**ADDENDUM TO**

**AGREEMENT**

**BY AND BETWEEN**

**TENNESSEE STATE UNIVERSITY**

**AND**

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

The following terms and conditions, as applicable, shall amend the above-referenced Agreement between **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** (“Contractor”) and **TENNESSEE STATE UNIVERSITY** (“Institution”), a public institution of higher education, acting for the benefit of the Tennessee State University Board of Trustees and are incorporated by reference and made an integral part of the Agreement. The terms and conditions of this Addendum shall control in the event of any conflict with any term or condition of the Agreement or any other additional terms and conditions thereto:

1. Governing Law/Venue. This Agreement shall be governed by the laws of the State of Tennessee and Federal law. Any action between the parties arising from this Agreement shall be maintained in the courts of Davidson County, Tennessee.
2. Term. The term of this Agreement shall be \_\_\_\_\_\_\_\_\_ year(s) commencing on \_\_\_\_\_\_\_\_\_\_\_ and ending on \_\_\_\_\_\_\_\_\_\_\_. This Agreement may be renewed with a writing signed by both parties. Under no circumstances shall the term of this Agreement extend beyond five (5) years from the effective date. Institution shall have the right to terminate the agreement at the end of any fiscal year in the event that sufficient funds are not appropriated by the General Assembly and/or budgeted for continuation of the Agreement.
3. Termination for Convenience. Institution may terminate this Agreement without cause for any reason. Termination under this section shall not be deemed a breach of contract by either party. Institution shall give Contractor at least 90 days written notice before the effective termination date. Contractor shall be entitled to receive compensation for satisfactory, authorized service completed as of the termination date, but in no event shall Institution be liable to Contractor for compensation for any service which has not been rendered. Upon such termination, Contractor shall have no right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
4. Maximum Liability. In no event shall the maximum payment obligation of Institution for services under the Agreement exceed $\_\_\_\_\_\_\_\_\_. The maximum liability represents available funds for payment to Contractor and does not guarantee payment of any such funds to Contractor under the Agreement unless Institution requests work and Contractor performs satisfactory work.
5. Force Majeure. The parties’ obligations under the Agreement shall be voided in the event of 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.
6. Remedies. The State of Tennessee may be found liable for actual damages only. Institution, as a State of Tennessee entity, shall not, under any circumstances, indemnify, defend, or hold harmless Contractor or any party or be liable for attorney’s fees, punitive damages, or the costs of litigation. Each party shall be solely liable for payment of its portion of all claims, liability, costs, expenses, demands, settlements, or judgments resulting from negligence, actions or omissions of itself or those for whom it is legally responsible. Any and all monetary claims against the State of Tennessee, including Institution, its officers, agents, and employees in performing any responsibility specifically required under the terms of the 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.
7. Non-Assignment. Contractor shall not assign the Agreement or enter into sub-contracts for any of the work described herein without obtaining the prior written approval of Institution.
8. Modification. The Agreement may be modified only by written amendment and executed by all parties hereto.
9. Conflict of Interest. Contractor assures that no payment shall be made 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, subcontractor or consultant to Contractor in connection with any work contemplated or performed relative to the Agreement.
10. Payment. 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 Institution to make payments for products or services when purchased and, therefore, prohibits advance deposits or payments. 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. In the event Institution receives defective goods from Contractor, Institution may return the defective goods, at Contractor's expense, for a full refund. Exercise of this option shall not relieve Contractor of any liability to Institution for damages sustained by virtue of Contractor's breach of warranty.
11. Audit. Contractor shall maintain records pertaining to the Agreement for a period of three (3) years from the date of the final payment. The records are subject to audit by the State of Tennessee.
12. Limitation of Liability. Institution, as an agency of the State of Tennessee, cannot agree to the limit of Contractor’s liability applicable to: a) liability for intellectual property or to any other liability, including without limitation, indemnification obligations for infringement of third-party intellectual property rights; b) claims covered by any specific provision in this Agreement providing for liquidated damages; or c) claims for intentional torts, criminal acts, fraudulent conduct, or acts or omissions that result in personal injuries or death. Furthermore, any limitation of liability in this Agreement shall not waive or limit the State of Tennessee’s legal rights, sovereign immunity, or any other immunity from suit provided by law.
13. Insurance. Contractor 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 the Agreement. Institution, as an agency of the State of Tennessee is self-funded and does not carry or maintain commercial general liability insurance or medical, professional or hospital insurance. Any and all claims against the State of Tennessee, including Institution or its employees, shall be heard and determined by the Tennessee Claims Commission in the manner prescribed by law. Damages recoverable against the State of Tennessee shall be limited to claims paid by the Claims Commission pursuant to TCA § 9-8-301 et seq.
14. 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.
15. Conflict Resolution. Except with respect to controversies or claims regarding either party’s Confidential Information or property rights under the Agreement, in the event any controversy or claim arises in connection with any provision of the Agreement, the parties shall try to settle their differences amicably between themselves by referring the disputed matter to their respective designated representative for discussion and resolution. Either party may initiate such informal dispute resolution by sending written notice of the dispute to the other party, and if such representatives are unable to resolve such dispute within thirty (30) days of initiating such negotiations, either party may seek remedies available to such party under law. The provisions of this section are subject to the requirements of T.C.A. § 8-6-301 and T.C.A. § 20-13-103. Any and all monetary claims against the State of Tennessee, including Institution, its officers, agents, and employees in performing any responsibility specifically required under the terms of the 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.
16. Entire Agreement. The Agreement shall constitute the entire agreement between Institution (including its employees and other end users) and Contractor. In the event Contractor enters into terms of use, end user agreements, or other agreements or understandings, whether electronic, online, click-through, or shrink-wrap, with Institution employees or other end users, whether verbal or written, such agreements are null, void, and without effect, and the terms of the Agreement will apply.
17. Nondisclosure and Nonuse. 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.
18. Competitive Bidding. State of Tennessee agencies are bound to comply with competitive bidding requirements under Tennessee Law. Therefore, if Institution determines that it needs a particular service, it may be required to competitively bid for that service and cannot agree to a non-compete clause that prohibits such bidding.
19. Illegal Immigrants. T.C.A. § 12-3-309 prohibits State of Tennessee entities from contracting to acquire goods or services from any person who knowingly utilizes the service of illegal immigrants in the performance of a contract and by signing this Addendum, Contactor attests, certifies, warrants, and assures that 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.
20. Authority. Tennessee State University is a public institution of higher learning. As an entity of the State of Tennessee it possesses certain rights and privileges, is subject to certain limitations and restrictions, and only has such authority as is granted to it under the Constitution and laws of the State of Tennessee. Notwithstanding any other provision to the contrary, nothing in the Agreement is intended to be, nor shall it be construed to be, a waiver of the sovereign immunity of the State of Tennessee or a prospective waiver or restriction of any of the rights, remedies, claims and privileges of the State of Tennessee. Institution does not waive for itself or its officers, employees, agents, or for members of the Board of Trustees, any defenses or immunities available to it or any of them. Moreover, notwithstanding the generality or specificity of any provisions herein, the provisions of this Agreement as they pertain to Tennessee State University are enforceable only to the extent and authority authorized by the Constitution and laws of the State of Tennessee.
21. Attorney Fees. Contractoragrees that, in the event either party deems it necessary to take legal action to enforce any provision of the Agreement, and, in the event Institution prevails, Contractor shall pay all expenses of such action including Institution's attorney fees and costs at all stages of the litigation.
22. Tax Exemption. Contractor recognizes that Institution is exempt from sales tax. A certificate of sales tax exemption will be provided upon request.
23. 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 the Agreement.
24. Compliance with Laws. Contractoragrees to comply with any applicable federal, state, and local laws and regulations.
25. 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.

***[SIGNATURE PAGE FOLLOWS]***

**IN WITNESS** ofthe acceptance of the term of this Addendum, the parties have by their duly authorized representatives set their signature below:

**(INSERT NAME OF CONTRACTOR HERE) TENNESSEE STATE UNIVERSITY**

Signature: Signature: \_\_\_\_\_\_

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Name: Dr. Glenda Glover\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Title: President\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date: Date: \_\_\_\_\_\_\_