

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: _____

WITNESSETH:

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. 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:

- 17. 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.
- 18. 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.
- 19. 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.

20. This Agreement requires the Contractor to provide products and/or services that are funded in whole or in part under the American Recovery and Reinvestment Act of 2009, Public Law 111-5, (Recovery Act). The Contractor is responsible for ensuring that all applicable requirements, including but not limited to those set forth herein, of the Recovery Act are met and that the Contractor provides information to the State as required.

The Contractor (and any subcontractor) shall comply with the following:

- a. Federal Grant Award Documents, as applicable.
- b. Executive Office of the President, Office of Management and Budget (OMB) Guidelines as posted at www.whitehouse.gov/omb/recovery_default/, as well as OMB Circulars, including but not limited to A-102 and A-133 as posted at www.whitehouse.gov/omb/financial_offm_circulars/.
- c. Office of Tennessee Recovery Act Management Directives (posted on the Internet at www.tnrecovery.gov).
- d. Any Contractor, if covered by the Single Audit Act Amendments of 1996 and OMB Circular A-133, agrees to specifically identify Recovery Act expenditures separately for Federal awards under the Recovery Act on the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF-SAC) required by OMB Circular A-133.
- e. The Recovery Act, including but not limited to the following sections of that Act:
 - (1) Section 1604 – Disallowable Use. No funds pursuant to this Agreement may be used for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.
 - (2) Section 1512 – Reporting and Registration Requirements.
 - i. The Contractor must report on use of Recovery Act funds provided through this Agreement. Information from these reports will be made available to the public.
 - ii. The subrecipient Contractor must maintain current registrations in the Central Contractor Registration (www.ccr.gov) at all times during which they have an active Contract funded with Recovery Act funds.
 - (3) Section 1553 – Recovery Act Whistleblower Protections. An employee of any non-Federal employer receiving covered funds under the Recovery Act may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing, including a disclosure made in the ordinary course of an employee's duties, to the Accountability and Transparency Board, an inspector general, the Comptroller General, a member of Congress, a State or Federal regulatory or law enforcement agency, a person with supervisory authority over the employee (or other person working for the employer who has the authority to investigate, discover or terminate misconduct), a court or grand jury, the head of a Federal agency, or their representatives, information that the employee believes is evidence of one or more of the following related to the implementation or use of covered funds:
 - i. Gross mismanagement,
 - ii. Gross waste,
 - iii. Substantial and specific danger to public health or safety,
 - iv. Abuse of authority, or
 - v. Violation of law, rule, or regulation (including those pertaining to the competition for or negotiation of a Contract).

Non-enforceability of Certain Provisions Waiving Rights and Remedies or Requiring Arbitration: Except as provided in a collective bargaining agreement, the rights and remedies provided to aggrieved employees by this section may not be waived by any agreement, policy, form, or condition of employment, including any predispute arbitration agreement. No predispute arbitration agreement shall be valid or enforceable if it requires arbitration of a dispute arising out of this section.

Requirement to Post Notice of Rights and Remedies: The Contractor and any subcontractor shall post notice of the rights and remedies as required under Section 1553. (Refer to Section 1553 of the American Recovery

and Reinvestment Act of 2009, Pub. L. 111-5 located at www.recovery.gov, for specific requirements of this section and prescribed language for the notices.)

- (4) Section 902 – Access Of Government Accountability Office. The Contractor shall provide that the Comptroller General and his representatives are authorized:
 - i. To examine any records of the Contractor or any of its subcontractors, that directly pertain to, and involve transactions relating to, this Agreement or a subcontract; and
 - ii. To interview any officer or employee of the Contractor or any of its subcontractors regarding such transactions.
- (5) Section 1514 – Inspector General Reviews. Any inspector general of a federal department or executive agency has the authority to review, as appropriate, any concerns raised by the public about specific investments using such funds made available in the Recovery Act. In addition, the findings of such reviews, along with any audits conducted by any inspector general of funds made available in the Recovery Act, shall be posted on the inspector general's website and linked to the website established by Recovery Act Section 1526, except that portions of reports may be redacted to the extent the portions would disclose information that is protected from public disclosure under sections 552 and 552a of title 5, United States Code.
- (6) Section 1515 – Access of Offices of Inspector General to Certain Records and Employers. With respect to this Agreement, any representative of an appropriate inspector general appointed under section 3 or 8G of the Inspector General Act of 1978 (5 U.S.C. App.), is authorized:
 - i. To examine any records, of the Contractor or any of its subcontractors, that pertain to and involve transactions relating or pursuant to this Agreement; and
 - ii. To interview any officer or employee of the Contractor or any subcontractors regarding such transactions.
- (7) Section 1606 – Wage Rate Requirements. All laborers and mechanics employed by pursuant to this Agreement shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code. All rulings and interpretations of the Davis-Bacon Act and related acts contained in 29 CFR 1, 3, and 5 are herein incorporated by reference.

For purposes of this Agreement, laborer or mechanic includes at least those workers whose duties are manual or physical in nature (including those workers who use tools or who are performing the work of a trade), as distinguished from mental or managerial. The term laborer or mechanic includes apprentices, trainees, helpers, and, in the case of contracts subject to the Contract Work Hours and Safety Standards Act, watchmen or guards.

- (8) Section 1605 – Buy American Requirements for Construction Material – Buy American, Use of American Iron, Steel, and Manufactured Goods. None of the funds provided by this Agreement may be used for a project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States.
- f. The Contractor agrees to comply with any modifications or additional requirements that may be imposed by law and future guidance and clarifications of Recovery Act requirements.
 - g. If the Contractor enters into one or more subcontracts for any of the services performed under this Agreement, each subcontract shall contain provisions specifically imposing on the subcontractor all requirements set forth in this Agreement Section C.21.

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, non-exclusive 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 _____
Dr. Claire Stinson
Vice President for
Planning and Finance
Title

APPENDIX A
STATEMENT OF WORK

APPENDIX B
CONTRACTOR BUDGET

APPENDIX C

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

APPENDIX D

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

W-9 FORM

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.