

TENNESSEE TECHNOLOGICAL UNIVERSITY

AND

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

hereinafter referred to as "Subrecipient";

Subrecipient Information:

Address: _____
City, State, Zip: _____
F.E.I.N./Social Security Number: _____

University Prime Award Information:

Project Title: _____
TTU Project Director: _____
Funding Agency: _____
Funding Agency Award No.: _____
Funding Agency Contact: _____
Award Dates: _____
CFDA No.: _____
TTU Account No.: _____

W I T N E S S E T H:

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

- A. The Subrecipient agrees to perform the work as described in the Statement of Work, herein made a part of this Agreement as *Appendix A*, on the above-referenced project.
- B. This is a cost-reimbursable contract. Payments to the Subrecipient 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 and the required quarterly report. The final payment shall be made only after the Subrecipient has completely performed its duties under this Agreement. At the end of the project, the Subrecipient shall submit an invoice marked "FINAL" along with the final technical report within forty-five (45) days after the end of the project period.
- 1. If the Subrecipient 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 Subrecipient by the Internal Revenue Service and Immigration Naturalization Service and

presented to the University. Payment(s) may be subject to withholding based on U. S. Internal Revenue Service regulations.

2. In no event shall the liability of the University under this Agreement exceed \$_____.
3. This Agreement shall not be binding until the Subrecipient has returned a completed Contractor Requirements Form (*Appendix C*) and a W-9 Form to the University.
4. The University is not obligated to increase funding to Subrecipient due to an after-the-fact indirect cost rate adjustment determined by a government agency.
5. The prime award documentation is attached as *Appendix D*. Performance of Subrecipient under this Agreement shall also conform to the requirements of the Prime Award and applicable Federal and state regulations.

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

1. The Subrecipient and its subcontractors agrees 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.
2. The Subrecipient, 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.
3. The term of this Agreement shall be from the date of the last signature to _____.
4. 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 Subrecipient shall be entitled to receive just and equitable compensation for any satisfactory authorized work completed as of the termination date.
5. If the Subrecipient fails to fulfill in a timely and proper manner its obligations under this Agreement, or if the Subrecipient shall violate any of the terms of this Agreement or fail to adhere to Federal guidelines, 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 Subrecipient shall not be relieved of liability to the University for damages sustained by virtue of any breach of this Agreement by the Subrecipient.
6. The Subrecipient 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's Board of Trustees, as appropriate. Approval shall not be given if the proposed contractor was or is currently ineligible to bid on the contract.
7. This Agreement shall not be binding upon the parties until it is approved by the President or designee, or the Tennessee Tech Board of Trustees, as appropriate.

8. Subrecipient agrees to adhere to the applicable requirements of CFR 200.317 to 200.325 which prescribe standards for use by recipients in establishing procedures for the procurement of supplies and other expendable property, equipment, real property and other services with Federal funds.
9. Subrecipient shall submit to the University quarterly progress reports and a final technical report. These reports shall accompany the Subrecipient's quarterly invoices and final invoice for payment.
10. Subrecipient hereby certifies that it has established policies and procedures for regularly reporting and managing financial conflicts of interest for its key personnel as required by CFR 200.112. Subrecipient further certifies that it will report any significant conflict of interest as it relates to this project to University, within 30 days of disclosure to Subrecipient. Subrecipient's report to University will include a management plan for such disclosed conflicts of interest. Subrecipient will provide University with a timely annual follow up of the management of previously disclosed conflicts of interest.
11. The Subrecipient shall maintain documentation for all charges against the University under this Agreement. The books, records and documents of the Subrecipient, 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, Subrecipient 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 CFR 200.512, Subrecipient 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 Subrecipient.
 - a. Subrecipient acknowledges that it is aware of and agrees to comply with the Federal Code of Regulations 200.512 regarding audit requirements. Subrecipient agrees to provide University with audit information attesting to the fact that Subrecipient's records covering the period of this Agreement have been audited in accordance with CFR 200.512.
 - b. Subrecipient further agrees to notify University in writing if at any time during the period of this Agreement it is no longer in compliance with CFR 200.512, or if there are audit findings that relate specifically to this Agreement. In cases of such non-compliance or audit findings, Subrecipient 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
Box 5036
Cookeville, TN 38505
ATTN: A-133

12. If this Agreement is for \$25,000 or more and requires the Subrecipient to provide supplies and/or services that are funded in whole or in part by Federal funds that are subject to Federal Funding Accountability and Transparency Act (FFATA), the Subrecipient is responsible for ensuring that all applicable requirements, including but not limited to those set forth herein, of FFATA are met and that the Subrecipient provides information to the University as required.

The Subrecipient shall comply with the following:

- a. Reporting of Total Compensation of the Subrecipient's Executives*.
 - (1) The Subrecipient shall report the names and total compensation of each of its five most highly compensated executives for the Subrecipient's preceding completed fiscal year, if in the Subrecipient's preceding fiscal year it received:

- i. 80 percent or more of the Subrecipient's annual gross revenues from Federal procurement contracts and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
- ii. \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and
- iii. The public does not have access to information about the compensation of the executives* through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

*Executive means officers, managing partners, or any other employees in management positions.

(2) Total compensation means the cash and noncash dollar value earned by the executive during the Subrecipient's preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)):

- i. Salary and bonus.
- ii. Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
- iii. Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
- iv. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
- v. Above-market earnings on deferred compensation which is not tax qualified.
- vi. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.

- b. The Subrecipient must report executive total compensation described above to the University by the end of the month during which this Agreement is awarded.
- c. If this Agreement is amended to extend its term, the Subrecipient must submit an executive total compensation report to the University by the end of the month in which the amendment to this Agreement becomes effective.
- d. The Subrecipient will obtain a Data Universal Numbering System (DUNS) number and maintain its DUNS number for the term of this Agreement. More information about obtaining a DUNS Number can be found at: <http://fedgov.dnb.com/webform/>

The Subrecipient's failure to comply with the above requirements is a material breach of this Agreement for which the University may terminate this Agreement for cause. The University will not be obligated to pay any outstanding invoice received from the Subrecipient unless and until the Subrecipient is in full compliance with the above requirements.

- 13. 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.

14. By the signature below and in accordance with the Tennessee Public Chapter No. 878 of 2006, TCA 12-4-124, the Subrecipient attests in writing that it will not knowingly utilize the services of illegal immigrants in the performance of this Agreement and will not knowingly utilize the services of any contractor, if permitted under this Agreement, who will utilize the services of illegal immigrants in the performance of this Agreement. If Subrecipient is discovered to have breached the Attestation, the Commissioner of Finance and Administration shall declare that the Subrecipient shall be prohibited from contracting or submitting a bid to any other State entity for a period of one (1) year from the date of discovery of the breach. Subrecipient may appeal the one (1) year prohibition by utilizing an appeals process in the Rules of Finance and Administration, 0620.
15. All instructions, notices, consents, demands, or other communications required or contemplated by Subrecipient 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:

For Subrecipient (please complete):
Project Director:

Financial Contact:
Ms. Debbie Gernt
Manager of Grant Accounting
Tennessee Technological University
Box 5037
Cookeville, TN 38505
931-372-3026/931-372-3898 fax
dgernt@tntech.edu

Financial Contact:

Contractual Contact:
Ms. Nicole Clark
Contract Compliance Assistant
Tennessee Technological University
Box 5164
Cookeville, TN 38505
931-372-3202
nclark@tntech.edu

Contractual Contact:

16. Title to equipment costing \$5,000 or more that is purchased or fabricated with research funds, or Subrecipient's cost sharing funds, as direct costs of the project or program, shall be governed by CFR 200.313.
17. Neither University nor Subrecipient 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.

18. 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 Subrecipient. Said termination shall not be deemed a breach of contract by University. Upon receipt of the written notice, the Subrecipient shall cease all work associated with the Agreement. Should such an event occur, the Subrecipient shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, the Subrecipient 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 Subrecipient 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 Subrecipient personnel, will belong to Subrecipient. 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 Subrecipient personnel shall belong jointly to University and Subrecipient.
 2. University and Subrecipient 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. Subrecipient 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 Subrecipient's notification or a longer period of time if the parties mutually agree to extend negotiations. If University and Subrecipient 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 Subrecipient. In the event that Subrecipient elects to obtain said license, Subrecipient 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 Subrecipient, if Subrecipient so requests. Under these circumstances, patent applications filed by Subrecipient 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 Subrecipient and provided the University shall be granted a world wide, fully paid-up, non-exclusive license to any Inventions so patented.
- E. The Subrecipient 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 Subrecipient 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); and Scientific Fraud and Misconduct (Subrecipient 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 may be executed in one or more counterparts and may be electronically transmitted, subject to the limitations of State or Federal law and/or University policies. Each counterpart, regardless of transmission method, shall be deemed an original and all of which together shall constitute one Agreement.

G. This Agreement, including all documents incorporated herein by reference, constitutes the entire Agreement and understanding of the parties hereto and shall supersede and replace any and all prior or contemporaneous representations, agreements, or understandings of any kind, whether written or oral, relating to the subject matter hereof. No changes to this Agreement shall be binding upon either party unless incorporated in a written modification to the Agreement and signed by the Parties' Authorized Representatives.

H. This Agreement may be executed in one or more counterparts and may be electronically transmitted, subject to the limitations of State or Federal law and/or University policies. Each counterpart, regardless of transmission method, shall be deemed an original and all of which together shall constitute one Agreement.

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

SUBRECIPIENT

By: _____ Date _____ Title _____

TENNESSEE TECHNOLOGICAL UNIVERSITY

By: _____ Date _____ Title _____

APPENDIX A
STATEMENT OF WORK

APPENDIX B
SUBRECIPIENT BUDGET

APPENDIX C
CONTRACTOR REQUIREMENTS FORM

APPENDIX D
PRIME AGREEMENT