limited to the Center of Excellence for Creative Arts.

**The *Pro Forma* Contract substantially represents the contract document that the Proposer selected by the Institution MUST agree to and sign.**

### **2.2 RFQ Communications**

2.2.1 Unauthorized contact regarding this RFQ with employees or officials of the Institution other than the RFQ Coordinator named below may result in disqualification from this procurement process.

2.2.2 Interested Parties must direct all communications regarding this RFQ to the following who is the Institutions only official point of contact for this RFQ.

Judy Blain  
Austin Peay State University  
681 Summer Street  
(931) 221-7691  
(931) 221-6300  
[appurchasing@apsu.edu](mailto:appurchasing@apsu.edu)

2.2.3 The Institution has assigned the following RFQ identification number that must be referenced in all communications regarding the RFQ-12-007.

2.2.4 Any oral communications shall be considered unofficial and non-binding with regard to this RFQ.

### **2.3 Written Questions/Answer Period**

A question and answer period deadline is in the RFQ Section 1, Schedule of Events. The purpose of the written question/answer period is to allow Bidders to submit any questions they may have in regard to the scope of services requested. To ensure accurate, consistent responses to all known potential Bidders, the official response to questions will be issued by the Institution on the date in the RFQ Section 1, Schedule of Events.

## **3 GENERAL REQUIREMENTS & CONTRACTING INFORMATION**

3.1 The Institution reserves the right, at its sole discretion, to waive a Quotation's variances from full compliance with this RFQ. If the Institution waives minor variances in a Quotation, such waiver shall not modify the RFQ requirements or excuse the Proposer from full compliance with the RFQ.

### **3.2 Assignment and Subcontracting**

3.2.1 The Proposer awarded a contract pursuant to this RFQ may not subcontract, transfer, or assign any portion of the Contract without the Institution's prior, written approval.

3.2.2 A subcontractor may only be substituted for a proposed subcontractor at the discretion of the Institution and with the Institution's prior, written approval.

- 3.2.3 At its sole discretion, the Institution reserves the right to refuse approval of any subcontract, transfer, or assignment.
- 3.2.4 Notwithstanding Institution approval of each subcontractor, the Proposer, if awarded a contract pursuant to this RFQ, shall be the prime contractor and shall be responsible for all work performed.

### **3.3 Right to Refuse Personnel**

At its sole discretion, the Institution reserves the right to refuse any personnel, of the prime contractor for use in the performance of a contract pursuant to this RFQ.

### **3.4 Insurance**

Successful Proposer must provide and maintain a commercial general liability policy. The policy shall provide coverage which includes, but is not limited to, bodily injury, personal injury, death, property damage and medical claims, with minimum limits of \$1,000,000 per occurrence, \$3,000,000 in the aggregate. The Proposer shall maintain workers' compensation coverage or a self-insured program as required under Tennessee law, with Employer's Liability Limits of \$100,000. The Proposer shall deliver to the Institution a certificate of insurance no later than the effective date of the Order. If any policy providing insurance required by the Order is cancelled prior to the policy expiration date, the Proposer, upon receiving a notice of cancellation, shall give immediate notice to the Institution.

The enumeration in the Order or in this document of the kinds and amounts of liability insurance shall not abridge, diminish or affect the contractor's legal responsibilities for the consequences of accidents arising out of or resulting from the services of the successful bidder under this contract.

Failure to provide evidence of such insurance coverage is a material breach and grounds for termination of the contract negotiations. Any insurance required by the Institution shall be in form and substance acceptable to the Institution.

### **3.5 Licensure**

The apparent successful Proposer must hold all necessary, applicable business and professional licenses. The Institution will require any or all Proposers to submit evidence of proper licensure.

### **3.6 Financial Stability**

The successful Bidder will be required to provide information to the Institution to demonstrate financial stability and capability prior to award of contract.

### **3.7 Contract Cancellation**

Either party reserves the right to cancel the contract with a ninety (90) day written notice.

### **3.8 Contract Term**

The Institution intends to enter into a contract with an expected effective period beginning November 1, 2011 and ending October 31, 2011. The Institution reserves the right to renew the contract on an annual basis for up to four (4) additional one-year terms at its option. The Institution reserves the right to cancel the Contract if sufficient funding for its continuance is not appropriated by the General Assembly of the State of Tennessee. Expenditure contracts, other than real property contracts, may not have a contract term for a period in excess of sixty (60) months.

### **3.9 Contract Payments**

All contract payments shall be made in accordance with the Contract's Payment Terms and Conditions provisions (refer to RFQ Attachment 3, *Pro Forma* Contract, Section (C)). No payment shall be made until the Contract is approved as required by state laws and regulations. Under no circumstances shall the Institution be liable for payment of any type associated with the Contract or responsible for any work done by the Contractor, even work done in good faith and even if the Contractor is orally directed to proceed with the delivery of services, if it occurs before contract approval by Institution officials as required by applicable statutes and rules of the State of Tennessee or before the Contract start date or after the Contract end date specified by the Contract. Payments to the Contractor will be made in accordance with the Tennessee Prompt Pay Act (T.C.A. Section 12-4-701 et seq.).

### **3.10 Monitoring**

The Contractor's deliverables and services provided pursuant to this Contract shall be subject to monitoring and evaluation by the Institution, by a duly appointed representative(s). The Contractor shall submit brief, periodic, progress reports to the Institution as requested.

### **3.11 Severability**

If any provision of this RFQ is declared by a court to be illegal or in conflict with any law, the decision shall not affect the validity of the remaining RFQ terms and provisions, and the rights and obligations of the Institution and Proposers shall be construed and enforced as if the RFQ did not contain the particular provision held to be invalid.

**3.12 Policy and Guideline Compliance** This Quotation request and any award made hereunder are subject to the policies and guidelines of the Tennessee Board of Regents ([www.tbr.edu](http://www.tbr.edu)) and the Institution (available upon request).

## **4.0 PROJECT NARRATIVE AND DOCUMENTATION**

The Institution intends to secure a contract for a Web Based ticket management system (hosted solution software) designed to be used in a collegiate environment for ticket management to include but not limited to the Center of Excellence for Creative Arts. Price must include training.

System must offer the following:

- Easy-to-navigate ticketing portal (hosted solution) for website—to be designed by vendor and approved by appropriate University personnel)
- On-line seating selection with the ability to control access
- Ability to use the system as point-of-sale in addition to online sales
- Compatible with Banner software—SunGard /Higher Education
- Able to integrate with campus merchant accounts
- Able to integrate with campus authentication and single-sign-on-systems
- Must be PCI (Payment Card Industry data standards) compliant
- Must have the potential to increase as other areas of the campus decide to use the system.
- Initial volume would be 5,000 –10,000 tickets with approximately 25% free vs. paid
- Ticket pricing for the Center for Creative arts would be \$10 - \$25

5.0 **COST QUOTATION**

Austin Peay reserves the right, to accept or reject all, part or any combination thereof, of the RFQ submitted as deemed in its best interest, or complete and accurate pricing, including itemized prices in the format prescribed in this RFQ.

| Cost Item Description                                     | Cost   |        |        |        |        |       |
|---|--------|--------|--------|--------|--------|-------|
|   | Year 1 | Year 2 | Year 3 | Year 4 | Year 5 | Total |
| Initial volume with approximately 25% free vs. paid.      |        |        |        |        |        |       |
| Initial cost to establish the website to include training |        |        |        |        |        |       |
| 5,000 – 10,000  |        |        |        |        |        |       |
| Percentage/amount charged for tickets priced \$5-\$9      |        |        |        |        |        |       |
| Percentage/amount charged for tickets priced \$10-\$14    |        |        |        |        |        |       |
| Percentage/amount charged for tickets priced \$15-\$19    |        |        |        |        |        |       |
| Percentage/amount charged for tickets priced \$20-\$24    |        |        |        |        |        |       |
| Percentage/amount charged for tickets priced \$25-\$30    |        |        |        |        |        |       |
| Any additional charges associated with a hosted solution. |        |        |        |        |        |       |
| Cost for any hardware requirements.                       |        |        |        |        |        |       |
| Cost to add an additional department with ticketing needs |        |        |        |        |        |       |

**PRO FORMA CONTRACT**

The *Pro Forma* set forth in this Attachment contains some “blanks”, signified in brackets by words in all capital letters, describing material to be added, along with appropriate additional information, in the final contract resulting from this RFP.

**CONTRACT  
BETWEEN AUSTIN PEAY STATE UNIVERSITY  
AND  
[CONTRACTOR NAME]**

This Contract, by and between Austin Peay State University, hereinafter referred to as the “Institution” and [CONTRACTOR LEGAL ENTITY NAME], hereinafter referred to as the “Contractor,” is for the provision of [SHORT DESCRIPTION OF THE SERVICE], as further defined in the “SCOPE OF SERVICES.”

The Contractor is [AN INDIVIDUAL / A FOR-PROFIT CORPORATION / A NONPROFIT CORPORATION / A SPECIAL PURPOSE CORPORATION OR ASSOCIATION / A FRATERNAL OR PATRIOTIC ORGANIZATION / A PARTNERSHIP / A JOINT VENTURE / A LIMITED LIABILITY COMPANY]. The Contractor’s address is:

[ADDRESS]

The Contractor’s place of incorporation or organization is [STATE OF ORGANIZATION].

A. SCOPE OF SERVICES:

A.1. [DESCRIBE IN DETAIL THE SERVICES THE CONTRACTOR IS TO PROVIDE TO THE INSTITUTION AND THE SERVICES THAT THE INSTITUTION IS TO PROVIDE TO THE CONTRACTOR – THIS MAY BE A SUMMARY WITH DETAILED SPECIFICATIONS IN AN ATTACHMENT.]

B. CONTRACT TERM:

B.1. Contract Term. This Contract shall be effective for the period commencing on [START DATE] and ending on [END DATE]. The Institution shall have no obligation for services rendered by the Contractor which are not performed within the specified period.

B.2. Term Extension. The Institution reserves the right to extend this Contract for an additional period or periods of time representing increments of no more than one year and a total contract term of no more than [WRITTEN NUMBER, NO GREATER THAN FIVE] years, provided that the Institution notifies the Contractor in writing of its intention to do so at least [WRITTEN NUMBER] [NUMBER]days prior to the Contract expiration date. An extension of the term of this Contract will be effected through an amendment to the Contract. If the extension of the Contract necessitates additional funding beyond that which was included in the original Contract, the increase in the Institution’s maximum liability will also be effected through an amendment to the Contract and shall be based upon rates provided for in the original Contract. Expenditure contracts, other than real property contracts, may not have a contract term for a period in excess of sixty (60) months. Revenue contracts may not have a contract term for a period in excess of one hundred twenty (120) months.

C. PAYMENT TERMS AND CONDITIONS:

- C.1. Maximum Liability. In no event shall the maximum liability of the Institution under this Contract exceed [WRITTEN DOLLAR AMOUNT] [\$NUMBER AMOUNT]. The Service Rates in Section C.3 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 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 Institution requests work and the Contractor performs the work.
- C.2. Compensation Firm. The Service Rates and the Maximum Liability of the Institution under this Contract are firm for the duration of the Contract and are not subject to escalation for any reason unless this Contract is amended.
- C.3. Payment Methodology. The Contractor shall be compensated based on the Service Rates herein for units of service authorized by the Institution in a total amount not to exceed the Contract Maximum Liability established in Section C.1. The Contractor's compensation shall be contingent upon the satisfactory completion of units of service or project milestones listed below. The Contractor shall be compensated based upon the following Service Rates:

| <u>SERVICE UNIT/MILESTONE</u>  | <u>[DUE DATE]</u> | <u>AMOUNT</u>       |
|--------------------------------|-------------------|---------------------|
| [SERVICE UNIT/MILESTONE EVENT] |                   | [\$(NUMBER AMOUNT)] |
| [SERVICE UNIT/MILESTONE EVENT] |                   | [\$(NUMBER AMOUNT)] |

The Contractor shall submit monthly invoices, in form and substance acceptable to the Institution with all of the necessary supporting documentation, prior to any payment. Such invoices shall be submitted for completed units of service or project milestones for the amount stipulated.

C.4. Travel Compensation. [PICK ONE OF THESE OPTIONS]

The Contractor shall not be compensated or reimbursed for travel, meals, or lodging.

[OR]

Compensation to the Contractor for travel, meals and/or lodging in connection to work performed under this Contract shall be in the amount of actual cost to the Contractor, subject to the maximum amounts and limitations specified in the State Comprehensive Travel Regulations and pursuant to TBR Travel Policy, as they may be amended from time to time.

- C.5. Payment of Invoice. The payment of an invoice by the Institution shall not prejudice the Institution's right to object to or question any invoice or matter in relation thereto. Such payment by the Institution shall neither be construed as acceptance of any part of the work or service provided nor as an approval of any of the amounts invoiced therein.
- C.6. 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 Institution, on the basis of audits conducted in accordance with the terms of this Contract, not to constitute proper remuneration for compensable services.
- C.7. Deductions. The Institution 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

Institution any amounts which are or shall become due and payable to the Institution by the Contractor.

- C.8. Retention of Final Payment. An amount of [WRITTEN DOLLAR AMOUNT] [\$NUMBER AMOUNT], representing [WRITTEN NUMBER] percent [NUMBER %] of the maximum total compensation payable under this Contract, shall be withheld by the Institution until [WRITTEN NUMBER] [NUMBER] days after final completion of the services to be performed by the Contractor under this Contract.
- D. TERMS AND CONDITIONS:
- D.1. Required Approvals. The Institution is not bound by this Contract until it is approved by the appropriate officials in accordance with applicable Tennessee laws and regulations as shown on the signature page of this Contract..
- D.2. Modification and Amendment. This Contract may be modified only by a written amendment executed by all parties hereto and approved by the appropriate officials.
- D.3. Ethnicity. This Contract shall not be executed until the Contractor has completed the Minority/Ethnicity Form.
- D.4. Termination for Convenience. The Institution may terminate this Contract without cause for any reason. Termination under this Section D. 4 shall not be deemed a Breach of Contract by the Institution. The Institution shall give the Contractor at least [WRITTEN NUMBER] [NUMBER] days written notice before the effective termination date. The Contractor shall be entitled to receive compensation for satisfactory, authorized service completed as of the termination date, but in no event shall the Institution 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.5. Termination for Cause. If the Contractor fails to perform its obligations under this Contract in a timely or proper manner, or if the Contractor violates any term of this Contract, the Institution shall have the right to immediately terminate the Contract and withhold payments in excess of fair compensation for completed services; provided, however, Institution shall have the option to give Contractor written notice and a specified period of time in which to cure. Notwithstanding the above, the Contractor shall not be relieved of liability to the Institution for damages sustained by virtue of any breach of this Contract by the Contractor.
- D.6. 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 Institution. If such subcontracts are approved by the Institution, they shall contain, at a minimum, sections of this Contract pertaining to "Conflicts of Interest" and "Nondiscrimination". Notwithstanding any use of approved subcontractors, the Contractor shall be the prime contractor and shall be responsible for all work performed.
- D.7. 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.
- D.8. 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 disability, age, race, color, religion, sex, veteran status, national origin, or any other classification protected by Federal, or 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.9. Records. The Contractor shall maintain documentation for all charges against the Institution 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 Institution, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.10. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the Institution, the Comptroller of the Treasury, or their duly appointed representatives.
- D.11. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the Institution as requested. [SPECIFY TIME PERIOD – MONTHLY, QUARTERLY, SEMI-ANNUALLY, ANNUALLY, ETC.]
- D.12. 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.13. 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 the 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 Institution, agrees to carry 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.14. Institution Liability. The Institution shall have no liability except as specifically provided in this Contract.
- D.15. 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, acts of God, riots, wars, epidemics or any other similar cause.
- D.16. State and Federal Compliance. The Contractor shall comply with all applicable State and Federal laws and regulations, including Institution policies and guidelines in the performance of this Contract.
- D.17. 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 Tennessee Claims Commission in actions that may arise under this Contract. The Contractor acknowledges and agrees that any rights or claims against the Institution 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.18. Severability. If any terms or 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.19. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.

E. ADDITIONAL TERMS AND CONDITIONS:

E.1. Communications and Contacts.

The Institution:

[NAME AND TITLE OF INSTITUTION CONTACT PERSON]  
[INSTITUTION NAME]  
[ADDRESS]  
[TELEPHONE NUMBER]  
[FACSIMILE NUMBER]

The Contractor:

[NAME AND TITLE OF CONTRACTOR CONTACT PERSON]  
[CONTRACTOR NAME]  
[ADDRESS]  
[TELEPHONE NUMBER]  
[FACSIMILE NUMBER]

All instructions, notices, consents, demands, or other communications shall be sent in a manner that verifies proof of delivery. Any communication by facsimile transmission shall also be sent by United States mail on the same date as the facsimile transmission. All communications which relate to any changes to the Contract shall not be considered effective until agreed to, in writing, by both parties.

E.2. 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 Institution reserves the right to terminate the Contract upon written notice to the Contractor. Termination under this Section E.2 shall not be deemed a breach of Contract by the Institution. 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 Institution any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

E.3. Breach. A party shall be deemed to have breached the Contract if any of the following occurs (However, this list is not exclusive.):

- failure to perform in accordance with any term or provision of the Contract;
- partial performance of any term or provision of the Contract;
- any act prohibited or restricted by the Contract, or
- violation of any warranty.

For purposes of this Contract, these items shall hereinafter be referred to as a "Breach."

a. Contractor Breach— Institution shall notify Contractor in writing of a Breach.

- (1) In event of a Breach by Contractor, the Institution shall have available the remedy of actual damages and any other remedy available at law or equity.
- (2) Liquidated Damages—In the event of a Breach, the Institution may assess Liquidated Damages. The Institution shall notify the Contractor of amounts to be assessed as Liquidated Damages. It is hereby agreed between the parties that the Liquidated Damages represent solely the damages and injuries sustained by the Institution in losing the benefit of the bargain with Contractor and do not include any injury or damage sustained by a third party. The Contractor agrees

that the Liquidated Damage amount is in addition to any amounts Contractor may owe the Institution pursuant to the indemnity provision or other section of this Contract.

The Institution may continue to withhold the Liquidated Damages or a portion thereof until the Contractor cures the Breach, the Institution exercises its option to declare a Partial Default, or the Institution terminates the Contract. The Institution is not obligated to assess Liquidated Damages before availing itself of any other remedy. The Institution may choose to discontinue Liquidated Damages and avail itself of any other remedy available under this Contract or at law or equity; provided, however, Contractor shall receive a credit for said Liquidated Damages previously withheld except in the event of a Partial Default.

- (3) Partial Default— In the event of a Breach, the Institution may declare a Partial Default. In which case, the Institution shall provide the Contractor written notice of: (1) the date which Contractor shall terminate providing the service associated with the Breach; and (2) the date the Institution will begin to provide the service associated with the Breach. Notwithstanding the foregoing, the Institution may revise the time periods contained in the notice written to the Contractor.

In the event the Institution declares a Partial Default, the Institution may withhold, together with any other damages associated with the Breach, from the amounts due the Contractor the greater of: (1) amounts which would be paid the Contractor to provide the defaulted service; or (2) the cost to the Institution of providing the defaulted service, whether said service is provided by the Institution or a third party. To determine the amount the Contractor is being paid for any particular service, the Institution shall be entitled to receive within five (5) days of any request, pertinent material from Contractor. The Institution shall make the final and binding determination of the amount.

The Institution may assess Liquidated Damages against the Contractor for any failure to perform. Upon Partial Default, the Contractor shall have no right to recover from the Institution any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount. Contractor agrees to cooperate fully with the Institution in the event a Partial Default is declared.

- b. Institution Breach— In the event of a Breach of contract by the Institution, the Contractor shall notify the Institution in writing within 30 days of any Breach of contract by the Institution. The notice shall contain a description of the Breach. In the event of Breach by the Institution, the Contractor may avail itself of any remedy available in the Claims Commission; provided, however, failure by the Contractor to give the Institution written notice and opportunity to cure as described herein operates as a waiver of the Institution's Breach. Failure by the Contractor to file a claim before the Claims Commission within one (1) year of the written notice of Breach shall operate as a waiver of the claim in its entirety. It is agreed by the parties this provision establishes a contractual period of limitations for any claim brought by the Contractor.

- E.4. Copyrights and Patents/Institution Ownership of Work Products. Contractor grants Institution a world-wide perpetual, non-exclusive, irrevocable, full paid up license to use and proprietary software products delivered under this Contract. The Institution shall have royalty-free and unlimited rights to use, disclose, reproduce, or publish, for any purpose whatsoever, as well as share in any financial benefits derived from the commercial exploitation of all work products created, designed, developed, or derived from the services provided under this Contract. The Institution shall have the right to copy, distribute, modify and use any training materials delivered under this Contract for internal purposes only.

The Contractor agrees to indemnify and hold harmless the Institution as well as its officers, agents, and employees from and against any and all claims or suits which may be brought

against the Institution for infringement of any third party's intellectual property rights, including but not limited to any alleged patent or copyright violations. The Institution shall give the Contractor written notice of any such claim or suit and full right and opportunity to conduct the Contractor's own defense thereof. In any such action brought against the Institution, the Contractor shall take all reasonable steps to secure a license for Institution to continue to use the alleged infringing product or, in the alternative, shall find or develop a reasonable, non-infringing alternative to satisfy the requirements of this Contract.

The Contractor further agrees that is shall be liable for the reasonable fees of attorneys for the Intuition in the event such service is necessitated to enforce the obligations of the Contractor to the Institution.

- E.5. Performance Bond. [ADD ONLY IF APPLICABLE] Upon approval of the Contract by all appropriate Institution officials in accordance with applicable state laws and regulations, the Contractor shall furnish a performance bond in the amount equal to [WRITTEN DOLLAR AMOUNT] (\$[NUMBER AMOUNT]), guaranteeing full and faithful performance of all undertakings and obligations under this Contract for the initial Contract term and all extensions thereof. The bond shall be in the manner and form prescribed by the Institution, must be issued through a company licensed to issue such a bond in the State of Tennessee, and be provided to the Institution no later than [DATE]. Failure to provide the performance bond prior to the deadline as required shall result in contract termination.

In lieu of a performance bond, a surety deposit, in the sum of [WRITTEN DOLLAR AMOUNT] [\$NUMBER DOLLAR AMOUNT], may be substituted if approved by the Institution prior to its submittal.

- E.6. Insurance. The contractor shall maintain a commercial general liability policy. The policy shall provide coverage which includes, but is not limited to,, bodily injury, personal injury, death, property damage and medical claims, with the minimum limits of \$1,000,000 per occurrence, \$3,000,000 in the aggregate. The Contractor shall maintain workers' compensation coverage or a self-insured program as required under Tennessee law, with Employer's Liability limits of \$100,000. The Contractor shall deliver to the Institution a certificate of insurance no later than the effective date of the Contract. If any policy providing insurance required by the Contract is cancelled prior to the policy expiration date, the Contractor, upon receiving a notice of cancellation, shall give immediate notice to the Institution.

The enumeration in the Contract of the kinds and amounts of liability insurance shall not abridge, diminish or affect the Contractor's legal responsibilities arising out of or resulting from the services under this Contract.

- E.7. Competitive Procurements. If this Contract provides for reimbursement of the cost of goods, materials, supplies, equipment, or services, such procurements shall be made on a competitive basis, when practical.
- E.8. Equipment/Inventory. The Contractor agrees to be responsible and accountable for the maintenance, management, and inventory of all property purchased totally or in part with funds provided under this Contract. The Contractor shall maintain a perpetual inventory system for all equipment purchased with funds provided under this Contract and shall submit an inventory control report with the required progress reports.

The Contractor shall notify the Institution, in writing, of any equipment loss describing reason(s) for the loss. Should the equipment be destroyed, lost, or stolen, the Contractor shall be responsible to the Institution for the *pro rata* amount of the residual value at the time of loss based upon the Institution's original contribution to the purchase price.

Upon completion or cancellation of this Contract, all equipment purchased with funds provided under this Contract shall be returned to the Institution.

[OR]

Equipment/Inventory No equipment shall be purchased under this Contract.

- E.9. Institution Furnished Property. The Contractor shall be responsible for the correct use, maintenance, and protection of all articles of nonexpendable, tangible, personal property furnished by the Institution for the Contractor's temporary use under this Contract. Upon termination of this Contract, all property furnished shall be returned to the Institution in good order and condition as when received, reasonable use and wear thereof excepted. Should the property be destroyed, lost, or stolen, the Contractor shall be responsible to the Institution for the residual value of the property at the time of loss.
- E.10. Incorporation of Additional Documents. Included in this Contract by reference are the following documents:
- a. This Contract document, its attachments and amendments
  - b. All Clarifications and addenda made to the Contractor's Proposal
  - c. The Request for Proposal and its associated amendments
  - d. The Contractor's Proposal

In the event of a discrepancy or ambiguity regarding the interpretation of this Contract, these documents shall govern in order of precedence as listed above.

- E.11. Lobbying. The Contractor certifies, to the best of its knowledge and belief, that:

No federally appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an office or employee of any agency, a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, and entering into any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an office or employee of any agency, a Member of Congress, an office or employee of Congress, or an employee of a Member of Congress in connection with the Contract, grant, loan, or cooperative agreement, the Contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

The Contractor shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-grants, subcontractors, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients of federally appropriated funds shall certify and disclose accordingly.

- E.12. Prohibited Advertising. The Contractor shall not refer to this Contract or the Contractor's relationship with the Institution hereunder in commercial advertising in such a manner as to state or imply that the Contractor or the Contractor's services are endorsed.
- E.13. Copyrights and Patents. The Contractor agrees to indemnify and hold harmless the Institution as well as its officers, agents, employees from and against any and all claims or suits which may be brought against the Institution for infringement of any laws regarding patents or copyrights which may arise from the performance of this Contract. In any such action brought against the Institution, the Contractor shall satisfy and indemnify the Institution for the amount of any final judgment for infringement. The Contractor further agrees it shall be liable for the reasonable fees of attorneys for the Institution in the event such service is necessitated to enforce the terms of this Contract or otherwise enforce the obligations of the Contractor to the Institution. The Institution shall give the Contractor written notice of any such claim or suit and full right and opportunity to conduct the Contractor's own defense thereof.
- E.14. Authorized Individuals. Each party has provided the other party with a list identifying the individuals from whom the other party is authorized to accept any notices, requests, demands, or

other advice which may be given hereunder by the party providing such list. Lists, which are attached hereto as Attachment [NUMBER], shall be valid until revoked or amended by further written notice. The parties shall only be entitled to rely on notices, requests, demands, or other advice given by such individuals.

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

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

- E.16. Debarment and Suspension. The Contractor certifies, to the best of its knowledge and belief, that it and its principals:
- a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal or State department or agency;
  - b. have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or Local) transaction or grant under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
  - c. are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or Local) with commission of any of the offenses listed 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.

- E.17. Prohibition on Hiring Illegal Immigrants. Tennessee Public Chapter No. 878 of 2006, TCA 12-4-124, requires that Contractor attest in writing that Contractor will not knowingly utilize the services of illegal immigrants in the performance of this Contract and will not knowingly utilize the services of any subcontractor, if permitted under this Contract, who will utilize the services of illegal immigrants in the performance of this Contract. The attestation shall be made on the form, Attestation re Personnel Used in Contract Performance ("the Attestation"), which is attached and hereby incorporated by this reference.

If Contractor is discovered to have breached the Attestation, the Commissioner of Finance and Administration shall declare that the Contractor shall be prohibited from contracting or submitting a bid to any Tennessee Board of Regents institution or any other state entity for a period of one (1) year from the date of discovery of the breach. Contractor may appeal the one (1) year by utilizing an appeals process in the Rules of Finance and Administration, 0620.

- E.18. Voluntary Buyout Program. The Contractor acknowledges and understands that, for a period of two years beginning August 16, 2008, restrictions are imposed on former state employees who

received a State of Tennessee Voluntary Buyout Program (VBP) severance payment with regard to contracts with state agencies that participated in the VBP.

- a. The State will not contract with either a former state employee who received a VBP severance payment or an entity in which a former state employee who received a VBP severance payment or the spouse of such an individual holds a controlling financial interest.
- b. The State may contract with an entity with which a former state employee who received a VBP severance payment is an employee or an independent contractor. Notwithstanding the foregoing, the Contractor understands and agrees that there may be unique business circumstances under which a return to work by a former state employee who received a VBP severance payment as an employee or an independent contractor of a State contractor would not be appropriate, and in such cases the State may refuse Contractor personnel. Inasmuch, it shall be the responsibility of the State to review Contractor personnel to identify any such issues.
- c. With reference to either subsection a. or b. above, a Contractor may a written request for a waiver of the VBP restrictions regarding a former state employee and a contract with a state agency that participated in the VBP. Any such request must be submitted to the State in the form of the *VBP Contracting Restriction Waiver Request* format available from the State and the Internet at: [www.state.tn.us/finance/rds/ocr/waiver.html](http://www.state.tn.us/finance/rds/ocr/waiver.html). The determination on such a request shall be at the sole discretion of the head of the state agency that is a Party to this Contract, the Commissioner of Finance and Administration, and the Commissioner of Human Resources.

- E.19. 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 Grand 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. Any subrecipient Contractor, if covered by the Single Audit Act Amendments of 1996 and OMB Circular A-1 , agrees to specifically identify Recovery Act expenditures separately for Federal awards under the Recovery Act on the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF-SAC) required by OMB Circular A-133.
- e. 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.

- i. 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
  - ii. The subrecipient Contractor must maintain current registrations in the Center Contractor Registration ([www.ccr.gov](http://www.ccr.gov)) at all times during which they have an active Contract funded with Recovery Act funds.
- (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 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, 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 project 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 House and Safety Standards Act, watchmen or guards.

- (8) Section 1605 – Buy American Requirements for Constructional 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.
- f. 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.
  
  - g. 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.#, “Federal Economic Stimulus Funding.”

**IN WITNESS WHEREOF:**

**[CONTRACTOR LEGAL ENTITY NAME]:**

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**[NAME AND TITLE]**

**Date**

**AUSTIN PEAY STATE UNIVERSITY:**

---

**Timothy Hall, President**

**Date**

**APPROVED:**

**TENNESSEE BOARD OF REGENTS (IF APPLICABLE):**

---

**Morgan, Chancellor**

**Date**

**ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE**

|   |  |
|---|--|
| <b>SUBJECT CONTRACT NUMBER:</b>   |  |
| <b>CONTRACTOR LEGAL ENTITY NAME:</b>  |  |
| <b>FEDERAL EMPLOYER IDENTIFICATION NUMBER:</b><br>(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.**

**SIGNATURE & DATE:**

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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.

Austin Peay's Authorized Individuals

Contractor's Authorized Individuals