PROFESSIONAL SERVICES AGREEMENT

BETWEEN

**TENNESSEE STATE UNIVERSITY**

**AND**

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

This Professional Services Agreement (the “Agreement”) is made by and between **TENNESSEE STATE UNIVERSITY**, hereinafter referred to as the “Institution,” and **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**,hereinafter referred to as the “Contractor.”

# WITNESSETH

In consideration of the mutual promises contained herein, the parties hereby agree and enter into this Agreement according to the provisions set forth below:

1. Scope of Services.

[PROVIDE A DETAILED DESCRIPTION OF THE SERVICES TO BE PROVIDED, INCLUDING TYPE, FORM, DURATION, QUANTITY, TIME, PLACE, AND PURPOSE.]

1. Payment Terms and Conditions.
2. Amount/Rate of Compensation. $\_\_\_\_\_\_\_\_\_.
3. Payment Methodology. Payments to Contractor shall be made upon completion of services and submission of invoice(s) by Contractor. Final payment shall be made only after 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 at the maximum rates permitted under the Tennessee Prompt Pay Act, T.C.A. § 12-4-701, et seq.

If Contractor is a non-resident alien, payment of any portion of the amounts owed under this Agreement will not be made until verification of Contractor’s tax status and determination of appropriate withholdings, if any.

1. Invoicing. Contractor will receive payment for services rendered to Institution, based on its prepared invoice(s) as submitted to: accountspayable@tnstate.edu.
2. Maximum Financial Obligation. In no event shall the maximum financial obligation of Institution for services under this Agreement exceed $\_\_\_\_\_\_\_\_\_. This maximum financial obligation includes, but is not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by Contractor. The maximum financial obligation represents available funds for payment to Contractor and does not guarantee payment of any such funds to Contractor under this Agreement unless Institution requests work and Contractor performs the work.
3. Travel Compensation. Reimbursement to Contractor for travel, meals, and/or lodging shall be in the amount of actual cost/per diem and shall be subject to the limitations and provisions specified in the State Comprehensive Travel Regulations, Tennessee state statutes, and Institution policies, as they may be from time to time amended.
4. Standard Terms and Conditions.
5. Term. The term of this Agreement shall be from \_\_\_\_\_\_\_\_\_\_\_ to \_\_\_\_\_\_\_\_\_\_\_\_. This Agreement may be renewed through a written amendment signed by the parties hereto. Under no circumstances shall the total term of this Agreement exceed five (5) years, including all extensions and renewals.
6. Termination. This Agreement may be terminated by either party upon at least thirty (30) days’ written notice to the other party. Contractor shall be entitled to receive compensation for authorized work completed as of the termination date. Institution may terminate this Agreement at the end of any fiscal year without notice in the event that funds to support this Agreement become unavailable. T.C.A. § 12-3-305(c)(2).

1. Force Majeure. The parties’ obligations under this 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.
2. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Tennessee, without regard to its conflict of law provisions.
3. 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 any party, including Contractor, or be liable for attorneys’ fees, punitive damages, or the costs of litigation. Furthermore, Institution is not permitted to pay liquidated damages or cancellation charges resulting in a penalty to Institution. 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 this Agreement shall 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.
4. Hold Harmless. Contractor agrees to indemnify and hold harmless 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 Contractor, its employees, or any person acting for or on its or their behalf relating to this Agreement. Contractor shall be liable for the reasonable cost of attorneys’ fees for Institution in the event such service is necessitated to enforce the terms of this Agreement or otherwise enforce the obligations of Contractor to Institution.
5. Insurance. Institution, as an agency of the State of Tennessee, is self-insured under the Tennessee Claims Commission Act, T.C.A. § 9-8-301 et seq., which covers certain tort liability for actual damages of up to $300,000.00 per claimant and $1,000,000.00 per occurrence. This self-insurance is effective for acts or omissions of Institution or its employees. Moreover, the insurance coverage afforded to Institution is controlled and limited by state law.

Contractor shall maintain a commercial general liability policy which includes, but is not limited to, bodily injury, personal injury, death, property damage, and medical claims, with minimum limits of $1,000,000.00 per occurrence and $3,000,000.00 in the aggregate, as well as any other forms of insurance required by law. Contractor shall maintain workers’ compensation coverage or be insured through a self-insured program as required under Tennessee law. Certificates of insurance shall be provided upon request. Institution reserves the right to amend current or require additional insurance coverage or coverage amounts under this Agreement.

1. Conflict of Interest. Contractor warrants that no part of the total contracted 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 Contractor in connection with any work contemplated or performed in relation to this Agreement. Contractor acknowledges and agrees that this Agreement shall be null and void if Contractor is, becomes, or within the past six (6) 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, becomes, or within the past six (6) months has been, an employee of the State of Tennessee. If Contractor is a State of Tennessee entity, this provision shall not apply.
2. Confidentiality. Institution does not have the authority to consent to provisions which require confidentiality or nondisclosure in violation of the Tennessee Open Records Act. Therefore, each party shall treat the other party’s confidential information as confidential to the extent permitted by applicable state and federal laws. Specifically, each party receiving confidential information agrees not to disclose such confidential information, except to its directors, officers, employees, and agents, in accordance with applicable law, and shall use the same care to prevent disclosure of such confidential information as each party uses with respect to its own confidential information; provided that, in any case, each party shall not use less than the care a reasonable person would use under similar circumstances. The obligations set forth in this section shall survive the termination of this Agreement.
3. Non-Discrimination. The parties agree to comply with all applicable state and federal laws pertaining to discrimination. Contractor agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or otherwise be subjected to discrimination in the performance of this Agreement or in the employment practices of Contractor on the grounds of handicap or disability, age, race, color, religion, sex, national origin, or any other classification protected by law.
4. 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 services of illegal immigrants in the performance of a contract. Contactor attests, certifies, warrants, and assures that Contractor will not knowingly utilize, nor hire subcontractors who will utilize, the services of illegal immigrants in the performance of this Agreement.
5. Iran Divestment Act. The requirements of T.C.A. § 12-12-101 et. seq., which address contracting with persons with investment activities in Iran, shall be a material provision of this Agreement. Contractor certifies, under penalty of perjury and to the best of its knowledge and belief, that it is not on the list created pursuant to T.C.A. § 12-12-106. Misrepresentation may result in civil and criminal sanctions, including contract termination, debarment, or suspension from being a contractor under Institution’s contracts.
6. Debarment and Suspension. 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 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; 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 Agreement had one or more public transactions (federal, state, or local) terminated for cause or default.
7. Sales and Use Tax. Institution is tax exempt under Tennessee law and is not liable for the payment of Tennessee sales or use taxes. T.C.A. § 67-6-322. Furthermore, Institution’s liability for taxes is limited to that which is required by law. A certificate of tax exemption will be provided to Contractor upon request. If Contractor makes sales to customers in Tennessee of taxable goods or services, 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. Contractor shall comply, and shall require any approved subcontractors to comply, with all laws and regulations governing the remittance of sales and use taxes on the sale of goods and services made by Contractor or any approved subcontractors.
8. Intellectual Property. The parties agree that each party’s intellectual property, including, but not limited to, the trademarks, trade names, logos, copyrighted materials, written works, photographs, images, graphics, video recordings, service marks, and symbols (collectively, “Intellectual Property”), constitute valuable property rights. Neither party claims by virtue of this Agreement any right, title, or interest in any previous or independently-derived Intellectual Property which is owned or controlled by the other party, whether or not copyrightable or patentable. The parties agree to promptly disclose to the other all Intellectual Property developed in the course of the work performed under this Agreement. Intellectual Property developed or produced jointly in the course of the work performed under this Agreement shall be jointly owned. The parties further agree that: (1) any Intellectual Property licensed hereunder from one party to the other shall, at all times, remain the property of the licensor of such Intellectual Property; (2) the use of such Intellectual Property by the party to whom any license is granted herein shall, at all times, be subject to the terms of this Agreement; (3) any use of a party’s Intellectual Property not specifically authorized or contemplated herein shall not be authorized except with the prior written permission of the licensing party; and (4) any licenses granted herein shall terminate with the termination of this Agreement.
9. Conflict Resolution. Except with respect to controversies or claims regarding either party’s confidential information or property rights under this Agreement, in the event any controversy or claim arises in connection with any provision of this Agreement, the parties shall try to settle their differences amicably by referring the disputed matter to their respective designated representative(s) 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.
10. Audit and Documentation. Contractor shall maintain documentation for all charges against Institution under this Agreement. In accordance with T.C.A. § 12-3-602, the books and records of Contractor or any subcontractor, insofar as they relate to work performed or money received under this Agreement, shall be maintained for a period of five (5) full years from the date of final payment, and shall be subject to audit at reasonable times by the State of Tennessee. Any financial statements required by this Agreement shall be prepared in accordance with generally accepted accounting principles.
11. Forms. Contractor agrees that no work shall commence until this Agreement is fully executed by both parties and that both a Minority Ethnicity and W-9 form are completed and returned with this Agreement.
12. Monitoring. Contractor’s activities conducted and records maintained pursuant to this Agreement shall be subject to monitoring and evaluation by the State of Tennessee. As required by the State of Tennessee GoDBE, Contractor shall assist Institution in monitoring and reporting Contractor’s performance of this Agreement by providing, as requested, a quarterly report of participation in the performance of this Agreement by small business enterprises and businesses owned by minorities, women, and Tennessee service-disabled veterans. Such reports shall be provided to Institution in form and substance required by Institution.
13. Notices. Any notice, request, approval, or consent required or permitted to be given under this Agreement shall be in writing and deemed to have been sufficiently given if delivered in person, sent by nationally recognized overnight carrier service with confirmation of receipt, or sent by certified or electronic mail, return receipt requested, to the party to whom it is directed at its address shown below:

If to **Institution:** Tennessee State University

3500 John A Merritt Boulevard

Nashville, TN 37209

Attn: (Department Name)

Email: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

With Copy to: Tennessee State University

 3500 John A. Merritt Boulevard

Nashville, TN 37209

 Attn: Office of the General Counsel

 Email: legalnotice@tnstate.edu

 If to **Contractor:** (Insert Contractor Name)

(Address Line 1)

(Address Line 2)

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

Email: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

1. Data Privacy and Security. If Contractor will have access to Institution’s student or customer data and will be mainlining Institution’s data on Contractor’s computer network or servers, the following provisions shall apply:
	1. Data Privacy. “Personal Information” means information provided to Contractor by or at the direction of Institution, or to which access was provided to Contractor by or at the direction of Institution, in the course of Contractor’s performance under this Agreement that (i) identifies or can be used to identify an individual (including, without limitation, names, signatures, addresses, telephone numbers, e-mail addresses and other unique identifiers); or (ii) can be used to authenticate an individual (including, without limitation, employee identification numbers, government issued identification numbers, passwords or PINs, financial account numbers, credit report information, biometric or health data, answers to security questions and other personal identifiers).

Contractor represents and warrants that its collection, access, use, storage, disposal and disclosure of Personal Information complies with all applicable federal and state privacy and data protection laws, including without limitation, the Gramm Leach-Bliley Act (“GLBA”); the Health Information Portability and Accountability Act (“HIPAA”); the Family Educational Rights and Privacy Act (“FERPA”); the FTC’s Red Flag Rules, and any applicable federal or state laws, as amended, together with the regulations promulgated thereunder. Some Personal Information provided by Institution to Contractor is subject to FERPA. Contractor acknowledges that its improper disclosure or re-disclosure of Personal Information covered by FERPA may, under certain circumstances, result in Contractor’s exclusion from eligibility to contract with Institution for at least five (5) years and agrees to become a “School Official” as defined in the applicable Federal Regulations for the purposes of this Agreement.

* 1. Data Security. Contractor represents and warrants that Contractor will maintain compliance with the SSAE16 standard and shall undertake any audits and risk assessments Contractor deems necessary to maintain compliance with SSAE16.
	2. Incident Response. “Security Incident” means any reasonably suspected breach of information security, unauthorized access to any system, server or database, or any other unauthorized access, use, or disclosure of Personal Information occurring on systems under Contractor’s control. Contractor shall: (a) provide Institution with the name and contact information for an employee of Contractor who shall serve as Customer’s primary security contact and shall be available to assist Customer twenty-four (24) hours per day, seven (7) days per week as a contact in resolving obligations associated with a Security Incident; (b) notify Institution of a Security Incident as soon as practicable, but no later than forty eight (48) hours after Contractor becomes aware of it, except where disclosure is prohibited by law; and (c) notify Institution of any such Security Incident at otssecurity@tnstate.edu.

Contractor shall use best efforts to immediately mitigate or resolve any Security Incident, at Contractor’s expense and in accordance with applicable privacy rights, laws, regulations and standards. Contractor shall reimburse Institution for actual costs incurred by Institution in responding to and mitigating damages caused by any Security Incident, including all costs of notice and/or remediation incurred under all applicable laws as a result of the Security Incident.

* 1. Return of Personal Information. At any time during the term of this Agreement, at Institution’s written request or upon the termination or expiration of this Agreement, Contractor shall return to Institution all copies, whether in written, electronic or other form or media, of confidential, highly-sensitive, or Personal Information in its possession, or at Institution’s direction, securely dispose of all such copies.
1. Service and Software Accessibility Standards. For contracts that will require employees or students of Institution to access Contractor’s software or website, Contractor warrants and represents that the service and software, including any updates, provided to Institution will meet the accessibility standards set forth in WCAG 2.0 AA (also known as ISO standard, ISO/IEC 40500:2012), EPub 3, and Section 508 of the Vocational Rehabilitation Act. To the extent that the products fail to meet such standards, Contractor will cooperate with Institution on completing necessary remediation measures and forms.. Contractor shall indemnify and hold Institution harmless in the event of claims arising from inaccessibility related to Contractor’s products/services.
2. Click-Wrap Agreements. For contracts which may require individual Institution users to accept online terms and conditions, Contractor agrees that click-wrap or click-through agreements shall not be binding upon Institution and that no individual, including Institution employees, has the authority to enter into, modify, amend, or supplement this Agreement through a click-wrap or click-through agreement. This Agreement can only be modified, amended, or supplemented in accordance with the terms of this Agreement.
3. FERPA. The parties acknowledge that students’ education records are protected by the Family Educational Rights and Privacy Act (“FERPA”), and that Contractor will be considered a "School Official" (as that term is used in FERPA and its implementing regulations) and will comply with all FERPA provisions if accessing such records. Student education records will only be used for the purposes of carrying out this Agreement. Student permission must be obtained before releasing specific data to anyone other than Institution and Contractor employees who have a legitimate educational purpose.
4. Relationship of the Parties. The parties hereto shall not act as employees, agents, partners, joint venturers, or associates of one another in the performance of this Agreement. The parties acknowledge that they 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.
5. Non-Assignment. Neither party shall assign this Agreement without obtaining the prior written approval of the other party.
6. Subcontracting. Contractor shall not enter into subcontracts for any of the services performed under this Agreement without obtaining the prior written approval of Institution. Nothing in this Agreement shall create a contractual relationship between Institution and any subcontractor, nor shall it create any obligation on Institution to pay fees due to such subcontractors. Notwithstanding any use of approved subcontractors, Contractor shall remain responsible for all work performed under this Agreement.
7. Modification. This Agreement may be modified only by a written amendment signed by the parties hereto.
8. Compliance with Laws. The parties shall comply with all applicable federal, state, and local laws and regulations in the performance of this Agreement.
9. Authority. As an entity of the State of Tennessee, Institution 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 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, or privileges of the State of Tennessee. Institution does not waive for itself or its officers, employees, or agents, any defenses or immunities available to it or any of them. Moreover, the provisions of this Agreement as they pertain to Institution are enforceable only to the extent and authority authorized by the Constitution and laws of the State of Tennessee.

1. Entire Agreement. This Agreement shall constitute the entire agreement between the parties relating to the subject matter contained herein. This Agreement supersedes any and all prior understandings, representations, negotiations, and agreements between the parties, whether written or oral.
2. Headings. Section headings are for reference purposes only and shall not be construed as part of this Agreement.
3. Severability. The unenforceability or invalidity of any provision of this Agreement shall not affect any other provision herein, and this Agreement shall continue in full force and effect and be constructed as if such provision had not been included. To this end, the terms and conditions of this Agreement are declared severable.
4. Counterparts. This Agreement may be executed in separate counterparts, each of which is deemed to be an original and all of which taken together constitute one and the same Agreement.
5. Assent. This Agreement shall not be binding upon the parties until it is signed by each party’s authorized official(s). For Institution, this shall be Institution’s President or the President’s authorized designee.

***[SIGNATURE PAGE FOLLOWS]***

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

**TENNESSEE STATE UNIVERSITY [INSERT CONTRACTOR NAME]**

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

Name: Dwayne Tucker Name:

Title: President Title:

Date: Date: