**C-**Click or tap here to enter text.

**SOFTWARE LICENSE AGREEMENT**

This Agreement is made this day Click or tap to enter a date. by and between Austin Peay State University, (Licensee), and Click or tap here to enter text.(Licensor).

W I T N E S S E T H

The parties agree to the terms and conditions set forth below.

1. Licensor hereby grants to Licensee a nonexclusive license to use the software described below subject to the terms and conditions set forth herein: Click or tap here to enter text.

2. In addition to the software described above, Licensor shall provide the following documentation/instruction:  
Click or tap here to enter text.

3. Licensee agrees to the following restrictions on use of the software: Click or tap here to enter text.

4. This agreement shall be effective upon execution by all parties and ending Click or tap to enter a date. Total term of agreement not to exceed sixty (60) months.

5. In consideration for the license granted, Licensee shall pay to Licensor the total sum of $Click or tap here to enter text., (maximum financial obligation of Licensee) pursuant to the payment schedule set forth below: Click or tap here to enter text.

6. Licensor shall deliver the software according to the following terms: Click or tap here to enter text.

7. Licensor hereby warrants and represents as follows:

a. Licensor is the owner of the software system or otherwise has the right to grant to Licensee the license granted herein without violating the rights of any third party, and there is no actual or threatened suit by any such third party based on an alleged violation of such right by Licensor;

b. Licensor understands the purposes for which the Software shall be used by Licensee and warrants that the software is fit for such intended use;

c. For a period of Click or tap here to enter text.from the date of Licensee's acceptance of the software, the software shall not contain any defects and shall function properly and in conformity with the product description and specifications.

d. In addition, Licensor makes the following warranty: Click or tap here to enter text.

e. Licensor makes no other express or implied warranties.

8. Unless otherwise specified herein, Licensee shall be permitted to make one copy of the Software for archival purposes only. Said copy shall bear all copyright, trademark and other proprietary notices included in the original Software package.

9. Neither party may assign this agreement without the other party's prior written consent, which shall not be unreasonably withheld.

10. a. The Licensor shall, at his own expense, be entitled to and shall have the duty to defend any suit which may be brought against the State of Tennessee to the extent that it is based on a claim that the products or services furnished infringe a United States copyright or patent. The Licensor shall further indemnify the State against any award of damages and costs made against the State by a final judgment of a court of last resort in any such suit. The Licensee shall provide Licensor immediate notice in writing of the existence of such claim and full right and opportunity to conduct the defense thereof, together with all available information and reasonable cooperation, assistance and authority to enable Licensor to do so. No costs or expenses shall be incurred for the account of the Licensor without its written consent. The Attorney General for the State of Tennessee reserves the right to participate in the defense of any such action. Licensor shall not be liable for any award of judgment against Licensee or the State of Tennessee reached by compromise or settlement unless the Licensor accepts the compromise or settlement. Licensor shall have the right to enter into negotiations for and the right to effect settlement or compromise of any such action, but no such settlement or compromise shall be binding upon the Licensee and the State of Tennessee unless approved by the Attorney General.

b. If, in Licensor's opinion, the products or services furnished under the contract are likely to, or do become, the subject of a claim of infringement of a United States copyright or patent, then without diminishing the Licensor's obligation to satisfy the final award, the Licensor may at its option and expense:

1. Procure for the Licensee the right to continue using the products or services.

2. Replace or modify the alleged infringing products or services with other equally suitable products or services that are satisfactory to the Licensee, so that they become non-infringing.

3. Remove the products or discontinue the services and cancel any future charges pertaining thereto.

Provided, however, that the Licensor will not exercise option b. 3. until the Licensor and Licensee have determined that options b. 1. and b. 2. are impractical.

c. The Licensor shall have no liability to the Licensee, however, if any such copyright or patent infringement or claim thereof is based upon or arises out of:

1. The use of the products or services in combination with apparatus or devices not supplied or approved by Licensor.

2. The use of the products or services in a manner for which the products or services were neither designated nor contemplated.

3. The claimed infringement of any copyright or patent in which Licensee or the State of Tennessee has any direct or indirect interest by license or otherwise (apart from this License).

11. The State of Tennessee and Licensee shall be entitled to monitor this Contract to the extent allowed by [T.C.A. § 12-3-602](https://advance.lexis.com/documentpage/?pdmfid=1000516&crid=a0d50f0b-eb95-4202-980c-c9d3b1304513&nodeid=AAMAADAAGAAC&nodepath=%2FROOT%2FAAM%2FAAMAAD%2FAAMAADAAG%2FAAMAADAAGAAC&level=4&haschildren=&populated=false&title=12-3-602.+Right+to+inspect+plant+or+place+of+business+and+audit+books+and+records.&config=025054JABlOTJjNmIyNi0wYjI0LTRjZGEtYWE5ZC0zNGFhOWNhMjFlNDgKAFBvZENhdGFsb2cDFQ14bX2GfyBTaI9WcPX5&pddocfullpath=%2Fshared%2Fdocument%2Fstatutes-legislation%2Furn%3AcontentItem%3A591W-MF80-R03K-R3G5-00008-00&ecomp=h3t7kkk&prid=a42d2740-ca94-4783-8316-68449b76f4fe), and Licensor shall maintain books and records related to this Contract for three (3) years from the date of final payment.

12. Contractor certifies its compliance with applicable federal and state laws, rules and regulations and APSU policies with respect to Conflict of Interest, including, but not limited to the following:

a. Pursuant to T.C.A. § 12-4-103, Contractor acknowledges that it is unlawful for any state official or employee to bid on, sell, or offer for sale, any merchandise, equipment or material, or similar commodity, to the state of Tennessee during the tenure of such official's or employee's office or employment, or for six (6) months thereafter, or to have any interest in the selling of the same to the state;

b. Pursuant to APSU’s Conflict of Interest Policy 1:001, APSU prohibits purchases of merchandise, equipment, materials or similar commodities from a APSU employee’s business or from a family member’s business. Family member, as defined by the policy, means a spouse or child dependent or non-dependent of APSU employee, unless otherwise defined by statute.

c. Pursuant to APSU’s Conflict of Interest Policy 1:001, APSU prohibits service contracts with an individual who is, or within the past six months has been a state employee. Contracts with the employee’s spouse, a company or corporation in which a controlling interest is held by any state employee or the employee’s spouse shall be considered, for the purpose of applying this rule, to be a contract with said individual.

The Licensor warrants that no part of the total contract amount provided herein shall be paid directly or indirectly to any officer or employee of the State of Tennessee as wages, compensation, or gifts in exchange for acting as officer, agent, employee, subcontractor or consultant to the Licensor in connection with any work contemplated or performed relative to this contract.

13. All notices required or permitted to be given by one party to the other under this Agreement shall be sufficient if sent by certified mail, return receipt requested, to the parties at the respective addresses set forth below or to such other address as the party to receive the notice has designated by notice to the other party.

Licensee:

Click or tap here to enter text.

Click or tap here to enter text.

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Licensor:

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Click or tap here to enter text.

14. This Agreement shall be governed by and construed under the laws of the State of Tennessee.

15. The parties agree to comply with Titles 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, Executive Order 11,246, the Americans with Disabilities Act of 1990, and the related regulations to each. Each party assures that it will not 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.

The parties also agree to take affirmative action to ensure that applicants are employed and that employees are treated during their employment without regard to their race, religion, creed, color, sex, age, disability, veteran status or national origin. Such action shall include, but not be 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 available to employees and applicants for employment.

16. The entire contract between the parties consists of

a. any amendment to this Contract Click or tap here to enter text., with the latter in time controlling over any earlier amendments;

b. this Contract with any attachments or exhibits (excluding the items listed at subsections c. through f., below), which includes Click or tap here to enter text.;

c. any clarifications of or addenda to the Contractor’s proposal seeking this Contract;

d. the Institution solicitation, Click or tap here to enter text., as may be amended, requesting responses in competition for this Contract;

e. any technical specifications provided to proposers during the procurement process to award this Contract; and

f. the Contractor’s response seeking this Contract.

In the event of conflicting provisions, the documents shall be construed according to the following priority: Addenda and/or amendments (most recent with first priority), this Agreement, Purchase Order, Request for Bids and Bid.

17. If any provision of this Agreement is held invalid or otherwise unenforceable, the enforceability of the remaining provisions shall not be impaired thereby.

18. The failure by any party to exercise any right provided for herein shall not be deemed a waiver of any right hereunder.

1. Additional provisions, if any, to be added by Procurement and Contract Services.

In witness whereof, the parties, through their authorized representatives, have affixed their signatures below.

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| **CONTRACTOR:**  By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Name (Printed):  Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | **AUSTIN PEAY STATE UNIVERSITY:**  By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Name: Michael J. Licari by  Title: President by  Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |