C-Click or tap here to enter text.

**Austin Peay State University Standard**

**Software Contract Addendum to Licensor’s Contract Form**

**Part I:** Austin Peay State University (“Licensee”), located at 601 College Street, Clarksville, Tennessee, 37040 and Click or tap here to enter text., (“Licensor”), located at Click or tap here to enter text., are entering into a contract/agreement and, for their mutual convenience are using the standard contract form provided by the Licensor (hereinafter “Licensor’s Contract Form”). This addendum, duly executed by the parties, is attached to and made a part of that contract.

**Entity of State.**  Austin Peay State University is a state-funded public Licensee of higher learning.  As an entity of the State of Tennessee, under the Constitution and laws of the State of Tennessee it possesses certain rights and privileges, is subject to certain limitations and restrictions, and only has such authority as is granted to it under the Constitution and laws of the State of Tennessee.  Notwithstanding any other provision to the contrary, nothing in this Agreement is intended to be, nor shall it be construed to be, a waiver of the sovereign immunity of the State of Tennessee or a prospective waiver or restriction of any of the rights, remedies, claims and privileges of the State of Tennessee.  Moreover, notwithstanding the generality or specificity of any provision herein, the provisions of this Agreement as they pertain to the Licensor are enforceable only to the extent authorized by the Constitution and laws of the State of Tennessee. Additionally, Tennessee law requires contracts entered into by Licensee to contain certain provisions, including but not limited to those related to state/federal debarment, registration for collection of Tennessee sales/use tax, use of illegal immigrants in contract performance, conflict of interest, data privacy and security, Iran Divestment Act, etc., and all such required provisions, to the extent applicable, are found in Part II of this addendum.

The Licensor’s Contract Form is, with the exceptions noted herein, acceptable to the Licensee. However, because state constitutional and statutory restrictions prevent the Licensee from accepting certain standard clauses contained in the Licensor’s Contract Form, and in consideration of the convenience of using that form contract and this form addendum without the necessity of specifically negotiating a separate contract document, ***the*** ***parties agree that none of the following provisions described below, if contained in the Licensor’s Contract Form, shall have any effect or be enforceable against the Licensee***:

1. Provisions requiring the Licensee to pay taxes (T.C.A. §§ 67-5-203 and 67-6- 322), cancelation fees, liquidated damages, incidental or consequential damages, or punitive or exemplary damages (Licensee is liable for actual damages only T.C.A. § 9-8-101 et seq.). Provisions requiring the Licensee to pay late charges, finance charges or interest in excess of that provided under the Tennessee Prompt Pay Act (T.C.A. § 12-4-701 et seq.). Provisions requiring the Licensee to pay punitive damages or costs of litigation other than court costs (T.C.A. § 9-8-307(d)).
2. Payment of travel/per diem expenses in excess of maximum limitations set forth in APSU Policy 4:015.
3. Provisions designating the governing law of a state other than Tennessee.
4. Provisions requiring the Licensee to make deposits or payments before goods are received or services are performed (T.C.A. § 12-4-703), except that the Licensee may pay for licensing, preventive maintenance/service, subscriptions, memberships, and in other instances only if approved in accordance with APSU Policies, upon the signing of an agreement.
5. Provisions requiring the Licensee to purchase or obtain liability, property or other insurance or a performance bond. TCA § 9-8-108 (a)(3)(C) and 9-8-108 (a)(4).
6. Provisions requiring the Licensee to agree to assume the risk of liability which might otherwise fall on other parties are void as both an unauthorized attempt to abrogate sovereign immunity and an unauthorized attempt to lend the State’s credit. OAG No. 04-065, OAG 93-1. Tenn. Const. art. I, §17; Tenn. Const. art. II, §31. Indemnification and Hold Harmless provisions requiring the Licensee to indemnify and hold another party harmless are prohibited. Rules of Tennessee Department of General Services 0690-03-01-.17 (3)(a). and T.C.A. § 8-6-301.
7. Provisions requiring the Licensee to obtain or pay for outside labor of persons not employed by the Licensee (for example, union stage-hands, teamsters, etc.) are prohibited unless such cost is included as part of the total contract price.
8. Provisions requiring the Licensee to consent to binding arbitration by a third party of claims arising out of or relating to the agreement. Only the Attorney General can enter into a settlement agreement that is binding upon the State. TCA §§ 8-6-301 and 20-13-103. Therefore, the State may participate in arbitration or mediation should it choose to do so, but no agreement reached during arbitration is binding unless approved by the Tennessee Attorney General.
9. Provisions passing risk of loss or title to the Licensee before delivery and/or installation of products unless Licensor provides shipment protection in the Licensee's interest.
10. Right of Licensor to enter Licensee's premises without notice to remove equipment or product upon alleged default by Licensee.
11. Provisions permitting the Licensor to take a secured interest in personal property under the agreement.
12. Provisions providing for a limitation of time in which the Licensee may bring suit. (T.C.A. § 28-1-113).
13. Provisions requiring confidentiality and nondisclosure that violate the Tennessee Open Records Act, TCA § 10-7-101, et seq. Except as otherwise provided by statute, all State records are public records and open to inspection by any citizen of this State. TCA §10-7-503.
14. Limitation of Liability. Pursuant to T. C. A. §§ 12-3-701 and 12-3-1210 an Licensee shall not agree to limitation the liability of a Licensor for less than two (2) times the maximum liability, estimated liability or maximum revenue of the contract.

IN NO EVENT SHALL THIS LIMITATION OF LIABILITY APPLY TO CLAIMS FOR INFRINGEMENT OF THIRD PARTY INTELLECTUAL PROPERTY RIGHTS, INTENTIONAL TORTS, CRIMINAL ACTS, FRAUDULENT CONDUCT OR ACTS OR OMISSIONS THAT RESULT IN PERSONAL INJURIES OR DEATH.

1. Provisions by the Licensor of disclaimers of express or implied warranties.
2. Provisions automatically renewing or automatically extending the contract beyond the original term, unless the contract is cancelable for convenience upon a specified period of days’ notice by the University.
3. Provisions stating exclusivity terms and conditions.
4. Provisions permitting State of Tennessee funds to purchase alcoholic beverages. State funds are not be used for the purchase of alcoholic beverages.
5. Provisions prohibiting the University from hiring Licensor’s employees, officers, contractors, or suppliers do not apply to the Licensee.
6. Provisions requiring or stating that the terms of the Licensor’s Form Contract shall prevail over the terms of this addendum in the event of conflict.

**The parties further agree to the following additional provisions:**

**Part II: Austin Peay State University’s Standard Terms and Conditions.**

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. Term and Termination:

Contract Term. This Contract shall be effective for the period commencing on Click or tap to enter a date. and ending on Click or tap to enter a date.. The Licensee shall have no obligation for goods and/or services rendered by the Licensor which are not performed within the specified period.

Term Extension. This agreement shall not be extended for more than a five (5) year period.

Termination for Convenience. The Licensee may terminate this Contract without cause and for any reason. The Licensee shall give the Licensor at least, sixty (60) days written notice before the effective termination date. The Licensor shall be entitled to compensation for all conforming goods delivered and accepted by the Licensee or for satisfactory, authorized services completed as of the termination date. In no event shall the Licensee be liable to the Licensor for compensation for any goods neither requested nor accepted by the Licensee or for any services neither requested by the Licensee nor satisfactorily performed by the Licensor. In no event shall the Licensee’s exercise of its right to terminate this Contract for convenience relieve the Licensor of any liability to the Licensee for any damages or claims arising under this Contract.

Termination for Cause. If the Licensor fails to perform its obligations under this Contract in a timely or proper manner, or if the Licensor materially violates any terms of this Contract (“Breach Condition”), the Licensee shall have the right to immediately terminate the Contract and withhold payments in excess of fair compensation for completed goods and/or services, Notwithstanding the above, the Licensor shall not be relieved of liability to the Licensee for damages sustained by virtue of any breach condition and the Licensee may seek other remedies allowed at law or in equity for breach of this contract.

Subject to Funds Availability. The Contract is subject to the appropriation and availability of Licensee and/or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the Licensee reserves the right to terminate the Contract upon written notice to the Licensor. Termination under this Section shall not be deemed a breach of Contract by the Licensee. Upon receipt of the written notice, the Licensor shall cease all work associated with the Contract. Should such an event occur, the Licensor shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, the Licensor shall have no right to recover from the Licensee any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

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. 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.

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:

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

b. 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.

c. 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.

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:

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

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

c. 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).

10. 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.

Click or tap here to enter text.

Click or tap here to enter text.

Click or tap here to enter text.

Licensor:

Click or tap here to enter text.

Click or tap here to enter text.

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Click or tap here to enter text.

Click or tap here to enter text.

1. If result of bid place bid info here.
2. This Contract may be modified only by a written amendment that has been executed and approved by the appropriate parties as indicated on the signature page of this Contract.
3. The Licensor shall not assign this Contract or enter into a subcontract for any of the services performed under this Contract without obtaining the prior written approval of the University.
4. The Licensor warrants that it has the right to enter into the agreement and to grant the rights set forth herein to the University. The Licensor will defend, subject to the statutory duty of the Tennessee Attorney General, indemnify, and hold Licensee harmless against any claim that University’s use of the Product in accordance with this Agreement infringes upon any patent, copyright, or other intellectual property right of any third party. Licensee agrees to provide prompt written notice of any claim for indemnification.
5. If this contract provides for reimbursement for travel, meals or lodging, such payment shall be in the amount of actual cost/per diem, and shall be expressly subject to the limits and rules set forth in APSU’s General Travel Policies and Procedures, Policy No. 4:015.
6. Licensor 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:

	1. Pursuant to [T.C.A. § 12-4-103](https://advance.lexis.com/documentpage/?pdmfid=1000516&crid=672f0461-04d5-42af-911e-56bc137681d2&nodeid=AAMAAEAABAAD&nodepath=%2FROOT%2FAAM%2FAAMAAE%2FAAMAAEAAB%2FAAMAAEAABAAD&level=4&haschildren=&populated=false&title=12-4-103.+Bidding+by+state+employees+prohibited.&config=025054JABlOTJjNmIyNi0wYjI0LTRjZGEtYWE5ZC0zNGFhOWNhMjFlNDgKAFBvZENhdGFsb2cDFQ14bX2GfyBTaI9WcPX5&pddocfullpath=%2Fshared%2Fdocument%2Fstatutes-legislation%2Furn%3AcontentItem%3A4X8K-V930-R03K-62FN-00008-00&ecomp=h3t7kkk&prid=a42d2740-ca94-4783-8316-68449b76f4fe), Licensor 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;
	2. Pursuant to [APSU’s Conflict of Interest Policy 1:001](https://www.apsu.edu/policy/1s_governance_organization_and_general_policies/1001-conflict-interest.php), 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;
	3. Pursuant to [APSU’s Conflict of Interest Policy 1:001](https://www.apsu.edu/policy/1s_governance_organization_and_general_policies/1001-conflict-interest.php), 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;
	4. The Licensor warrants that no part of the total Contract Amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subLicensor, or consultant to the Licensor in connection with any work contemplated or performed relative to this Contract; and
	5. The Licensor acknowledges, understands, and agrees that this Contract shall be null and void if the Licensor is, or within the past six months has been, an employee of the State of Tennessee or if the Licensor is an entity in which a controlling interest is held by an individual who is, or within the past six months has been, an employee of the State of Tennessee.
7. Non-discrimination. The Licensor shall abide by all applicable Federal and State law pertaining to discrimination and hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or otherwise be subjected to discrimination in the performance of this Contract or in the employment practices of the Licensor on the grounds of classifications protected by Federal or State law.
8. 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 11246, 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.
9. The parties hereto, in the performance of this Contract, shall not act as employees, partners, joint venturers, or associates of one another. It is expressly acknowledged by the parties hereto that the parties are independent contracting entities and that nothing in this Contract shall be construed to create an employer/employee relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual goods and/or services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.
10. The Licensor, being an independent Licensor, agrees to carry adequate public liability and other appropriate forms of insurance, and to pay all taxes incident to this Contract. The Licensee shall have no liability except as specifically provided in this Contract.
11. The Licensee is self-insured under the Tennessee Claims Commission Act, Tenn. Code Ann. §§ 9-8-301 et seq., which covers certain tort liability for actual damages of up to $300,000 per claimant and $1,000,000 per occurrence.
12. State and Federal Compliance: The Licensor shall comply with all applicable Federal and State laws and regulations in the performance of this Contract.
13. Hold Harmless. The Licensor agrees to indemnify and hold harmless the Licensee as well as its officers, agents, and employees from and against any and all claims, liabilities, losses, and causes of action, including reasonable attorney’s fees, which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of the Contractor, its employees, or any person acting for or on its or their behalf relating to this Contract. The Contractor further agrees it shall be liable for the reasonable cost of attorneys for the University in the event such service is necessitated to enforce the terms of this Contract or otherwise enforce the obligations of the Contractor to the University hereunder.

In the event of any such suit or claim, the Contractor shall give the University immediate notice thereof and shall provide all assistance required by the University in the University’s defense. The Contractor shall have full right and obligation to conduct the Contractor’s own defense thereof. Nothing contained herein shall be deemed to accord to the Contractor, through its attorney(s), the right to represent the University in any legal matter, such rights being governed by Tennessee Code Annotated, Section 8-6-106.

1. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Licensor agrees that it will be subject to the exclusive jurisdiction of the Tennessee Claims Commission in actions that may arise under this Contract. The Licensor acknowledges and agrees that any rights or claims against the University or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under Tennessee Code Annotated, Sections 9-8-101 through 9-8-407.
2. PCI-DSS Compliance: If Licensor will accept credit or debit cards in its performance under this Agreement, Licensor agrees that it will at all times during the performance of this Agreement comply with current Payment Card Industry Data Security Standards (PCI-DSS standards).
3. Sales and Use Tax: The Licensor shall be registered with or have received an exemption from the Department of Revenue for the collection of Tennessee sales and use tax. This registration requirement is a material requirement of this Contract. The Licensor shall comply, and shall require any subcontractor to comply, with all laws and regulations governing the remittance of sales and use taxes on the sale of goods and services made by the Licensor, or the Licensor’s subcontractor.
4. Contract Monitoring. Licensor’s Commitment to Diversity: The Licensor shall assist the Licensee in monitoring the Licensor’s performance, per T.C.A. § 12-3-602 & T.C.A. § 12-3-305, of this commitment by providing, as requested, a quarterly report of participation in the performance of this Contract by small business enterprises and businesses owned by minorities, women, and Tennessee service-disabled veterans. Such reports shall be provided to the Licensee in form and substance as required by Licensee.

The Contractor’s activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the University, the Comptroller of the Treasury, or their duly appointed representatives.
5. The Licensor shall maintain documentation for all charges against the Licensee under this Contract. The books, records, and documents of the Licensor, insofar as they relate to work performed or money received under this Contract, 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 Licensee, the Comptroller of the Treasury, or their duly appointed representatives. Any financial statements required by this Contract shall be prepared in accordance with generally accepted accounting principles.” (Reference T.C.A Code 12-3-602(c))
6. Red Flags and Identity Theft. The Service Provider shall have policies and procedures in place to detect relevant Red Flags that may arise in the performance of the Service Provider's activities under the Agreement, or review the Licensee's Red Flags identity theft program and report any Red Flags to Licensee.
7. Service and Software Accessibility Standards: The Licensor warrants and represents that the service and software, including any updates, provided to the Licensee will meet the accessibility standards set forth in WCAG 2.0 AA (also known as ISO standard, ISO/IEC 40500:2012), EPub 3 and Section 508 of the Vocational Rehabilitation Act. To the extent that the Products fail to meet the WCAG 2.0 AA, EPub 3 and Section 508 standards, the Licensor will provide Licensee with a fully completed Accessibility Statement and Conformance and Remediation forms. The Licensor shall indemnify and hold the Licensee harmless in the event of claims arising from inaccessibility related to the Licensor’s products/services.
8. Click Agreements.  The Licensor agrees that click-wrap or click -through agreements shall not be binding upon the Licensee.  No employee has the actual or apparent authority to enter into click-wrap or click -through agreements on behalf of the Licensee without the approval of the Licensee’s Procurement and/or Contracts Office.  No employee has the authority to modify, amend, or supplement this Agreement through a click-wrap or click -through agreement.  This Agreement can only be modified, amended, or supplemented under these terms through a written amendment in accordance with the Licensee’s procedures, policies, and guidelines.
9. No person or entity, other than the Licensee and Licensor and their successors and permitted assigns has any rights, remedies, claims, benefits, or powers under this agreement, and this agreement will not be construed or interpreted to confer any rights, remedies, claims, benefits, or powers upon any third party. There are no third-party beneficiaries of this agreement.
10. Data Privacy and Security. Contractor acknowledges that in the course of providing services under this Agreement, Contractor may receive information or be granted access to restricted University information including, but not limited to, personally-identifiable information, student records, protected health information or individual financial information (collectively, Protected Information) of the students, employees, customers and/or donors of the University.

Protected Information can include any information that (i) identifies or can be used to identify an individual (including, without limitation, names, signatures, addresses, telephone numbers, e-mail addresses, images and other unique identifiers); or (ii) can be used to authenticate an individual (including, without limitation, employee identification numbers, government-issued identification numbers, passwords or PINs, financial account numbers, credit report information, biometric or health data, answers to security questions and other personal identifiers.

Contractor represents and warrants that its collection, access, use, storage, disposal and disclosure of University Protected Information complies with all applicable federal and state legal and regulatory requirements including, but not limited to, the Family Educational Rights and Privacy Act ("FERPA") of 1974 (20 U.S.C. § 1232g; 34 CFR Part 99), the Gramm-Leach-Bliley Act ("GLBA") (15 U.S.C §§ 6801(b) and 6805(b)(2)), the Federal Trade Commission Safeguards Rule (16 CFR § 314), the Health Information Portability and Accountability Act ("HIPAA") (45 CFR Parts 160 and 164), Payment Card Industries Data Security Standard (PCI-DSS), Tennessee Data Breach Law (Tenn. Code Ann. § 47–18–2107).

Contractor agrees that any University Protected Information provided under the Agreement shall be used only and exclusively to support the service and service execution and not for any other purpose, unless such other use is subsequently specifically agreed to in writing by both parties. Contractor further agrees that it will take all reasonable steps to ensure that its employees or subcontractors who have access to University Protected Information shall not copy, disclose or transmit any of the Protected Information to any third party except as necessary to perform the services under this Agreement.

Contractor agrees that it will protect the University Protected Information it receives according to commercially acceptable standards and no less rigorously than it protects its own confidential information. Specifically, the Contractor shall implement, maintain, and use appropriate administrative, technical, and physical security measures, which may include but not be limited to encryption techniques, to preserve the confidentially, integrity, and availability of all electronically managed Protected Information. Contractor shall ensure that such security measures are regularly reviewed and revised to address evolving threats and vulnerabilities.

Contractor agrees that any and all University Protected Information will be stored, processed, and maintained solely on designated target servers and that no University Protected Information at any time will be processed on or transferred to any portable or laptop computing device or any portable storage medium, unless that storage medium is in use as part of the Contractor’s designated backup and recovery processes.

Contractor agrees that any and all electronic transmission or exchange of University Protected Information shall be encrypted during transport. Any transmission, transport or storage of University Protected Information to data centers outside of the United States is prohibited without prior written authorization from the University.

Contractor shall implement an Information Security Program throughout the term of this Agreement as required by 16 CFR § 314, for all University Protected Information obtained by or provided to Contractor pursuant to this Agreement, and provide details of said program upon University request.

Contractor, upon request of the University, will provide the University with the Contractor’s most current SOC 2 report, or any other comparable information security assessment report for Contractor’s operations or the operations of any of the Contractor’s third party providers.

For the purposes of this Agreement, a Security Incident shall be defined as any reasonably suspected unauthorized access to any system, server or database, or any other unauthorized access, acquisition, use, or disclosure of Protected Information occurring on systems under Contractor’s control.

In the event that a Security Incident occurs, Contractor shall:

a. provide the University with the name and contact information for an employee of Contractor who shall serve as the University’s primary security contact and shall be available to assist the University twenty-four (24) hours per day, seven (7) days per week as a contact in resolving obligations associated with a Security Incident;

b. notify the University of a Security Incident as soon as practicable, but no later than twenty-four (24) hours after Contractor becomes aware of it, except where disclosure is prohibited by law; and

c. Notify the University Chief Information Officer of any such Security Incident by telephone at the following number: 931-221-7113 and via e-mail at taylors@apsu.edu; with a copy by read receipt email to the University IT Security Office at apitsecurity@apsu.edu; and with a copy by read receipt e-mail to Contractor’s primary business contact at the University.

Immediately following Contractor’s notification to the University of a Security Incident, the parties shall coordinate to investigate the Security Incident in accordance with the Contractor’s standard policies and procedures.

Contractor shall use best efforts to immediately mitigate, resolve any Security Incident, at the Contractor’s expense and in accordance with applicable privacy rights, laws, regulations and standards. Contractor shall use best efforts to promptly prevent any further recurrence of any such Security Incident.

Contractor shall reimburse the University for actual costs incurred by the University in responding to and mitigating damages caused by any Security Incident, including all costs of notice and or/remediation.

Contractor shall indemnify, defend and hold the University harmless from all lawsuits, claims, liabilities, damages, settlements, or judgments, which arise as a result of Contractor’s negligent acts or omissions or willful misconduct as a part of the Security Incident.

Any Security Incident may be grounds for immediate termination of this Agreement. Contractor agrees that within 30 days of termination, cancellation or expiration of this Agreement, Contractor shall return to the University all copies, whether written, electronic or other form, of Protected Information in an agreed upon format, unless the University requests that the data be destroyed. This provision applies to all copies of Protected Information in the possession of the Contractor or any of the Contractor’s third-party providers.

If the University elects to request destruction of University Protected Information, Contractor agrees to securely perform sanitization or physical destruction of the data in accordance with NIST Guidelines for Media Sanitization, NIST SP 800–8. Contractor shall certify in writing to the University that return or destruction of data has been completed.

Cyber Insurance. Contractor shall carry error & omissions and cyber liability insurance in an amount not less than $5,000,000 per claim and annual aggregate, covering all acts, errors, omissions, negligence, infringement of intellectual property (except patent and trade secret); network security and privacy risks, including but not limited to unauthorized access, failure of security, breach of privacy perils, wrongful disclosure, collection, or other negligence in the handling of confidential information, privacy perils, and including coverage for related regulatory defense and penalties; data breach expenses, in an amount not less than $5,000,000 and payable whether incurred by University or Contractor, including but not limited to consumer notification, whether or not required by law, computer forensic investigations, public relations and crisis management firm fees, credit file or identity monitoring or remediation services in the performance of services for University or on behalf of University hereunder.

1. General Data Protection Regulation (GDPR) – Attachment Click or tap here to enter text., if applicable.
2. Prohibition of Illegal Immigrants. T.C.A. § 12-3-309 prohibits State entities from contracting to acquire goods or services from any person who knowingly utilizes the service of illegal immigrants in the performance of the contract and by signing this Contract, the Contactor attests, certifies, warrants, and assures that the Licensor shall not knowingly utilize the services of illegal immigrants in the performance of the Contract and will not knowingly utilize the services of any subcontractor, if permitted under the Contract, who will utilize the services of illegal immigrants in the performance of the Contract.
3. Debarment and Suspension. The Licensor certifies, to the best of its knowledge and belief, that it and its principals:

	1. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal or State department or agency;
	2. have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offense in connection with, obtaining attempting to obtain, or performing a public (Federal, State, or Local) transaction or grant under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
	3. are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or Local) with commission of any of the offenses listed in section b. of this certification; and
	4. have not within a three (3) year period preceding this Contract had one or more public transactions (Federal, State, or Local) terminated for cause or default.
4. Iran Divestment Act: The requirements of Tenn. Code Ann. § 12-12-101 et. seq., addressing contracting with persons with investment activities in Iran, shall be material provision of this Contract. The Licensor agrees, under penalty of perjury, that to the best of its knowledge and belief that it is not on the list created pursuant to Tenn. Code Ann § 12-12-106.
5. Force Majeure. The obligations of the parties to this Contract are subject to prevention by causes beyond the parties’ control that could not be avoided by the exercise of due care including, but not limited to, acts of God, riots, wars, epidemics or any other similar cause.
6. The Licensor shall be paid, upon the submission of invoices or vouchers, the prices stipulated herein for supplies delivered and accepted or services rendered in completion, less deductions, if any, in accordance with the provisions of the Tennessee Prompt Pay Act of 1985.
7. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Contract are declared severable.
8. The failure by any party to exercise any right provided for herein shall not be deemed a waiver of any right hereunder.
9. The Licensee is not bound by this Contract until it is executed by the President or her/his delegate per APSU Delegation of Authority for Approval and Execution of Contracts and Agreements Policy 4:022. The person signing on behalf of the Contractor represents she/he is authorized to enter into the Contract on behalf of the entity named in the Contract. The Parties agree that this Contract may be executed in counterparts, executed electronically, and transmitted electronically.

In the event of any inconsistency between this Addendum and the Licensor’s Contract Form, the terms of this Addendum shall govern. Except as modified hereby, all of the terms of the Licensor’s Contract Form shall remain in full force and effect.

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

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| **LICENSOR:**By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Name (Printed): Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | **LICENSEE:**By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Name: Michael J. Licari by Title: President byDate: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |