

AGREEMENT BETWEEN
TENNESSEE TECHNOLOGICAL UNIVERSITY
AND

THIS AGREEMENT, by and between **TENNESSEE TECHNOLOGICAL UNIVERSITY**, hereinafter referred to as "University," and

hereinafter referred to as "Contractor";

Contractor Information:

Address: _____

City, State, Zip: _____

F.E.I.N/Social Security Number: _____

W I T N E S S E T H:

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

- A. The Contractor agrees to perform the work as described in the Statement of Work, herein made a part of this Agreement as *Appendix A*, on the following project:

Title: _____

Project Director: _____

Agency: _____

Grant Award No.: _____

CFDA No.: _____

TTU Account No.: _____

- B. Payments to the Contractor shall be made according to the Budget, herein made a part of this Agreement as Appendix B, but only after receipt of invoices for services performed. The final payment shall be made only after the Contractor has completely performed its duties under this Agreement. At the end of the project, the Contractor shall submit an invoice marked "FINAL" within forty-five (45) days after the end of the project period.

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

2. In no event shall the liability of the University under this Agreement exceed \$
3. The University is not obligated to increase funding to Contractor due to an after-the-fact indirect cost rate adjustment determined by a government audit agency.

C. The parties further agree that the following shall be essential terms and conditions of this Agreement.

1. The Contractor warrants that no part of the total contract amount provided herein shall be paid directly or indirectly to any officer or employee of the University or the State of Tennessee as wages, compensation, or gifts in exchange for acting as officer, agent, employee, subcontractor, 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 the Agreement will not become an employee of the University or the State of Tennessee. Notwithstanding anything to the contrary in the foregoing, nothing in this Paragraph shall be construed to prevent the University from paying any of its employees working on the project from funds received from Sponsor.
2. The Contractor and its subcontractors are required 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, the Americans with Disabilities Act of 1990, Executive Order 11, 246, and 38 U.S.C. Section 4212, along with the related regulations and reporting requirements of each. Neither party shall 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. Further, the parties also agree to take affirmative action to ensure that applicants are employed and that employees are treated during the employment without regard to their race, religion, creed, color, sex, disability or veteran status. Such action includes, but is not limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Contractor agrees to complete a Tennessee Board of Regents (TBR) Annual Title VI Survey (*Appendix C*) or cooperate with a TBR Title VI compliance audit if Contractor received Federal funds under this Agreement.
3. This Agreement shall not be binding until the Contractor has returned a completed Minority/Ethnicity form and a W-9 form to the University (*Appendix D*).
4. The Contractor, being an independent contractor and not an employee of the University, agrees to carry adequate public liability and other appropriate forms of insurance, to pay all taxes incident hereto, and otherwise protect and hold harmless the University from any and all liability not specifically provided for in this Agreement.
5. The term of this Agreement shall be from the date of the last signature to
6. This Agreement may be terminated by either party, without cause, by giving written notice to the other at least 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.
7. 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, the University shall have the right to immediately terminate this Agreement and withhold payments in excess of fair compensation for work completed. Notwithstanding anything in the foregoing sentence, the Contractor shall not be relieved of liability to the University for damages sustained by virtue of any breach of this Agreement by the Contractor.
8. The Contractor shall not assign this Agreement or enter into subcontracts for any of the work described herein without obtaining the prior written approval of the University 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.

9. This Agreement shall not be binding upon the parties until it is approved by the President or designee, or the Tennessee Board of Regents, as appropriate.
10. Compensation to the Contractor, if any, for travel, meals, or lodging shall be in the amount of actual cost to the Contractor, subject to maximum amounts and limitations specified in the University Travel Procedures, as they may be from time to time amended (<http://www.tntech.edu/adminpandp/accounting/Travel/acct4.html>).
11. Contractor shall submit to the University:
- Monthly progress reports
 - Quarterly progress reports
 - Annual progress reports
 - Final report
 - Other (please specify type of report) -
12. The Contractor shall maintain documentation for all charges against the University 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 the University or the Tennessee Comptroller of the Treasury or their duly appointed representatives. Within thirty (30) days following written request by University, Contractor shall make available for inspection and/or audit any and all records related to its performance under this Agreement. In the event an audit is initiated by the University, the Tennessee Comptroller of the Treasury or any Federal funding or regulatory authority pursuant to OMB Circular A-133 or A-128, Contractor agrees to retain any and all records associated with this Agreement until such time as any disputes arising therefrom are resolved. All audit disallowances under this Agreement shall be the responsibility of Contractor.
- a. Contractor acknowledges that it is aware of and agrees to comply with Office of Management and Budget Circular A-133, or A-128 as appropriate. Contractor agrees to provide University with audit information attesting to the fact that Contractor's records covering the period of this Agreement have been audited in accordance with OMB Circulars A-133 or A-128, whichever is appropriate (*Appendix E*).
- b. Contractor further agrees to notify University 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 cases of such non-compliance or audit findings, Contractor will promptly provide University with its written plan for corrective action. Audit reports and notifications should be sent to:

Tennessee Technological University
Office of Research and Graduate Studies
Box 5036
Cookeville, TN 38505
ATTN: A-133

13. Reimbursement for the cost of procuring goods, materials, or services shall be subject to the Contractor's compliance with applicable Federal procurement requirements.
14. Any and all claims against the University, its officers, agents, 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. Damages recoverable against the University shall be limited to claims paid by the Board of Claims or the Claims Commission pursuant to T.C.A. Section 9-8-301, et. Seq.
15. Tennessee Public Chapter No. 878 of 2006, TCA 12-4-124, requires that Contractors attest in writing that Contractor 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 this Agreement, who will utilize the

services of illegal immigrants in the performance of this Agreement. The attestation shall be made on the form, Attestation re Personnel Used in Contract Performance ("the Attestation") (*Appendix D*).

If Contractor is discovered to have breached the Attestation, the Commissioner of Finance and Administration shall declare that the Contractor shall be prohibited from contracting or submitting a bid to any Tennessee Board of Regents institution or any other State entity for a period of one (1) year from the date of discovery of the breach. Contractor may appeal the one (1) year prohibition by utilizing an appeals process in the Rules of Finance and Administration, 0620.

16. The Contractor acknowledges and understands that, for a period of two years beginning August 16, 2008, restrictions are imposed on former state employees who received a State of Tennessee Voluntary Buyout Program (VBP) severance payment with regard to contracts with state agencies that participated in the VBP.
 - a. The State will not contract with either a former state employee who received a VBP severance payment or an entity in which a former state employee who received a VBP severance payment or the spouse of such an individual holds a controlling financial interest.
 - b. The State may contract with an entity with which a former state employee who received a VBP severance payment is an employee or an independent contractor. Notwithstanding the foregoing, the Contractor understands and agrees that there may be unique business circumstances under which a return to work by a former state employee who received a VBP severance payment as an employee or an independent contractor of a State contractor would not be appropriate, and in such cases the State may refuse Contractor personnel. Inasmuch, it shall be the responsibility of the State to review Contractor personnel to identify any such issues.
 - c. With reference to either subsection a. or b. above, a Contractor may submit a written request for a waiver of the VBP restrictions regarding a former state employee and a contract with a state agency that participated in the VBP. Any such request must be submitted to the State in the form of the *VBP Contracting Restriction Waiver Request* format available from the State and the Internet at: www.staten.tn.us/finance/rds/ocr/waiver.html. The determination on such a request shall be at the sole discretion of the head of the state agency that is a party to this Contract, the Commissioner of Finance and Administration, and the Commissioner of Human Resources.

17. All instructions, notices, consents, demands, or other communications required or contemplated by Contractor shall be in writing and shall be made by first class mail, return receipt requested; or by overnight courier service with an asset tracking service; or by email or facsimile transmission with recipient confirmation. Any such communications, regardless of method of transmission, shall be addressed to the respective party at the appropriate mailing address, facsimile number, or email address as set forth below or to that of such other party or address, as may be hereafter specified by written notice.

For University:

Project Director:

(name) _____

(title) _____

(department) _____

Tennessee Technological University

Box _____

Cookeville, TN 38505

931-372- /931- fax

(email) _____

For Contractor (please complete):

Project Director:

Financial Contact:

Ms. Diane Cushman

Manager of Grant Accounting

Tennessee Technological University

Box 5037

Cookeville, TN 38505

931-372-3025/931-372-3898 fax

dcushman@tntech.edu

Financial Contact:

Contractual Contact:

Ms. Judy Hull

Director, Business Services

Tennessee Technological University

Box 5041

Cookeville, TN 38505

931-372-3452/931-372-3727 fax

jmhull@tntech.edu

Contractual Contact:

18. Title to equipment costing \$5,000 or more that is purchased or fabricated with research funds, or Contractor's cost sharing funds, as direct costs of the project or program, shall be governed by OMB Circular A-110.

19. Neither University nor Contractor shall use the name of the other either expressly or by implication, in any news, publicity release, or other promotional fashion without the express written approvals of the other.

20. 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, University reserves the right to terminate the Agreement upon written notice to Contractor. Said termination shall not be deemed a breach of contract by

University. Upon receipt of the written notice, the Contractor shall cease all work associated with the Agreement. Should such an event occur, the Contractor shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, the Contractor shall have no rights to recover from University any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

- D. It is understood that during the course of this project valuable intellectual property may be generated by University personnel alone or jointly with Contractor personnel. The following terms concerning intellectual property and inventions shall apply to this Agreement:
1. All rights and title to inventions and intellectual property, including but not limited to U.S. and foreign patent applications and patents resulting therefrom, which are invented solely by University personnel, will belong to University. All rights and title to inventions and intellectual property, including but not limited to U.S. and foreign patent applications and patents resulting therefrom, which are invented solely by Contractor personnel, will belong to Contractor. All rights and title on inventions and intellectual property, including but not limited to U.S. and foreign patent applications and patents resulting therefrom, which are invented jointly by University and Contractor personnel shall belong jointly to University and Contractor.
 2. University and Contractor agree to negotiate in good faith regarding the transfer of rights to inventions or other intellectual property held by the University that may have arisen from the project. Contractor shall have three (3) months from disclosure of any invention or discovery to notify University that it wants to enter into such a license agreement. The parties shall negotiate in good faith for a period not to exceed six (6) months from Contractor's notification or a longer period of time if the parties mutually agree to extend negotiations. If University and Contractor fail to enter into such an agreement, the rights to such inventions or other intellectual property shall be disposed of in accordance with University policies, with no obligation to Contractor. In the event that Contractor elects to obtain said license, Contractor shall bear the expense of the prosecution of any related patent applications, including without limitation, patentability investigation expenses, on behalf of University and University personnel.
 3. In the event that University declines to file patent applications in the U.S. or in any foreign countries on any patentable inventions, the rights to file will, with prior agreement of all persons who will be engaged in the project, and to the extent that any inventions growing out of the project also relied upon governmental sponsored research, be transferred by University and those persons to Contractor, if Contractor so requests. Under these circumstances, patent applications filed by Contractor will be made with the understanding that a share in royalties equivalent to that provided to the inventor(s) under the current University patent policy will be provided to the inventor(s) by Contractor and provided the University shall be granted a world wide, fully paid-up, nonexclusive license to any Inventions so patented.
- E. The Contractor shall comply with all applicable State, and Local laws and regulations in the performance of this Agreement, including any applicable University policies. This Agreement shall be governed by and subject to the laws of the State of Tennessee. Further, as this Agreement covers work to be done under a Federal award which requires certain assurances and as University has the specific responsibility for ensuring that all required assurances are obtained, the Contractor agrees to comply with all applicable Federal laws, including but not limited to the following and will, upon request, furnish University with written assurances of such compliance: Animal Welfare Act (P.L. 89-544, as amended); Protection of Human Subjects (45 CFR Part 46, Subpart A); Anti-Kickback Act of 1986 (41 USC 51-58); International Traffic in Arms Regulations (ITAR-22 CFR Parts 120 through 130); Export Administration Regulations (EAR-15 CFR Parts 730 through 799); Non-delinquency on Federal Debt (2 CFR 215.22(h)); Debarment and Suspension (45 CFR Part 620); Drug-free Workplace (41 USC 701-707, as amended); Clean Air Act (42 USC 7401-7661, as amended); Clean Water Act (33 USC 1251-1376); Lobbying (2 USC 1611, as amended); Conflict of Interest Regulations (National Science Foundation, 59 Fed. Reg. 25820 and 60 Fed. Reg. 35820) (Public Health Service, 42 CFR Part 50, Subpart F and/or 45 CFR Part 94); and Scientific Fraud and Misconduct (Contractor shall immediately report to University any and all findings of fraud or misconduct under this Agreement, in accordance with applicable law and agency policy).

F. This Agreement consists of the following parts and constitutes the entire agreement by and between University and Contractor with regard to the subject of this Agreement: Agreement, Appendix A through E. Any other agreement, written or oral, is hereby superseded. No amendments, changes, additions, deletions, or modifications to or of this Agreement shall be valid unless reduced to writing, signed by all the parties, and attached hereto. This Agreement supersedes and cancels any previous agreement whether written or oral entered into between the parties related to the topics discussed herein. All terms of this Agreement which by their nature have continuing effects shall survive the termination or expiration of this Agreement.

In witness whereof, the parties have by their duly authorized representatives set their signatures.

CONTRACTOR

By: _____ Date _____ Title _____

TENNESSEE TECHNOLOGICAL UNIVERSITY

By: _____ Date _____ Title _____
Dr. Claire Stinson Vice President for Business & Fiscal Affairs

APPENDIX A
STATEMENT OF WORK

APPENDIX B
CONTRACTOR BUDGET

APPENDIX C

**TENNESSEE BOARD OF REGENTS
ANNUAL TITLE VI SURVEY**

Tennessee Board of Regents - Title VI
Survey of Sub-Recipients of Federal Funds

1. Date of Survey _____
2. Type of survey: Initial ___ Annual ___ Other ___
3. Name of Institution/School _____
4. Name of President/Director _____
5. Name of Local Title VI Coordinator _____
(Affirmative Action Officer)
6. Non-Discrimination Policies: Does your institution/school have a written policy stating that services will be provided to all persons without regard to race, color, or national origin?
Yes ___ No ___
7. Posters: Are posters containing Title VI information prominently displayed within the facility? Yes ___ No ___
8. Do these posters include the name of the Local Coordinator to whom complaints should be referred? Yes ___ No ___
9. Records: Are permanent records kept of all Title VI complaints? Yes ___ No ___
10. Complaints: If applicable, describe below any complaints received in this reporting period:

Name of Complainant	Race	Charge	Findings

11. Dissemination: Is Title VI information disseminated to your employees, applicants, students and other beneficiaries of services? Yes ___ No ___

If yes, describe how all beneficiaries are informed.

12. Are you confident that all beneficiaries are clearly aware of their rights under Title VI, including the right to file a complaint? Yes ___ No ___
13. Are new employees clearly informed about their specific responsibilities to recipients of services under Title VI? Yes ___ No ___

14. Are staff members periodically re-oriented or refreshed on information detailing their Title VI responsibilities? Yes ___ No ___

If yes, state by whom and how:

15. Compliance Assurance: Do all contracts to provide services contain a Title VI statement of compliance? Yes ___ No ___

If yes, attach a copy of Title VI statement included in such contracts, FOR INITIAL SURVEY ONLY.

16. Courtesy Titles: Does a written policy exist which states that courtesy titles (i.e., Mr., Mrs., Ms., Miss) will be used by staff to address beneficiaries without regard to race, color, or national origin in all communications? Yes ___ No ___

17. Are all physical areas (exits, waiting rooms, dining areas, restrooms, etc.) provided and used without regard to race, color, or national origin of beneficiaries? Yes ___ No ___

18. Is there a particular Title VI area in which you would like assistance? Please describe.

19. Comments: State below any particular problems you find with the manual, self-survey etc.

Declaration of Respondent: I declare that I have completed the data in this survey and to the best of my knowledge and belief, it is true, correct, and complete.

Signature/Position of Individual Completing Survey

Declaration of Administrative Head: I declare that I have reviewed and approved the information provided in this self-survey and to the best of my knowledge and belief, it is true, correct, and complete.

Signature: Administrative Head

APPENDIX D

**TENNESSEE BOARD OF REGENTS
HIGHER EDUCATION SYSTEM
MINORITY/ETHNICITY
and
ATTESTATION RE: PERSONNEL USED
IN CONTRACT PERFORMANCE FORM**

W-9 FORM

**FORMS FOR APPENDIX D
TO BE PROVIDED BY PURCHASING**

APPENDIX E

A-133 AUDIT CERTIFICATION

APPENDIX E

A-133 AUDIT CERTIFICATION

Contractor Name: _____

Address: _____

Contact Person: _____

Phone: _____ Fax: _____

E-mail: _____

TTU Project PI/Director: _____

Account #: _____

The Federal Office of Management and Budget Circular A-133 "Audits of Institutions of Higher Education and Other Nonprofit Institutions" requires that recipients of Federal awards, who are subject to the provisions of OMB Circular A-133, comply with the audit requirements of OMB Circular A-133.

As a recipient of Federal funds, Tennessee Technological University (TTU) requests certification from your institution that you are in compliance, if necessary, with the audit requirements of OMB Circular A-133. Accordingly, please check the appropriate items below and provide the applicable documents, if necessary:

1. We are not subject to the audit requirements of OMB A-133 because our institution:
- Did not expend more than \$500,000 in Federal awards during the last completed fiscal year.
 - Is a for-profit organization.
 - Is exempt for other reasons (explain). _____

Our most recent, independent audited financial statements are for the period ending _____. The auditors expressed the following opinion:

- Unqualified – the financial statements taken as a whole, represent the financial position, in all material respects, of the organization.
 - Qualified – a copy of the Independent Auditor's Report is enclosed.
 - Adverse – a copy of the Independent Auditor's Report is enclosed.
 - Our financial statements are not reviewed by an independent auditor(s).
2. Our most recently completed A-133 audit is for the fiscal year ending (date) _____.
- The audit disclosed that the financial statements present fairly, in all material respects, the financial position or our organization. There were no material instances of noncompliance with applicable Federal laws and regulations. There were no matters involving internal control that are considered to be a material weakness or a reportable condition. There are no unresolved prior year findings. (Please submit a copy of the audit report along with this survey. If your audit is published on the web, please provide the web link: _____)

- The audit report disclosed material noncompliance issues and/or material internal control weaknesses and/or reportable conditions. (Please submit a copy of the audit report along with this survey which includes:

- (1) Financial statements and schedule of expenditures of Federal awards;
- (2) Auditor's report on compliance and internal controls;
- (3) Summary schedule of prior audit findings; and
- (4) Corrective action responses or plans.

I certify that the above checked boxes characterize the position of the institution of which I am a representative.

Signature: _____ Date: _____

Name and Title: _____

Should you have any questions regarding this form, please contact Sammie Sparks at (931) 372-3202.