

AMENDMENT TO AGREEMENT  
BETWEEN  
AUSTIN PEAY STATE UNIVERSITY  
AND

This amendment, made this        day of        , 20        , by and between Austin Peay State University (University) and        (Contractor/Vendor).

WITNESSETH

WHEREAS, the parties desire to modify the terms and conditions and to add or delete certain other terms and conditions to their original Agreement        the parties hereby agree as set forth below.

The following provisions are added to and fully incorporated into the agreement:

**CIVIL RIGHTS CLAUSE**

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, Americans with Disabilities Act of 1990, Executive Order 11,246 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, handicap, 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, disability 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.

**ILLEGAL IMMIGRANT CLAUSE**

This contract prohibits contractor's hiring of illegal immigrants. Tennessee Public Chapter No. 878 of 2006, TCA 12-4-124, requires that Contractor attest in writing

that Contractor will not knowingly utilize the services of illegal immigrants in the performance of this Contract and will not knowingly utilize the services of any subcontractor, if permitted under this Contract, who will utilize the services of illegal immigrants in the performance of this Contract. The attestation shall be made on the form, Attestation re Personnel Used in Contract Performance ("Attestation"), which is attached and hereby incorporated by this reference.

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 by utilizing an appeals process in the Rules of Finance and Administration, 0620.

### **AUDIT CLAUSE**

The Contractor/Vendor shall maintain documentation for all charges against the state under this contract. The books, records and documentation of the Contractor/Vendor insofar as they relate to work performed or money received under this contract, shall be maintained in conformity with generally accepted accounting principles for a period of three 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 State Comptroller of the Treasury, or their duly appointed representatives, or a licensed independent public accountant.

### **INDEMNITY**

The Contractor shall indemnify and hold harmless the University, the Tennessee Board of Regents and their officers, employees and agents, individually and collectively, from any and all liability (including loss of use), expenses, demands and claims in connection with or arising out of any injury or alleged injury to persons (including death or damages or alleged damage to property), sustained or alleged to have been sustained as a result of acts, omissions or negligence on the part of the Contractor, its employees, or any other person acting for or on its or their behalf, in connection with or to have arisen out of the performance of the Contract by the Contractor, its subcontractors and their agents, servants and employees. The Contractor shall defend any suit or action brought against them or any party, and shall pay all damages, judgments, costs, and expenses, including attorney's fees in connection with said demands and claims resulting therefrom. The University agrees to immediately notify Contractor of all losses or claims resulting therefrom. The University agrees to immediately notify Contractor of all losses or claims for which it will seek indemnity under this Agreement. The University agrees not to incur any cost or expense with respect to any such loss or claim without the approval of Contractor and further agrees to fully cooperate with Contractor and Contractor's authorized representatives in the investigation, defense and settlement of all such claims.

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

- 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 that state of Tennessee as wages, compensation, or gifts in exchange for acting as officer, agent, employee, sub-Contractor, 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 months he/she has not been and during the term of this contract will not be an employee of the State of Tennessee.

The parties further agree that Austin Peay State University, as an entity of the government of the state of Tennessee, is prohibited by Tennessee state law from entering into agreements that contain certain UNACCEPTABLE PROVISIONS. Therefore any provision in the original agreement between the parties that attempts to require Austin Peay State University to act contrary to Tennessee law is null, void and unenforceable.

**The parties agree that any of the following provisions contained in the original agreement are null, void and unenforceable:**

- Provisions requiring the University to pay taxes.
- Provisions requiring the University to pay travel expenses in excess of maximum limitations set for in TBR Policy 4:03:03:00.
- Provisions designating governing law other than the state of Tennessee.
- Provisions requiring the University to make deposits or payments before goods are received or services are performed, except that the University may pay for computer software or computer software/hardware maintenance and other similar maintenance services upon the signing of an agreement. (Such maintenance services are considered fully delivered upon execution of a contract)
- Provisions requiring the University to purchase or obtain liability, property or other insurances or a performance bond.
- Provisions requiring the University to insure, guarantee, indemnify or hold harmless.
- Provisions requiring the University to obtain or pay for outside labor of persons not employed by the University.
- Provisions requiring the University to consent to binding arbitration by a third party of claims arising out of or relating to the agreement.

- Provisions constituting a disclaimer of vendor's liability for incidental, exemplary, or consequential damages.
- Provisions constituting a disclaimer by vendor of express or implied warranties of merchantability and fitness for a particular purpose.
- Provisions constituting a Limitation on dollar amount of damages recoverable by state from vendor.
- Provisions that shift the risk of loss or title to the University before delivery and/or installation of products.
- Provisions granting the right of vendor to enter University's premises without notice to remove equipment or product upon alleged default by University.
- Provisions permitting an award of attorney's fees or cost to vendor in the event of legal action against University.
- Provisions constituting a consent to jurisdiction in courts outside of Tennessee
- Provisions requiring the University to pay late charges, finance charges or interest in excess of that provided under the Tennessee Prompt Pay Act.
- Provisions permitting the vendor to take a secured interest in personal property under the agreement.
- Provisions constituting a Limitation on the time in which the University may bring suit.
- Provisions requiring confidentiality and nondisclosure that violate the Tennessee Open Records Act.
- Provisions constituting an agreement to pay a penalty or liquidated damages.
- Provisions defining the term of an agreement as being automatically renewed; unless the agreement is cancelable for convenience upon a specified period of days notice by the university.

Amendment to Agreement #  
Between Austin Peay State University  
And

Subject to the modifications set forth in this amendment, the above-referenced original agreement between the parties is hereby ratified and confirmed.

IN WITNESS WHEREOF, the parties, through their authorized representatives, have affixed the signatures below.

*(Same signatures as original agreement)*

CONTRACTOR/VENDOR:

Name: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_  
*Signature*

Federal ID or SS#: \_\_\_\_\_  
*(Enter your taxpayer identification number above. For individuals and sole proprietors, this is your social security number. For others, it is your employer identification number.)*

AUSTIN PEAY STATE UNIVERSITY

By: \_\_\_\_\_

Date: \_\_\_\_\_

**ATTESTATION RE PERSONNEL USED IN CONTRACT  
PERFORMANCE**

<b>CONTRACT NUMBER:</b>	
<b>CONTRACTOR LEGAL ENTITY NAME:</b>	
<b>FEDERAL EMPLOYER IDENTIFICATION NUMBER:</b> (or Social Security Number)	

- **The Contractor, identified above, does hereby attest, certify, warrant, and assure that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract.**
- **The Contractor, identified above, does hereby attest, certify, warrant, and assure that they are not a former state employee who received a State of Tennessee Voluntary Buyout Program (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.**

**SIGNATURE &  
DATE:**

---

NOTICE: This attestation MUST be signed by an individual empowered to contractually bind the Contractor. If said individual is not the chief executive or president, this document shall attach evidence showing the individual's authority to contractually bind the Contractor.