**ADDENDUM TO AGREEMENT**

**BETWEEN**

**TENNESSEE STATE UNIVERSITY**

**AND**

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

The following terms and conditions of this Addendum (the “Addendum”) shall amend the above-referenced agreement (the “Vendor Agreement”) between **TENNESSEE STATE UNIVERSITY,** hereinafter referred to as the “Institution,” and **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,** hereinafter referred to as the “Contractor,” and are incorporated by reference and made an integral part of the Vendor Agreement. The terms and conditions of this Addendum shall control in the event of any conflict with any term or condition of the Vendor Agreement or any other additional terms and conditions thereto. The Vendor Agreement and this Addendum shall be collectively referred to herein as the “Agreement.”

1. 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.
2. 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.
3. Termination. This Agreement may be terminated by either party upon at least thirty (30) days’ written notice to the other party. Contractor shall 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. 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. Payment. Payments to Contractor shall be made upon completion of services and submission of invoice(s) by Contractor, as submitted to: accountspayable@tnstate.edu. 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. Institution is required to make payments for products or services when purchased and, therefore, is prohibited from making advance deposits or payments. 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.
4. Travel Compensation. Where applicable, 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.
5. 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. Each party shall be solely liable for payment of its portion of all claims, liability, costs, expenses, demands, settlements, or judgments resulting from its own negligence or the negligence of those for whom it is legally responsible relating to or arising under this Agreement. 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.
6. Limitation of Liability. Pursuant to T.C.A. § 12-3-701(b), 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. In no event shall Contractor’s liability be limited to less than two (2) times the maximum liability of this Agreement. 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.
7. 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. Notwithstanding any term or condition of this Agreement, the insurance coverage afforded to Institution is controlled and limited by state law. A certificate of self-insurance shall be provided to Contractor upon request.
8. Conflict of Interest. Contractor warrants that no part of the total contracted amount shall be paid directly or indirectly to any employee or official 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 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.
9. 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.
10. 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.
11. 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.
12. 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.
13. 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. 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.
14. 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.
15. 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.
16. Audit and Documentation. In accordance with T.C.A. § 12-3-602, Contractor shall maintain books and records pertaining to this Agreement for a period of five (5) full years from the date of final payment and shall be subject to audit at any reasonable time and upon reasonable notice by Institution, the Comptroller of the Treasury, or their duly appointed representatives.
17. 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.
18. Click Wrap Agreements. For contracts which may require individual users to accept online terms and conditions, or in the event Contractor enters into terms of use, end user agreements, or other agreements or understandings, whether electronic, online, click-wrap, click-through, or shrink-wrap, with Institution employees or other individual users, Contractor agrees that such agreements shall not be binding upon Institution and shall not modify the terms and conditions of this Agreement. This Agreement can only be modified, amended, or supplemented in accordance with the terms of this Agreement.
19. 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.
20. Non-Assignment. Neither party shall assign this Agreement or enter into subcontracts for any of the work described herein without obtaining the prior written approval of the other party.
21. Modification. This Agreement may be modified only by a written amendment signed by the parties hereto.
22. Compliance with Laws. The parties shall comply with all applicable federal, state, and local laws and regulations in the performance of this Agreement.
23. 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.
24. Entire Agreement. The Agreement, including the Vendor Agreement and this Addendum, 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.

***[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: