AGREEMENT

BETWEEN

**TENNESSEE STATE UNIVERSITY**

**AND**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

This Agreement is made this \_\_\_ day of \_\_\_\_, 2023, by and between Tennessee State University, acting for the benefit of the Tennessee State University Board of Trustees, located at 3500 John A. Merritt Boulevard, Nashville, Tennessee 37209-1561, hereinafter referred to as the “Institution,” and \_\_\_\_\_\_\_\_\_\_\_\_\_\_, having its principle office located at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,hereinafter referred to as the “Contractor.”

# WITNESSETH

In consideration of the mutual promises herein contained, the parties have agreed and do hereby enter into this Agreement according to the provisions set out herein:

1. The Contractor agrees to perform the following services:

[Provide a detailed description of the services, including type, scope, duration, form, quality, quantity, place, time, and purpose.]

1. Institution agrees to compensate the Contractor as follows:
2. Rate of Compensation: (hourly, daily, 12 month payment of $\_\_\_\_\_, etc.)
3. Timetable for Payment: (monthly, quarterly, upon completion of work or performance and submission of invoice)
4. Payments to the Contractor shall be made according to the schedule set out above, provided that payments shall be made only upon submittal of invoices by the Contractor, and after performance of the portion of the services which the invoiced amount represents. The final payment shall be made only after the Contractor has completely performed its duties under this Agreement.

Institution agrees to remit payment to Contractor no later than Forty-Five (45) calendar days after receipt of invoices, and to pay any applicable interest on such amount at the maximum rate permitted under the Tennessee Prompt Payment Act. (TCA §12-4-701 et. seq.). T.C.A. 12-4-703, requires the Institution to make payments for products or services when purchased and, therefore, prohibits advance deposits or payments. The Institution does not have authority to consent to provisions requiring the payment of interest, or finance charges in excess of the requirement of the Tennessee Prompt Payment Act.

If the Contractor is a non-resident alien, payment of any portion of the contract from any source will not be made by Institution until an individual Taxpayer Identification Number or Social Security Numbers has been assigned to the Contractor by the Internal Revenue Service and Immigration Naturalization Service and presented to Institution.

1. In no event shall the liability of Institution under this Agreement exceed: $\_\_\_\_\_\_\_\_\_\_. This maximum liability includes, but is 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.
2. The parties further agree that the following shall be essential terms and conditions of this Agreement:
3. Term. The effective date and term of this Agreement shall be from \_\_\_\_\_\_\_\_\_\_\_ to \_\_\_\_\_\_\_\_\_\_\_\_. Institution reserves the right to extend this Agreement for an additional period or periods of time, provided that Institution notifies Contractor of its intention to do so at least thirty (30) days prior to the expiration date. Under no circumstances shall the term of this Agreement extend beyond five (5) years from the effective date. An extension of the term of this Agreement will be effected through an amendment to the Agreement. If the extension of the Agreement necessitates additional funding beyond that which was included in the original Agreement, the increase in Institution’s maximum liability will also be effected through an amendment to the Agreement and shall be based upon rates provided for in the original Agreement.
4. Termination. This Agreement may be terminated by either party by giving written notice to the other, at least thirty (30) days before the effective date of termination. In that event, the Contractor shall be entitled to receive just and equitable compensation for any satisfactory authorized work completed as of the termination date. This Agreement may be terminated without the above-described notice if performance is prevented by an occurrence 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 pandemics, declaration of a federal, state or local state of emergency, or any other similar occurrence or cause. In such an event (known as a “Force Majeure event”), any and all refunds shall be returned for services not already rendered. Institution may also terminate this Agreement if it becomes aware of any threat to personal or public safety arising at the intended time of performance.

If the Contractor fails to fulfill in a timely and proper manner its obligations under this Agreement, or if the Contractor shall violate any of the terms of this Agreement, Institution shall have the right to immediately terminate this Agreement and withhold payment in excess of fair compensation for work completed. Notwithstanding the above, the Contractor shall not be relieved of liability to Institution for damages sustained by virtue of any breach of this Agreement by the Contractor.

This Agreement 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, Institution reserves the right to terminate the Contract upon written notice to Contractor. Termination under this paragraph shall not be deemed a breach of contract by Institution. Upon receipt of the written notice, Contractor shall cease all work associated with this Agreement. Should such an event occur, Contractor shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, Contractor shall have no right to recover from Institution any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

1. Governing Law and Venue. This Agreement shall be governed by and construed pursuant to the laws of the State of Tennessee. Any action between the parties arising from this Agreement shall be maintained in the courts of Davidson County, Tennessee.
2. Modification. This Agreement may be modified only by written amendment executed by all parties hereto and approved by the appropriate officials.
3. Non-Assignment. The Contractor shall not assign this Agreement or enter into sub-contracts for any of the work described herein without obtaining the prior written approval of Institution or Tennessee Board of Regents, as appropriate. Approval shall not be given if the proposed subcontractor was or is currently ineligible to bid on the contract.
4. Indemnification. 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 (including Institution), 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 Agreement. 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 Agreement or otherwise enforce the obligations of the Contractor to the Institution. Any and all monetary claims against the State of Tennessee, its officers, agents, governing board, and employees in performing any responsibility specifically required under the terms of this Agreement shall be submitted to the Board of Claims or the Claims Commission of the State of Tennessee and shall be limited to those provided for in T.C.A.§9-8-307.
5. Non-Employment by State. The Contractor warrants that no part of the total contracted amount provided herein shall be paid, directly or indirectly, to any officer or employee of the State of Tennessee as wages, compensation, or gifts in exchange for acting as officer, agent, employee, sub-contractor, or consultant to the Contractor in connection with any work contemplated or performed relative to this Agreement.

If the Contractor is an individual, the Contractor warrants that within the past six (6) months, he/she has not been and during the term of this Agreement will not become an employee of the State of Tennessee.

1. Non-Discrimination. The parties agree to comply with Title 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 of 1990 and the related regulations of 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.

Institution is committed to providing accessible information, materials and technologies to assure that individuals with disabilities have access to Institution resources comparable to access that is available to others.

1. Prohibition on Hiring Illegal Immigrants. T.C.A. § 12-3-309 prohibits State entities from contracting to acquire goods or services from any person who knowingly utilizes the service of illegal immigrants in the performance of the Agreement and by signing this Agreement, the Contactor attests, certifies, warrants, and assures that the Contractor shall not knowingly utilize the services of illegal immigrants in the performance of the Agreement and will not knowingly utilize the services of any subcontractor, if permitted under the Agreement, who will utilize the services of illegal immigrants in the performance of the Agreement.
2. Iran Divestment Act. In accordance with the Iran Divestment Act, Tennessee Code Annotated § 12-12-101 et seq., Contractor certifies that to the best of its knowledge and belief, neither Contractor nor any of its subcontractors are on the list created pursuant to Tennessee Code Annotated § 12-12-106. Misrepresentation may result in civil and criminal sanctions, including contract termination, debarment, or suspension from being a contractor or subcontractor under Institution’s contracts.
3. Sales and Use Tax. If the Contractor makes sales to customers in Tennessee of taxable good or services, the Contractor shall be registered with or have received an exemption from the Department of Revenue for the collection of Tennessee sales and use tax. This registration requirement is a material requirement of this Agreement. The Contractor shall comply, and shall require any subcontractor to comply, with all laws and regulations governing the remittance of sales and use taxes on the sale of goods and services made by the Contractor, or the Contractor’s subcontractor.
4. Insurance. The Contractor, being an independent contractor and not an employee of this Institution, agrees to carry adequate public liability and other appropriate forms of insurance, to pay all taxes incidental hereunto, and otherwise protect and hold Institution harmless from any and all liability not specifically provided for in this Agreement.

The Contractor’s commercial general liability 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 Contractor shall maintain workers’ compensation coverage, or a self-insured program as required under Tennessee law. The Contractor shall deliver to Institution both certificates of insurance no later than the effective date of this Agreement. If any policy providing insurance required by this Agreement 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 Agreement 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 Agreement.

1. Intellectual Property. All Work Product developed or produced by Contractor during the term of this Agreement shall be the property of Institution.  As used in this Agreement, "Work Product" means all images, photographs, video recordings, graphics, training materials, presentations, inventions, processes, data, documents, drawings, records, and works of authorship, whether or not copyrightable or patentable, that are originated or prepared by Contractor in the course of rendering services under this Agreement.
2. Nondisclosure and Nonuse. The Institution does not have the authority to consent to provisions which require confidentiality, or Nondisclosure in violation of Tennessee Open Records Act. Therefore, each party will treat the other party’s Confidential Information as Confidential to the extent permitted by law. Specifically, each party receiving Confidential Information agrees not to disclose such Confidential Information except to those directors, officers, employees and agents of such party, and shall use the same care to prevent disclosure of such information as such party uses with respect to its own confidential and proprietary information, provided that in any case it shall not use less than the care a reasonable person would use under similar circumstances.
3. Records. The Contractor shall maintain documentation for all charges against Institution under this Agreement. The books, records, and documents of the Contractor, insofar as they relate to work performed or money received under this Agreement, 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 Institution or the Comptroller of the Treasury or their duly appointed representatives. Financial statements shall be prepared in accordance with generally accepted accounting principles.
4. Reporting. The Contractor shall submit to Institution periodic progress reports if requested by Institution.
5. Travel. As applicable, payment to the Contractor for travel, meals or lodging shall be in the amount of actual cost or per diem, subject to maximum amounts and limitations specified in the State Comprehensive Travel Regulations, and Tennessee state statutes, and TSU policies, as they may be from time to time amended.
6. Forms. The Contractor agrees that no work shall commence until this Agreement is fully executed by both parties and that a Minority Ethnicity and W-9 forms are completed and returned with this Agreement.
7. \_\_\_\_\_\_\_\_\_\_\_\_ is the Institution’s Contract Monitor for this Agreement and can be reached at tel: \_\_\_\_\_\_\_\_\_\_\_, or email: \_\_\_\_\_\_\_\_\_\_\_
8. \_\_\_\_\_\_\_\_\_\_\_\_\_ is the Contractor’s Coordinator for this Agreement and can be reached at tel: \_\_\_\_\_\_\_\_\_\_\_\_, or email: \_\_\_\_\_\_\_\_\_\_\_\_\_
9. Assent. This Agreement shall not be binding upon the parties until it is approved by Institution’s President.
10. Grant Agreements. One of the following clauses shall govern expenditures for personal, professional or consulting services pursuant to grant contracts.

If the grant contract does not involve federal money, the following clause shall apply to this Agreement. “The Contractor shall cause to be performed, in accordance with auditing standards prescribed by the Controller of the Treasury of the State of Tennessee, an audit of all its program(s) funder by this Agreement; provided, however, that any contract for such audit shall be subject to prior approval of the Comptroller of the Treasury of the State of Tennessee, and must be submitted on the standard contract to audits accounts’ published by the Controller of the Treasury. The audit may include and be combined with an audit of other programs of the Contractor, and the existence of more than one contract between the Contractor and any agency of the State of Tennessee shall not necessitate more than one (1) audit of the Contractor’s programs to be performed every two (2) years.

If the grant contract involves federal money, the following clause shall apply to this Agreement:

Within thirty (30) days following written request by Institution, Contractor shall make available for inspection and/or audit any and all records related to its performance under this Agreement, which shall include any exceptions noted on the audit. Said records are subject to inspection and audit by representatives of Institution and the Tennessee Comptroller of the Treasury or the Comptroller’s duly appointed representative during reasonable business hours throughout the term of this Agreement and for the three (3) years immediately following Institution’s final payment, Contractor agrees to retain any and all records associated with this Agreement until such time as any disputes arising therefrom are resolved. All audits disallowances under this Agreement shall be the responsibility of the Contractor.

1. Contractor acknowledges that it is aware of and agrees to comply with Office of Management and Budget (OMB) Circular A-133 or A-128 as appropriate. Contractor agrees to provide Institution with audit information attesting to the fact that Contractor’s records covering the period of this Agreement have been audited in accordance with OMB Circular A-133or A-128, whichever is appropriate.
2. Contractor agrees to notify Institution in writing if at any time during the period of this Agreement it is no longer in compliance with Circular A-133 or A-128 as appropriate, or if there are audit findings that relate specifically to this Agreement. In case of such non-compliance or audit findings, Contractor will promptly provide Institution with its written plan for corrective action. Audit reports and notifications should be sent to:

Tennessee State University

3500 John Merritt Boulevard

Nashville, TN 37209

Attn: \_\_\_\_\_\_\_\_\_\_\_\_\_\_

1. Procurement Pursuant to Grant Contracts. If the terms of this Agreement allow reimbursement for the cost of procuring goods, materials, supplies, equipment or services, such procurement shall be made on a competitive basis (including the use of competitive bidding procedures), when practicable. Reimbursement for the cost of procuring goods, materials or services shall be subject to the Contractor’s compliance with applicable federal procurement requirements, if funds for such reimbursement are derived wholly or partially from federal sources.
2. Gramm Leach Bliley Act. If the Contractor will have access to Institution’s customers’ non-public financial information (e.g., personal Information that is maintained by Institution to provide a financial product or service, such as a student loan) the following Gramm Leach Bliley Act (GLBA) clause shall apply to this agreement:Throughout the term of this Agreement, Contractor shall implement an Information Security Program (“the Program”) and maintain “appropriate safeguards,” as required by 16 C.F.R. § 314, for all “customer information,” (as that term is defined in 16 C.F.R § 314.2(b)) obtained by or provided to Contractor pursuant to this Agreement.

Contractor shall promptly notify Institution, in writing, of each instance of (i) unauthorized access to or use that nonpublic financial customer information that could result in substantial harm or inconvenience to a customer of Institution or (ii) unauthorized disclosure, misuse, alteration, destruction or other compromise of that nonpublic financial customer information. Contractor shall forever defend and hold Institution harmless from all claims, liabilities, damages, or judgments involving a third party, including Institution’s costs and attorney fees, which arise as a result of Contractor’s failure to meet any of its obligations under this provision. Contractor shall further agree to reimburse Institution for its direct damages (e.g., cost to reconstruct lost or altered information) resulting from any security breach, loss, or alteration of nonpublic financial customer information caused by the Contractor or its subcontractor or agents.

Contractor grants Institution the right to conduct on-site audits, as deemed necessary by Institution, of the Contractor’s Program to ensure the integrity of the Contractor’s safeguarding of Institution’s customers’ nonpublic financial information.

Institution retains the right to unilaterally terminate the Agreement, without prior notice, if Contractor has allowed a material breach of its program in violation of its obligation under the GLBA, if Contractor has lost or materially altered nonpublic financial customer information, or if Institution reasonably determines that Contractor’s Program is inadequate.

Within thirty (30) days of the termination or expiration of this Agreement, Contractor shall, at the election of Institution, either: (1) return to Institution or (2) destroy (and shall cause each of its agents to destroy) all records, electronic or otherwise, in it or its agent’s possession that contains such nonpublic financial customer information and shall deliver to Institution a written certification of the destruction.

1. Relationship of Parties. The parties hereto, in the performance of this Agreement, 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 Agreement 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 parties agree that neither party shall have any authority to represent or bind the other and that neither party shall hold itself out or have any authority as an agent of the other for any purpose whatsoever.
2. Compliance with Laws. The Contractor shall comply with all applicable federal, state and local laws and regulations in the performance of this Agreement.
3. Severability. If any terms or conditions of this Agreement 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 Agreement are declared severable
4. FERPA. Contractor acknowledges that students’ education records are protected by the Family Educational Rights and Privacy Act (FERPA) and will comply with FERPA provisions if accessing such records. Student education records will only be used for the purposes of carrying out this Agreement.
5. NCAA Compliance. If applicable to the Agreement, Contractor agrees to comply with relevant National Collegiate Athletic Association (“NCAA”) legislation, interpretations and policies, located on the NCAA website at http://www.ncaa.org/ and as amended from time to time, on the use of student-athlete’s name or likeness. This duty to comply includes, but is not limited to, the requirements found in relevant NCAA Manual, such as NCAA Rule 12.5.2 “Use of Student Athlete Name or Likeness.” Contractor further agrees that it will immediately report any real or suspected violation of the NCAA legislation, interpretations, and/or policies to Institution in the manner prescribed by this Agreement for communicating with Institution. Contractor also acknowledges that this obligation is a material term of this Agreement.

***[SIGNATURE PAGE FOLLOWS]***

**IN WITNESS WHEREOF**, the parties have by their duly authorized representatives set forth their signatures:

**(INSERT CONTRACTOR NAME HERE)**

Signature:

Title Date

**TENNESSEE STATE UNIVERSITY**

Signature: President

Dr. Ronald Johnson Title Date