



These ETSU Standard Terms and Conditions ("ETSU T&C") are incorporated by reference and made a part of the agreement between the counterparty identified in the agreement ("Contractor") and East Tennessee State University ("University") (each, a "Party" and collectively, the "Parties") (the "Agreement"). The provisions in the ETSU T&C shall control in the event of any conflict with any term or condition in the Agreement. Agreement provisions not amended herein shall remain in full force and effect.

THEREFORE, the parties agree as follows:

1. Contractor acknowledges that East Tennessee State University is a public institution of higher education and an instrumentality of the State of Tennessee, governed by a statutorily created Board of Trustees and subject to Tennessee law applicable to state entities. As an entity of the State of Tennessee and under the Constitution and laws of the State of Tennessee, University possesses certain rights and privileges, is subject to certain limitations and restrictions, and has only 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 this 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. Moreover, notwithstanding the generality or specificity of any provision herein, the provisions of this Agreement as they pertain to University are enforceable only to the extent authorized by the Constitution and laws of the State of Tennessee.
2. The entirety of this Agreement shall be enforceable only to the extent permitted and not prohibited by law.
3. The State of Tennessee is self-insured and does not carry or maintain commercial general liability insurance or medical, professional or hospital liability insurance; a State of Tennessee Certificate of Self-Insurance can be provided upon request. Any and all claims against the State of Tennessee, its officers, agents, and employees shall be heard and determined by the Board of Claims or the Tennessee Claims Commission in the manner prescribed by law, and shall be limited as provided in Tennessee Code Annotated § 9-8-307. Damages recoverable against University shall be expressly limited to claims paid by the Claims Commission pursuant to Tenn. Code Ann. §§ 9-8-301 et seq.
4. University may, in accordance with Tenn. Code Ann. § 12-3-305(c)(1), terminate this Agreement by giving Contractor 30 days' written notice. Contractor shall be entitled to reasonable compensation for satisfactory work performed (including recovery of any actual, documented, and reasonable costs it reasonably incurs in performing) under this Agreement, prior to the date of termination. If Contractor fails to properly perform its obligations under this Agreement or violates any term of this Agreement, University shall have the right to terminate this Agreement immediately and withhold payments in excess of fair compensation for completed services. Contractor shall not be relieved of liability to University for damages sustained by the breach of this Agreement by Contractor.
5. This Agreement is subject to the allocation of state funds.
6. University may terminate this Agreement, without notice, at the end of any fiscal year, in the event that funds to support the Agreement become unavailable. Tenn. Code Ann. § 12-3-305(c)(2); Tenn. Comp. R. & Regs. § 0690-03-01-.14(2)(b); *id.* § 0690-03-01-.17(2)(p).
7. This Agreement may be amended, modified, or supplemented only by a written instrument that expressly states it is intended to amend this Agreement and that is signed by duly authorized representatives of both Parties. No oral statements, course of dealing, or course of performance shall be deemed to amend or modify this Agreement.
8. In no event will this Agreement exceed a total term of 5 years. Tenn. Code Ann. § 12-3-305(c)(3).
9. University is a tax-exempt entity and will provide proof of tax-exempt status upon request.
10. Contractor shall not assign this Agreement or enter into a subcontract for any of the services performed under this Agreement without obtaining the prior written approval of University, which approval shall not be unreasonably withheld. In the event University disapproves of such assignment or subcontracting request from Contractor, University may terminate this Agreement on 30 days' notice, and Contractor shall be entitled to reasonable compensation for satisfactory work performed under this Agreement prior to the date of termination, including recovery of any actual, documented, and reasonable costs Contractor reasonably incurs in performing.
11. Neither Party shall be liable or responsible to the other Party, nor be deemed to have defaulted or breached this Agreement, for any failure or delay in performing any obligation under this Agreement (except for obligations to pay money when due), if and to the extent such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of the affected Party, including, without limitation: acts of God; flood, fire, earthquake, storm, or other natural disasters; epidemic, pandemic, or public health emergency (including government-mandated quarantines or restrictions); war, invasion, hostilities (whether declared or undeclared), terrorist threats or acts, riots, or other civil unrest; government order, law, or action; embargoes or blockades; strikes, labor disputes, or lockouts (other than those involving the nonperforming Party's own workforce); shortage of adequate power or transportation facilities; or other events beyond the reasonable

control of the affected Party ("Force Majeure Event"). A Party affected by a Force Majeure Event shall promptly give written notice to the other Party of the occurrence of the Force Majeure Event, describing the nature of the event, its expected duration, and the effect on the Party's ability to perform its obligations. The affected Party shall use diligent, good-faith efforts to mitigate the impact of the Force Majeure Event and resume full performance as soon as reasonably practicable. The obligations of the affected Party shall be suspended to the extent and for the duration of the Force Majeure Event. The time for performance shall be extended for a period equal to the duration of the Force Majeure Event, provided that the affected Party continues to comply with the notice and mitigation provisions above. If a Force Majeure Event continues for a period of more than 10 consecutive days, either Party may terminate this Agreement upon written notice to the other Party without liability.

12. Neither party shall be responsible for personal injury or property damage or other loss except that resulting from its own negligence or the negligence of its employees or others for whom the party is legally responsible. Any and all claims against the State shall be submitted to the Tennessee Board of Claims or the Tennessee Claims Commission.
13. This Agreement shall in no way be interpreted as creating an agency or employment relationship between the parties.
14. Contractor shall be liable for and shall indemnify and hold harmless University, its officers, employees, and agents individually and collectively, from any and all liability, costs, damages (including loss of use), expenses, demands, and claims in connection with or arising out of injury or alleged injury (including death) to persons, or damages or alleged damage to property, sustained or alleged to have been sustained in connection with or to have arisen out of the performance of this Agreement by Contractor, its subcontractors, and either's agents, servants, and employees. Contractor shall defend any suit or action brought against University (or its officers, employees, agents, or party), and shall pay all damages, judgments, costs, and expenses, including attorneys' fees in connection with said demands and claims resulting therefrom.
15. Contractor's liability is, to the extent permitted by law and subject to this paragraph, limited to no less than two times the maximum liability, estimated liability, or maximum revenue of the Agreement. In no event shall this limitation of liability apply to: (1) liability for intellectual property or to any other liability, including, without limitation, indemnification obligations for infringement of third-party intellectual property rights; (2) claims covered by Agreement provisions providing for liquidated damages; or (3) claims for intentional torts, criminal acts, fraudulent conduct, or acts or omissions that result in personal injuries or death. Tenn. Code Ann. § 12-3-701(a)(2), (b).
16. If this Agreement provides for reimbursement to Contractor for travel, lodging, or meals, University agrees to reimburse Contractor for the following expenses incurred by Contractor in its performance of services, subject to maximum amounts and limitations specified in University policies, as they may be from time to time amended: (a) air travel, not to exceed the coach class rate; (b) auto rentals; (c) lodging and miscellaneous expenses, such as parking, taxi fares, fuel; and (d) a per diem rate for meals. Furthermore, Contractor shall provide itemized receipts for all travel-related expenses. University will not reimburse Contractor for any travel-related expenses that lack an itemized receipt.
17. Contractor agrees that click-through agreements are not binding on University. No University employee has the actual or apparent authority to enter into click-through agreements on behalf of University without the approval of University's Procurement and/or Contracts Office. No University employee has the authority to modify, amend, or supplement this Agreement through a click-through agreement.
18. Contractor may identify University as a customer in Contractor's customer lists or similar materials, provided that such identification is accurate and not misleading. Contractor may not, however, use University's name, logo, trademarks, or any likeness in any marketing, promotional materials, press releases, public announcements, or in any manner that suggests endorsement of Contractor's products or services, unless Contractor receives prior written approval from University to do so.
19. Contractor shall maintain documentation for all charges against University under the Agreement. The books, records, and documents of Contractor, insofar as they relate to work performed or money received under this Agreement, shall be maintained for a period of 5 full years from the date of the final payment, and shall be subject to audit, at any reasonable time and upon notice, by University, Comptroller of the Treasury, or their duly appointed representatives. Tenn. Code Ann. § 12-3-602.
20. Contractor certifies that Contractor has either registered with the State of Tennessee's Department of Revenue or does not make sales of goods or services that are subject to the collection of Tennessee sales and use tax, as required by Tenn. Code Ann. § 12-3-306, and will provide proof of compliance upon request.
21. Contractor acknowledges that this Contract is subject to the conflict-of-interest provisions of Tennessee law, including but not limited to Tenn. Code Ann. §§ 12-4-101 to -120. Contractor warrants that it has not provided and will not provide any gift, gratuity, rebate, compensation, or thing of value—whether characterized as wages, compensation, gift or otherwise—directly or indirectly to any officer, employee, or agent of the State of Tennessee or University in exchange for acting as officer, agent, employee, subcontractor, or consultant to Contractor in connection with any work contemplated or performed relative to this Agreement, or for the purpose of influencing the entry, award, or administration of this Agreement. Contractor warrants that no officer, employee, or agent of the State of Tennessee or University who participates in the award, procurement, or administration of this Agreement has any direct or indirect financial interest in Contractor or in this Agreement in violation of Tennessee law. Contractor warrants that it has disclosed all facts relevant to any organizational

conflict of interest, as defined under Tenn. Code Ann. § 12-4-115, which includes relationships or actions between Contractor and the State / University that may conflict with the State / University's interests or taint the procurement process. Contractor warrants that it shall promptly disclose in writing to University any actual, potential, or perceived conflict of interest arising during the term of this Agreement—including any financial interest, employment relationship, or other arrangement—that could reasonably be expected to create a conflict under applicable Tennessee law. If University determines that a conflict of interest exists, University may require Contractor to implement mitigation measures acceptable to University, or may terminate this Agreement for cause or convenience, in addition to any other remedies available under Tennessee law.

22. Contractor acknowledges, understands, and agrees that this Agreement shall be null and void if Contractor is, or within the past six months has been, an employee of the State of Tennessee or if Contractor is an entity in which a controlling interest is held by an individual who is, or within the past six months has been, an employee of the State of Tennessee.
23. The parties 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, and the regulations related to each. Each party represents and warrants 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.
24. Contractor represents that it will not knowingly utilize the services of illegal immigrants in the performance of this 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 this Agreement. Tenn. Code Ann. § 12-3-309(b).
25. In accordance with Tenn. Comp. R. & Regs., Comprehensive Rules and Regulations of the Central Procurement Office, § 0690-03-01-.17(2)(t), Contractor certifies, to the best of its knowledge and belief, that it and its principals: (i) are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any Federal or State department or agency; (ii) have not within a 3-year period preceding this Agreement 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; (iii) 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 (ii) of this certification; and (iv) have not within a 3-year period preceding this Agreement had one or more public transactions (Federal, State, or Local) terminated for cause or default.
26. Contractor certifies, under penalty of perjury, that to the best of its knowledge and belief, neither it nor any of its subcontractors, if applicable, is on the Iran Divestment Act (Tenn. Code Ann. §§ 12-12-101 et seq.) list of entities or persons ineligible to contract with the State of Tennessee.
27. Contractor certifies that it is not currently engaged in and will not for the duration of the Agreement engage in, a boycott of Israel as defined by Tenn. Code Ann. § 12-4-119. This provision shall not apply to contracts with a total value of less than \$250,000 or to contractors with fewer than 10 employees.
28. Pursuant to the Tennessee Procurement Protection Act (see Tenn. Code Ann. § 4-56-201 et seq.), Contractor certifies that it is not a foreign adversary company, and certifies that it is not knowingly selling (and that it will not knowingly sell) final products or services of a foreign adversary company to University. Tenn. Code Ann. § 4-56-204(c).
29. This Agreement shall be governed by the laws of the State of Tennessee.
30. Contractor has identified, labeled, marked, or otherwise designated certain documents, information, and/or data as "Confidential" and/or "Confidential Information" and/or has included provisions addressing documents, information, and/or data that it considers confidential. Without adopting those designations, University agrees to abide by the provisions to the extent permitted by law, and, that statement notwithstanding, the parties acknowledge and agree that University will comply with the Tennessee Public Records Act (Tenn. Code Ann. §§ 10-7-501 et seq.) in performing its obligations under this Agreement.
31. Contractor's performance shall be subject to monitoring and evaluation by University. Tenn. Comp. R. & Regs., Comprehensive Rules and Regulations of the Central Procurement Office, § 0690-03-01-.17(2)(s).
32. Contractor warrants and represents that the service and software, including any updates, provided to University will meet the accessibility standards in WCAG 2.1 AA and will be compliant with Section 508 of the Americans with Disabilities Act (ADA). To the extent that the service and software do not meet these standards, Contractor shall indemnify and hold University harmless in the event of claims arising from inaccessibility related to Contractor's services and software.
33. Contractor will: (1) use data provided by University solely for the purpose for which the data is provided to Contractor under the Agreement; (2) use data provided by University solely for the purpose of Contractor performing its obligations under the Agreement; and (3) will not sell or share such data with any other entity. *E.g.* Tenn. Code Ann. § 49-7-186.
34. Contractor may use de-identified records and information, if at all, only after Contractor: (1) has removed all personally identifiable information; and (2) has made a reasonable determination that a user's identity is not personally identifiable, whether through single or multiple releases or sources, and taking into account other reasonably available information.

35. The parties acknowledge that the services provided under the Agreement may involve Contractor's access to student education records that are subject to the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g, and its implementing regulations, 34 C.F.R. Part 99, and that Contractor will be considered a FERPA "School Official" with a legitimate educational interest in accessing student education records under FERPA, only to the extent required to carry out the services specified in this Agreement, and subject to the limitations and conditions set forth herein. Contractor agrees to comply with FERPA, and agrees to: (1) maintain the confidentiality of any education records and student information in accordance with FERPA; (2) use the education records only for the purpose of fulfilling its duties under the Agreement; (3) not disclose education records or any personally identifiable information (PII) from education records to any other party without the prior written consent of University or its student(s), except as otherwise permitted by FERPA; (4) require that any of Contractor's subcontractors, agents, or employees who have access to education records agree to the same restrictions and conditions that apply to Contractor; (5) return or securely destroy all education records upon termination of the Agreement, or when the records are no longer needed to carry out the services provided, whichever comes first, and provide certification of such destruction if requested; and (6) notify University promptly upon discovery of any breach of security, misuse, or unauthorized disclosure of education records or PII.
36. University, as an entity of the State of Tennessee, cannot agree to internally referenced, but externally sourced, terms and conditions. Contractor—as the party seeking to add terms or conditions that it wants to enforce against University—must provide a native, text-searchable .pdf or Word file of any externally referenced terms and conditions, along with a native, text-searchable .pdf or Word file of any terms and conditions embedded therein, to University for an opportunity to review and, thereafter, include any mutually agreed-to provisions as a part of this Agreement.
37. University cannot agree to be bound by terms and conditions that are currently unknown or that may be unilaterally changed by another party, Tenn. Code Ann. § 12-3-515(a)(1)(C), and all contracts are required to contain specific rates and prices, Tenn. Comp. R. & Regs. § 0690-03-01-.17(2)(c)(1).
38. University is, as a state entity, barred by express Tennessee law from indemnifying, releasing, or holding harmless its contractual parties. Tenn. Code Ann. § 12-3-515(a)(1)(A) (stating that University "shall not enter a contract that contains a term or condition that [r]equires [University] to ... [d]efend, indemnify, or hold harmless another person"); Tenn. Comp. R. & Regs. § 0690-03-01-.17(3)(a) ("Indemnification and Hold Harmless. Contract provisions requiring the State to indemnify and hold a Contracting Party harmless are prohibited."); Letter from Tenn. Att'y Gen., Feb. 7, 1978 (enclosing Op. Tenn. Att'y Gen. 93 (January 2, 1973)) ("It would not be legal for any agency in the State of Tennessee to enter into a contract with another party wherein one of the contract provisions sets out a promise by the state agency to hold harmless the other party for any liability arising from the contractual relationship.").
39. As a state entity, University—in a contract—may neither limit any rights or remedies that may be available to the state, nor expand the state's possible liabilities; stated differently, waiver of contractual parties' exposure to the State and expansion of the State's exposure to contractual parties is outside the authority of a State entity like University—such authority lies solely with the Tennessee Legislature. TENN. CONST. art. I, § 17 ("Suits may be brought against the State in such manner and in such courts as the Legislature may by law direct."). Along those lines, and more specifically, University cannot pre-emptively or prospectively waive any right, remedy, or ability the State may have in the future to seek indirect, special, incidental, exemplary, or consequential damages, as this would be in the nature of holding a contractual party harmless, which University is prohibited from doing. Tenn. Code Ann. § 12-3-515(a)(1)(A) (stating University "shall not enter a contract that contains a term or condition that [r]equires [University] to ... [d]efend, indemnify, or hold harmless another person").
40. University, as a public entity, cannot agree to a clause restricting it from soliciting or hiring a contractual counterparty's employees. Such a provision impermissibly restricts the State's ability to recruit and employ the most qualified individuals for public service. Public employers like University are required to maintain open and competitive hiring processes, and a contractual promise to refrain from considering otherwise qualified applicants would violate public policy, undermine merit-based hiring principles, and operate as an unlawful restraint on trade by limiting employee mobility and public access to talent.
41. As a state entity, University is barred by state law from paying for goods or services that University does not actually receive. TENN. CONST. art. I, § 31 ("The credit of this state shall not be hereafter loaned or given to or in aid of any person, association, company, corporation or municipality"); Tenn. Comp. R. & Regs. § 0690-03-01-.17(2)(c)(2) ("All contracts shall generally provide that the State is only obligated to pay for goods received or services performed, which are acceptable to the State, prior to the date of the State's payment."); cf. Tennessee Board of Regents G-030 Contracts Guideline at I.5.a.(1)(e) ("The provisions listed under this section are not to be included in any contract: ... Provisions requiring the Institution to make deposits or payments before goods are received or services are performed").
42. University, as a state governmental entity, is barred by state law from contractually agreeing to pay liquidated damages. Tenn. Code Ann. § 12-3-515(a)(1)(D).
43. University cannot contractually agree to pay collection costs or attorney's fees. Tenn. Code Ann. § 9-8-307(d) ("The state will be liable for actual damages only The state will not be liable for punitive damages and the costs of litigation other than court costs.").

44. University cannot contractually encumber state property; more specifically, University cannot grant a party a security interest or other lien in University / State property because enforcement would require remedies and proceedings that Tennessee has not authorized against the State's property. TENN. CONST. art. I, § 17 ("Suits may be brought against the State in such manner and in such courts as the Legislature may by law direct."); Tenn. Code Ann. § 20-13-102(a) (codifying state sovereign immunity and prohibiting suits "with a view to reach the state, its treasury, funds or property"); Tenn. Code Ann. § 9-8-307 (establishing that claims against the State of Tennessee, its officers, agents, and employees shall be heard and determined by the Board of Claims or the Tennessee Claims Commission in the manner prescribed by law, shall be limited as provided in that statute, and that damages are expressly limited to claims paid by the Claims Commission pursuant to Tenn. Code Ann. §§ 9-8-301 et seq.).
45. University, as a state governmental entity, is barred by state law from contractually agreeing to any venue in a jurisdiction other than in the Tennessee Claims Commission, the chancery courts of Williamson County, and federal courts in Tennessee, Tenn. Code Ann. § 12-3-515(a)(3), and from contractually agreeing to the contract being construed in accordance with the laws of any state other than Tennessee, Tenn. Code Ann. § 12-3-515(a)(4); *see also* Tenn. Comp. R. & Regs. § 0690-03-01-.17(2)(i) ("Choice of Law and Venue. All contracts subject to these Rules shall provide that the contract shall be governed by the Laws of Tennessee and that the Tennessee Claims Commission or the State or federal courts in Tennessee shall be the venue for resolving disputes or disagreements under the contract.").
46. University cannot contractually agree to arbitration, *see* Tenn. Code Ann. § 12-3-515(a)(5), and any and all claims against the State of Tennessee, its officers, agents, and employees shall be heard and determined by the Board of Claims or the Tennessee Claims Commission in the manner prescribed by law, and shall be limited as provided in Tenn. Code Ann. § 9-8-307.

IN WITNESS WHEREOF, the parties—through their duly authorized representatives identified below—have executed this Agreement as of the latest date indicated below.

EAST TENNESSEE STATE UNIVERSITY

CONTRACTOR

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____