



AUSTIN PEAY STATE UNIVERSITY
Procurement and Contract Services
 505 York Street
 P.O. Box 4638
 Clarksville, Tennessee 37040
 Telephone (931) 221-7032
 Fax (931) 221-6300

REQUEST FOR QUOTATION

1. FILE NUMBER: **RFQ #**
2. DUE DATE – NO LATER THAN: **BID OPENING TIME**
3. FOR THE PURCHASE OF: **NAME OF RECURRING SERVICE AND/OR GOODS**
4. FOR DELIVERY TO: Austin Peay State University, Clarksville, Tennessee
5. I (We) propose to furnish the goods and/or services specified herein, at the price(s) quoted opposite each item listed in this Request for Quotation.
6. It is understood and agreed that this quotation shall constitute an offer to sell which when accepted in writing by Austin Peay State University’s Procurement and Contract Services Department, and subject to the terms and conditions of such acceptance, will constitute a valid and binding contract between the undersigned and APSU.
7. Institution is exempt from state, federal, and local taxes; do not include taxes in quotation. Quote F.O.B., Austin Peay, Clarksville, Tennessee. Minimum terms: Net 30 days. Prepayment not allowed.
8. **IMPORTANT:** This quotation must be manually signed by Seller’s person with proper signature authority. Failure to sign and submit **original signature** on this document will result in REJECTION of your quotation. **Electronic or photocopy signatures will NOT be accepted. Quotation must be received in the Procurement and Contract Services by the designated time or bid will be REJECTED. Faxed bids will NOT be accepted.**
9. These prices _____ will be extended _____ will not be extended to other state institutions of higher education.
10. If accepted within _____ days of bid opening (above), the undersigned offers and agrees to honor this quotation.

(Name of Corporation, Firm or Person)	(Number of Days to Make Delivery)
(Mailing Address – PO Box or Street)	(Email)
(City, State, ZIP Code)	(Telephone/Fax Numbers)
(Authorized Signature for the Bidder)	(Date Signed)
(Typed or Printed Name and Title of Person Signing)	(F.O.B. Point) Austin Peay State University, Clarksville, TN

RFQ NUMBER – NAME OF RECURRING GOODS AND/OR SERVICE



THIS FORM MUST BE RETURNED WITH THE REQUEST FOR QUOTATION

I certify that this quotation is not made in connection with any other bidder submitting a quotation for the same commodity(s) and this quotation is in all other respects fair and without collusion, raid or conflict of interest.

I additionally certify, by signature below and submission of this quotation, that neither my principals nor I are presently disbarred, suspended, proposed for disbarment, declared ineligible or voluntarily excluded from participation in this transaction by any Federal department or agency.

The (Proposer/Bidder/Vendor) certifies, by signature below and submission of this (proposal/bid) that neither I nor my principals are presently disbarred, suspended, proposed for disbarment, declared ineligible or voluntarily excluded from participation in this transaction by any State or Federal department or agency.

Pursuant to TCA Code 12-4-120, all solicitations for goods and services must require contractors to be registered with the Department of Revenue for the collection of Tennessee sales and use tax.

Concerning the certification above, if you are unable to certify to any of the statements in that certifications, an explanation must be attached to your quotation.

I further certify that I received, as part of this bid document, Austin Peay's Minimum Bid Terms and Conditions.

Authorized Signature for Bidder	Printed or Typed Name
Title	

TYPE OF BUSINESS: (Check Only One)		ANNUAL SALES: (Check Only One)	
<input type="checkbox"/> Agriculture, Forestry or Fishing		<input type="checkbox"/> Less than \$499,999	
<input type="checkbox"/> Mining		<input type="checkbox"/> \$500,000 through \$999,999	
<input type="checkbox"/> Construction Services		<input type="checkbox"/> \$1,000,000 through \$1,499,999	
<input type="checkbox"/> Wholesale Trade		<input type="checkbox"/> \$1,500,000 or More	
<input type="checkbox"/> Retail Trade			
<input type="checkbox"/> Service Industry			
<input type="checkbox"/> Manufacturing			
BUSINESS OWNERSHIP: (Check Only One)		OWNERSHIP ETHNICITY (Check Only One)	
<input type="checkbox"/> Non-Minority	<input type="checkbox"/> Minority*	<input type="checkbox"/> African American	<input type="checkbox"/> Caucasian
<input type="checkbox"/> Government	<input type="checkbox"/> Woman	<input type="checkbox"/> Asian American	<input type="checkbox"/> Other
<input type="checkbox"/> Non-Profit	<input type="checkbox"/> Small	<input type="checkbox"/> Native American	
<input type="checkbox"/> Other		<input type="checkbox"/> Hispanic American	
		<input type="checkbox"/> Service Disable-Veteran	

*MINORITY OWNERSHIP CLARIFICATION: "Minority-owned business" means a business which is solely owned, or at least 51% of the assets or outstanding stock of which is owned, by an individual who personally manages and controls the daily operations of such business and who is impeded from normal entry into the economic mainstream because of: a) Past practices of discrimination based on race, religion ethnic background or sex;)b A disability defined as a physical impairment that, in the written opinion of a person's licensed physician, substantially limits one or more than five years, (as herein, "major life activities" means caring for oneself, and performing manual task – which includes writing, walking, seeing, hearing, speaking and breathing, (T.C.A. 4-26-102); or c) Past parities or racial discrimination against African Americans (T.C.A. 12-3.802).

**AUSTIN PEAY STATE UNIVERSITY
MINIMUM GENERAL BID CONDITIONS**

1. PREPARATION AND SUBMISSION OF BID.

- a. Failure to examine any drawings, specifications, or instructions will be at the bidder's risk.
- b. **BID SUBMITTAL / SIGNATURE:** Bid shall give the full name and business address of the bidder. If the bidder is a corporation, the name shall be stated as it is in the corporate charter. Bids must be signed in ink by the bidder's authorized agent. Unsigned bids will be rejected. Bids are to be sealed and the outside of the envelope is to reference the bid number. The person signing the bid must show his title, and if requested by the institution, must furnish satisfactory proof of his or her authority to bind his or her company in contract. Bidder understands that by submitting a bid with an authorized signature, it shall constitute an offer to the institution. Bids must be typewritten or in ink; otherwise they may not be considered. Purchase orders will be issued to the firm name appearing on the bid.
- c. Bids are to be received in the location designated on the bid no later than the specified date and time. Late bids will NOT be opened or considered.
- d. No erasures permitted. Errors may be crossed out and corrections printed in ink or typewritten adjacent to error and must be initialed in ink by person signing bid.
- e. Discounts other than "Time" or "Cash" offered should be deducted from the unit price.
- f. **Specifications:** Reference to available specifications shall be sufficient to make the terms of the specifications binding on the bidder. The use of the name of a manufacturer, or any special brand or make in describing an item does not restrict the bidder to that manufacturer or specific article, unless specifically stated. Comparable products of other manufacturers will be considered if proof of compatibility is contained in the bid. Bidders are required to notify the Institution's RFQ Coordinator whenever specifications/procedures are not perceived to be fair and open. All suggestions or objections shall be made in writing and received by the RFQ Coordinator at least three (3) working days prior to the bid opening. The articles on which the bids are submitted must be equal or superior to that specified. **Informative and Descriptive Literature:** The bidder must show brand or trade names of the articles bid, when applicable. It shall be the responsibility of the vendor, including vendors whose product is referenced; to furnish with the bid such specifications, catalog pages, brochures or other data as will provide an adequate basis for determining the quality and functional capabilities of the product offered. Failure to provide this data may be considered valid justification for rejection of bid.
- g. **Samples:** Samples of items when called for, must be furnished free of expense, and if not destroyed will, upon vendor's request within ten (10) days of bid opening, be returned at the bidder's expense. Each sample must be labeled with the bidder's name, manufacturer's brand name and number, bid number and item reference.
- h. **Time of Performance:** The number of calendar days in which delivery is to be made after receipt of order shall be stated in the bid and may be a factor in making an award, price notwithstanding. If no delivery time is stated in the bid, bidder agrees that delivery is to be made within two weeks (10 business days) of order.
- i. **Transportation and delivery charges** should be included in the price and be fully prepaid by the vendor to the destination specified in the bid. Bid prices shall include delivery of all items F.O.B. destination.
- j. **New materials and supplies** must be delivered unless otherwise specifically stated in the bid.
- k. **Alternate/multiple bids** will not be considered unless specifically called for in the bid.
- l. **Bond requirements.** The institution reserves the right to require that the selected vendor post a performance and/or payment bond in such amount as deemed reasonable by the institution. Any bond requirement should be included in the bid, itemized separately.
- m. Only bids submitted on bid forms furnished by the Institution will be considered, except that the Institution reserves the right to consider telephone, faxed or electronically submitted bids for purchases totaling less than \$50,000 if received by the deadline and confirmed in writing within five (5) days on Institution forms.
- n. By signing this bid where indicated, the bidder agrees to strictly abide by all state and federal statutes and regulations. The bidder further certifies that this bid is made without collusion or fraud.
- o. **Failure to Bid/Error in Bid.** Failure to bid without advising the Institution that future invitations for bids are desirable may result in removal from Institution's bidders' list covering this category of items. In case of error in the extension of prices in the bid, the unit price will govern. Late bids will NOT be opened or considered. Bidders are cautioned to verify their bids before submission, as amendments received after the bid deadline will not be considered. No bid shall be altered, amended or withdrawn after opening. After bid opening, a bidder may withdraw a bid only when there is obvious clerical error such as a misplaced decimal point, or when enforcement of the bid would impose unconscionable hardship due to an error in the bid resulting in a quotation substantially below the other bids received. Bid withdrawals will be considered only upon written request of the bidder.

2. INSPECTION. All bids will be publicly opened and are subject to public inspection after the award. Bidders may be present at bid opening.

3. ACCEPTANCE AND AWARD. The Institution reserves the right to reject any and all bids and to waive any informality in bids and, unless otherwise specified by the bidder to accept any item in the bid. Action to reject all bids shall be taken for unreasonably high prices, errors in the bid documents, cessation of need, unavailability of funds, or any other reason approved by the Tennessee Board of Regents.

RFQ NUMBER – NAME OF RECURRING GOODS AND/OR SERVICE

- a. Contracts and purchases will be made with the lowest, responsible, qualified bidder. The quality of the articles to be supplied, their conformity with the specifications, their suitability to the requirements of the Institution, cash discount offered and the delivery terms will be taken into consideration.
- b. The Institution reserves the right to order up to 10% more or less than the quantity listed in the bid.
- c. If a bidder fails to state a time within which a bid must be accepted, it is understood and agreed that the Institution shall have sixty (60) days to accept.
- d. A written purchase order mailed or otherwise furnished, to the successful bidder within the time period specified in the bid results in a binding contract without further action by either party. The contract may not be assigned without written Institution consent.
- e. If the appropriate space is marked on the bid, other state institutions of higher education may purchase off the contract during the same period as the Institution.

4. DISCOUNT PERIOD. Time in connection with discount offered will be computed from the date of delivery at destination, or from the date correct invoices are received, whichever is later.

5. DEFAULT OF SELECTED VENDOR. In case of vendor default, the Institution may procure the articles or services from other sources and hold the defaulting vendor responsible for any resulting cost.

6. INSPECTION OF PURCHASES. Articles received which are not equivalent will not be accepted and will be picked up by the vendor or returned to vendor, shipping charges collect. Institution shall have a reasonable period in which to inspect and accept or reject materials without liability. If necessity requires Institution to use nonconforming materials, an appropriate reduction in payment may be made.

7. TAXES. Institution is tax exempt; do not include taxes in quotation. Vendors making improvements or additions to, or performing repair work on real property for Institution are liable for any applicable sales or use tax on tangible personal property used in connection with the contract or furnished to vendors by the state for use under the contract.

8. NONDISCRIMINATION. The Institution and bidder 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.

9. PROHIBITIONS/NO VENDOR CONTRACT FORM/TENNESSEE LAW/AUDIT. Acceptance of gifts from vendors is prohibited. TCA §12-3-106. Bidding by state employees is prohibited. TCA §12-4-103. The bidder warrants that no part of the total contract amount shall be paid directly or indirectly to any officer or employee of the State of Tennessee. The contract documents for purchase under this bid request shall consist of the successful bidder's bid and the Institution's purchase order. **Bidders may not require any other written contract terms or conditions, nor may any other terms and conditions be imposed by means of subsequent documents, such as invoices, warranty agreements, license agreements, etc. Should the bidder request exceptions to terms and conditions and/or those proposed by the bidder vary from the bid and Institution Policies and Guidelines, Institution may render the bid unresponsive and subject the bid to rejection. The contract shall be governed by Tennessee law.** For all awards other than for a firm, fixed price, vendor shall maintain books and records for a period of three (3) years from final payment, and these records shall be subject to audit by the State.

10. PURCHASING POLICIES/BID PROTESTS. This bid request and any award made hereunder are subject to the policies and guidelines of the State of Tennessee (www.tn.gov) and Institution (available upon request). Bid protest procedures are available at: <http://www.apsu.edu/procurement/protest-procedures.php>

11. ILLEGAL IMMIGRANTS. By acceptance of this Contract, Contractor is attesting that it will not knowingly utilize the services of illegal immigrants and will not knowingly utilize the services of any subcontractor that does so in delivery of the goods/services under this order. If Contractor is discovered to have breached this attestation, it shall be prohibited from supplying goods/services or submitting a bid to the institution or 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.

12. SALES AND USE TAX. Before the Purchase Order/Contract resulting from this RFP is signed, the apparent successful bidder must be registered or exempted from registration with the Department of Revenue for the collection of Tennessee sales and use tax. The State shall not approve a contract unless the Proposer provides proof of such registration or exemption. The foregoing is a mandatory requirement of an award of a contract pursuant to this solicitation.

13. IRAN DIVESTMENT. By submission of this Bid, each Bidder and each person signing on behalf of any Bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that each Seller is not on the list created pursuant to § Tenn. Code Ann. § 12-12-106.

AUSTIN PEAY STATE UNIVERSITY
RFQ # (NUMBER)
NAME OF RECURRING GOODS AND/OR SERVICE

1. SCHEDULE OF EVENTS

The following Schedule of Events represents the Institution's best estimate of the schedule that will be followed. Unless otherwise specified, the time of day for the following events will be between 8:00 a.m. and 4:30 p.m., (CST).

RFQ SCHEDULE OF EVENTS		
NOTICE: The Institution reserves the right, at its sole discretion, to adjust this schedule as it deems necessary. The Institution will communicate any adjustment to the Schedule of Events to the potential Bidders.		
EVENT	TIME	DATE (all dates are Institution business days)
1. Institution Issues RFQ		
2. Written Questions Deadline		
3. Institution Responds to Written/Comments Questions and any amendments - <u>POSTED ONLINE ONLY</u>		
4. Bid Deadline		
5. Contract Effective Date		

2 INTRODUCTION

2.1 Scope of Service, Agreement Period, and Required Terms and Conditions

Successful vendor shall furnish (description of goods and/or services) to Austin Peay State University.

2.2 RFQ Communications

2.2.1 Unauthorized contact regarding this RFQ with employees or officials of the Institution other than the RFQ Coordinator named below may result in disqualification from this procurement process.

2.2.2 Interested Parties must direct all communications regarding this RFQ to the following who is the Institutions only official point of contact for this RFQ.

Judy Blain
Austin Peay State University
505 York Street
(931) 221-7691
(931) 221-6300
appurchasing@apsu.edu

2.2.3 The Institution has assigned the following RFQ identification number that must be referenced in all communications regarding the RFQ NUMBER.

2.2.4 Any oral communications shall be considered unofficial and non-binding with regard to this RFQ.

2.3 Written Questions/Answer Period

A question and answer period deadline is in the RFQ Section 1, Schedule of Events. The purpose of the written question/answer period is to allow Bidders to submit any questions they may have in regard to the scope of services requested. To ensure accurate, consistent responses to all known potential Bidders, the official response to questions will be issued by the Institution on the date in the RFQ Section 1, Schedule of Events.

3 GENERAL REQUIREMENTS & CONTRACT INFORMATION

3.1 The Institution reserves the right, at its sole discretion, to waive a Quotation's variances from full compliance with this RFQ. If the Institution waives minor variances in a Quotation, such waiver shall not modify the RFQ requirements or excuse the Proposer from full compliance with the RFQ.

3.2 Assignment and Subcontracting

3.2.1 The Proposer awarded a contract pursuant to this RFQ may not subcontract, transfer, or assign any portion of the Contract.

3.3 Right to Refuse Personnel

At its sole discretion, the Institution reserves the right to refuse any personnel, of the prime contractor for use in the performance of a contract pursuant to this RFQ.

3.4 Insurance

Successful Proposer must provide and maintain a commercial general liability policy. The policy shall provide coverage which includes, but is not limited to, bodily injury, personal injury, death, property damage and medical claims, with minimum limits of \$1,000,000 per occurrence, \$3,000,000 in the aggregate. The Proposer shall maintain workers' compensation coverage or a self-insured program as required under Tennessee law, with Employer's Liability Limits of \$100,000. The Proposer shall deliver to the Institution a certificate of insurance no later than the effective date of the Order. If any policy providing insurance required by the Contract is cancelled prior to the policy expiration date, the Proposer, upon receiving a notice of cancellation, shall give immediate notice to the Institution.

The enumeration in the Contract or in this document of the kinds and amounts of liability insurance shall not abridge, diminish or affect the contractor's legal responsibilities for the consequences of accidents arising out of or resulting from the services of the successful bidder under this contract.

Failure to provide evidence of such insurance coverage is a material breach and grounds for termination of the contract negotiations. Any insurance required by the Institution shall be in form and substance acceptable to the Institution.

3.5 Licensure

The apparent successful Proposer must hold all necessary, applicable business and professional licenses. The Institution will require any or all Proposers to submit evidence of proper licensure.

3.6 Financial Stability

The successful Bidder will be required to provide information to the Institution to demonstrate financial stability and capability prior to award of contract.

3.7 Contract Cancellation

Either party reserves the right to cancel the contract with a **thirty (30) day** written notice.

3.8 Contract Term

The Institution intends to enter into a contract with an expected effective period beginning for the commencing upon a fully executed contract and ending on five (5) years later. The Institution reserves the right to cancel the contract if sufficient funding for its continuance is not appropriated by the General Assembly of the State of Tennessee.

3.9 Contract Payments

All payments shall be made in accordance with the Contract's Payment Terms and Conditions provisions. No payment shall be made until the Contract is approved as required by state laws and regulations. Under no circumstances shall the Institution be liable for payment of any type associated with the Contract or responsible for any work done by the Contractor, even work done in good faith and even if the Contractor is orally directed to proceed with the delivery of services, if it occurs before contract approval by Institution officials as required by applicable statutes and rules of the State of Tennessee or before the Contract start date or after the Contract end date specified by the Contract. Payments to the Contractor will be made in accordance with the Tennessee Prompt Pay Act (T.C.A. Section 12-4-701 et.seq.).

3.10 Monitoring

The Contractor's deliverables and services provided pursuant to this Contract shall be subject to monitoring and evaluation by the Institution, by a duly appointed representative(s). The Contractor shall submit brief, periodic, progress reports to the Institution as requested.

3.11 Severability

If any provision of this RFQ is declared by a court to be illegal or in conflict with any law, the decision shall not affect the validity of the remaining RFQ terms and provisions, and the rights and obligations of the Institution and Proposers shall be construed and enforced as if the RFQ did not contain the particular provision held to be invalid.

3.12 Policy and Guideline Compliance This Quotation request and any award made hereunder are subject to the policies and guidelines of the Institution (available upon request).

4.0 PROJECT NARRATIVE AND DOCUMENTATION

This bid is for a **description of goods and/or services.**

4.1 Terms and Conditions

4.1.1 Austin Peay's special terms and conditions apply to this bid and can be found at www.apsu.edu/procurement under "Terms and Conditions."

4.1.2 The contractor is responsible for compliance with all federal, state, city, and local code requirements while working on campus.

4.2 Agreement

- 4.2.1 The form of the contract shall be a standard University contract referencing this specification and request for quotation.
- 4.2.2 Entering into this agreement, APSU does not agree or imply that there will be any specific amount of work requested.
- 4.2.3 APSU reserves the right to occasionally purchase same or similar service and repair from other companies.
- 4.2.4 All work must be performed by direct employees of the contractor. Any use of subcontractors for this bid must be approved by the Director of the Athletics or his designee before work is started.
- 4.2.5 This agreement may be terminated by either party by providing **thirty (30) day** written notice.
- 4.3 Cost Labor and Materials**
- 4.3.1 The contractor agrees to furnish billing statement itemized, priced, and extended in such a manner that they are easy to follow in terms of this agreement.
- 4.3.2 In all cases, APSU will only be liable for the services requested. In the case where the end customer requests additional services, those services will only be paid for if approved in advance.

DRAFT

AUSTIN PEAY STATE UNIVERSITY
RFQ # (NUMBER)
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Description	Year 1	Year 2	Year 3	Year 4	Year 5	Total
GOODS AND/OR SERVICES						
DESCRIPTION OF GOODS AND/OR SERVICES						
REPEAT REQUIREMENT ITEMS & ASSOCIATED ITEM						
REPEAT REQUIREMENT ITEMS & ASSOCIATED ITEM						
REPEAT REQUIREMENT ITEMS & ASSOCIATED ITEM						
REPEAT REQUIREMENT ITEMS & ASSOCIATED ITEM						
Total						

DRAFT

AUSTIN PEAY STATE UNIVERSITY
RFQ # (NUMBER)
NAME OF RECURRING GOODS AND/OR SERVICE

SPECIFICATIONS:

DRAFT

Any questions for this project must be submitted in writing at appurchasing@apsu.edu or by fax at 931-221-6300.

**ATTACHMENT 6.1
PRO FORMA CONTRACT**

The *Pro Forma* Contract detailed in following pages of this exhibit contains some “blanks” (signified by descriptions in capital letters) that will be completed with appropriate information in the final contract resulting from the RFP.

DRAFT

**CONTRACT
BETWEEN
AUSTIN PEAY INSTITUTION UNIVERSITY
AND
[CONTRACTOR NAME]**

This Contract, by and between the Austin Peay Institution University, hereinafter referred to as the "Institution" and [CONTRACTOR LEGAL ENTITY NAME], hereinafter referred to as the "Contractor," is for the provision of **Scope of Recurring Goods or Services Caption**, as further defined in the "SCOPE OF GOODS AND/OR SERVICES."

The Contractor is [AN INDIVIDUAL / A FOR-PROFIT CORPORATION / A NONPROFIT CORPORATION / A SPECIAL PURPOSE CORPORATION OR ASSOCIATION / A FRATERNAL OR PATRIOTIC ORGANIZATION / A PARTNERSHIP / A JOINT VENTURE / A LIMITED LIABILITY COMPANY].

The Contractor's address is:

[ADDRESS]

The Contractor's place of incorporation or organization is [INSTITUTION OF ORGANIZATION].

A. SCOPE OF GOODS AND/OR SERVICES:

- A.1. The Contractor shall provide all goods or services and deliverables as required, described, and detailed below and shall meet all service and delivery timelines as specified by this Contract. The scope of goods and/or services and Contractor's specific responsibilities are defined in Attachment A of this Agreement.
- A.2. The Contractor agrees to provide services to the Institution as well as the eligible institutions listed in Attachment X.

A.#. Warranty. Contractor represents and warrants that the term of the warranty ("Warranty Period") shall be the greater of the Term of this Contract or any other warranty general offered by Contractor, its suppliers, or manufacturers to customers of its goods or services. The goods or services provided under this Contract shall conform to the terms and conditions of this Contract throughout the Warranty Period. Any nonconformance of the goods or services to the terms and conditions of this Contract shall constitute a "Defect" and shall be considered "Defective." If Contractor receives notice of a Defect during the Warranty Period, then Contractor shall correct the Defect, at no additional charge.

Contractor represents and warrants that the Institution is authorized to possess and use all equipment, materials, software, and deliverables provided under this Contract.

Contractor represents and warrants that all goods or services provided under this Contract shall be provided in a timely and professional manner, by qualified and skilled individuals, and in conformity with standards generally accepted in Contractor's industry.

If Contractor fails to provide the goods or services as warranted, then Contractor will re-provide the goods or services at no additional charge. If Contractor is unable or unwilling to re-provide the goods or services as warranted, then the Institution shall be entitled to recover the fees paid to Contractor for the Defective goods or services. Any exercise of the Institution's rights under this Section shall not prejudice the Institution's rights to seek any other remedies available under this Contract or applicable law.

A.#. Inspection and Acceptance. The Institution shall have the right to inspect all goods or services provided by Contractor under this Contract. If, upon inspection, the Institution determines that the goods or services are Defective, the Institution shall notify Contractor, and Contractor shall re-deliver the goods or provide the services at no additional cost to the Institution. If after a period of thirty (30) days following delivery of goods or performance of services the Institution does not provide a notice of any Defects, the goods or services shall be deemed to have been accepted by the Institution.

B. CONTRACT TERM:

B.1. Contract Term. This Contract shall be effective for the period of three (3) years upon execution. The Institution shall have no obligation for goods and/or services rendered by the Contractor which are not performed within the specified period.

B.2. Term Extension. The Institution reserves the right to extend this Contract for an additional period or periods of time representing increments of no more than one (1) year and a total contract term of no more than five (5) years, provided that the Institution notifies the Contractor in writing of its intention to do so at least [WRITTEN NUMBER] [NUMBER] days prior to the Contract expiration date. An extension of the term of this Contract will be effected through an amendment to the Contract. If the extension of the Contract necessitates additional funding beyond that which was included in the original Contract, the increase in the Institution's maximum liability will also be effected through an amendment to the Contract and shall be based upon rates provided for in the original Contract.

C. PAYMENT TERMS AND CONDITIONS:

C.1. Maximum Liability. In no event shall the maximum liability of the Institution under this Contract exceed [WRITTEN DOLLAR AMOUNT] [\$NUMBER AMOUNT] (Maximum Liability). The Service Rates in Attachment B include, but are not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by the Contractor. The maximum liability represents available funds for payment to the Contractor and does not guarantee payment of any such funds to the Contractor under this Contract unless the Institution requests work and the Contractor performs the work in accordance with the Contract requirements.

C.2. Compensation Firm. The Service Rates and the Maximum Liability of the Institution under this Contract are firm for the duration of the Contract and are not subject to escalation for any reason unless this Contract is amended.

C.3. Payment Method. The Contractor agrees that Institution shall issue payment for all goods and/or services under this Agreement via the method agreed upon by the Contractor and the Institution.

C.4. Payment Methodology. The Contractor shall be compensated based on the Service Rates in Attachment X for units of service authorized by the Institution in a total amount not to exceed the Contract Maximum Liability established in Section C.1. The Contractor's compensation shall be contingent upon the satisfactory completion of units of service or project milestones identified in Attachment B.

The Contractor shall submit invoices, in form and substance acceptable to the Institution with all of the necessary supporting documentation, prior to any payment. Such invoices shall be submitted for completed units of service or project milestones for the amount stipulated.

C.5. Travel Compensation.

The Contractor shall not be compensated or reimbursed for travel, meals, or lodging.

C.6. Payment of Invoice. The payment of an invoice by the Institution shall not prejudice the Institution's right to object to or question any invoice or matter in relation thereto. Such payment by the Institution shall neither be construed as acceptance of any part of the work or service provided nor as an approval of any of the amounts invoiced therein.

C.7. Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment that is determined by the Institution, on the basis of audits conducted in accordance with the terms of this Contract, not to constitute proper compensation for compensable goods and/or services provided.

C.8. Deductions. The Institution reserves the right to deduct from amounts which are or shall become due and payable to the Contractor under this or any Contract between the Contractor and the Institution any amounts which are or shall become due and payable to the Institution by the Contractor.

D. MANDATORY TERMS AND CONDITIONS:

D.1. Required Approvals. The Institution is not bound by this Contract until it is approved by the appropriate officials in accordance with applicable Tennessee laws and regulations. Approvals shall be evidenced by a signature or electronic approval.

D.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by certified, first class mail, return receipt requested and postage prepaid, by overnight courier service with an asset tracking system, or by email or facsimile transmission with recipient confirmation. All communications, regardless of method of transmission, shall be addressed to the respective Party at the appropriate mailing address, facsimile number, or email address as stated below or any other address provided in writing by a Party.

The Institution:

[NAME AND TITLE OF INSTITUTION CONTACT PERSON]
[INSTITUTION NAME]
[ADDRESS]
[TELEPHONE NUMBER]
[FACSIMILE NUMBER]
[EMAIL ADDRESS]

The Contractor:

[NAME AND TITLE OF CONTRACTOR CONTACT PERSON]
[CONTRACTOR NAME]
[ADDRESS]
[TELEPHONE NUMBER]
[FACSIMILE NUMBER]
[EMAIL ADDRESS]

All instructions, notices, consents, demands, or other communications shall be considered effective upon receipt or recipient confirmation as may be required.

- D.3 Modification and Amendment. This Contract may be modified only by a written amendment executed by all parties and approved by all applicable Institution officials.
- D.4. Subject to Funds Availability. The Contract is subject to the appropriation and availability of Institution and/or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the Institution reserves the right to terminate the Contract upon written notice to the Contractor. The Institution's exercise of its rights to terminate this Contract shall not constitute a breach of Contract by the Institution. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. Should such an event occur, the Contractor shall be entitled to compensation for all satisfactory and authorized goods and/or services completed as of the termination date. Should the Institution exercise its right to terminate this Contract due to unavailability of funds, the Contractor shall have no right to recover from the Institution any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- D.5 Termination for Convenience. The Institution may terminate this Contract without cause and for any reason. The Institution shall give the Contractor at least, SPECIFY NUMBER OF DAYS, i.e. one hundred twenty (20) days] days written notice before the effective termination date. The Contractor shall be entitled to compensation for all conforming goods delivered and accepted by the Institution or for satisfactory, authorized services completed as of the termination date. In no event shall the Institution be liable to the Contractor for compensation for any goods neither requested nor accepted by the Institution or for any services neither requested by the Institution nor satisfactorily performed by the Contractor. In no event shall the Institution's exercise of its right to terminate this Contract for convenience relieve the Contractor of any liability to the Institution for any damages or claims arising under this Contract.
- D.6. Termination for Cause. If the Contractor fails to perform its obligations under this Contract in a timely or proper manner, or if the Contractor materially violates any terms of this Contract ("Breach Condition"), the Institution 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 Contractor shall not be relieved of liability to the Institution for damages sustained by virtue of any breach condition and the Institution may seek other remedies allowed at law or in equity for breach of this contract.
- D.7. Assignment and Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the goods or services provided under this Contract without the prior written approval of the Institution. Notwithstanding any use of the approved subcontractors, the Contractor shall be the prime contractor and responsible for compliance with all terms and conditions of this Contract. The Institution reserves the right to request additional information or impose additional terms and conditions before approving an assignment of this Contract in whole or in part or the use of subcontractors in fulfilling the Contractor's obligations under this Contract.
- D.8. Conflicts of Interest. The Contractor warrants that no part of the Contractor's compensation shall be paid directly or indirectly to an employee or official of the Institution as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed under this Contract.

The Contractor acknowledges, understands, and agrees that this Contract shall be null and void if the Contractor is, or within the past six (6) months has been, an employee of the Institution or if the Contractor is an entity in which a controlling interest is held by an individual who is, or within the past six (6) months has been, an employee of the Institution.

- D.9. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of disability, age, race, creed, color, religion, sex, national origin, or any other classification protected by Federal, or Institution constitutional or statutory law. The Contractor shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- D.10. Prohibition of Illegal Immigrants. The requirements of Tenn. Code Ann. § 12-3-309 addressing the use of illegal immigrants in the performance of any contract to supply goods or services to the State of Tennessee, shall be a material provision of this Contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Contract.
- a. The Contractor agrees 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 shall reaffirm this attestation, in writing, by submitting to the Institution a completed and signed copy of the document at Attachment C, semi-annually during the Term. If the Contractor is a party to more than one contract with the Institution, the Contractor may submit one attestation that applies to all contracts with the Institution. All Contractor attestations shall be maintained by the Contractor and made available to Institution officials upon request.
- b. Prior to the use of any subcontractor in the performance of this Contract, and semi- annually thereafter, during the Term, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work under this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work under this Contract. Attestations obtained from subcontractors shall be maintained by the Contractor and made available to Institution officials upon request.
- c. The Contractor shall maintain records for all personnel used in the performance of this Contract. Contractor's records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the Institution.
- d. The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of Tenn. Code Ann. § 12-3-309 for acts or omissions occurring after its effective date.
- e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not: (i) a United States citizen; (ii) a Lawful Permanent Resident; (iii) a person whose physical presence in the United States is authorized; (iv) allowed by the federal Department of Homeland Security and who, under federal immigration laws or regulations, is authorized to be employed in the U.S.; or (v) is otherwise authorized to provide services under the Contract.
- D.11. Records. The Contractor shall maintain documentation for all charges against the Institution under this Contract. The books, records, and documents of the Contractor, for work performed or money received under this Contract, shall be maintained for a period of five (5) 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 Institution, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.12. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the Institution, the Comptroller of the Treasury, or their duly appointed representatives.
- D.13. Progress Reports. The Contractor shall submit brief, quarterly, progress reports to the Institution as requested.

- D.14. Strict Performance. Failure by any party Contract to require, in any one or more cases, the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the Parties.
- D.15. Independent Contractor. The Parties shall not act as employees, partners, joint venturers, or associates of one another. The Parties are independent contracting entities. Nothing in this Contract shall be construed to create an employer/employee relationship or to allow either Party to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one Party are not employees or agents of the other Party.
- D.16. Patient Protection and Affordable Care Act. The Contractor agrees that it will be responsible for compliance with the Patient Protection and Affordable Care Act ("PPACA") with respect to itself and its employees, including any obligation to report health insurance coverage, provide health insurance coverage, or pay any financial assessment, tax, or penalty for not providing health insurance. The Contractor shall indemnify the Institution and hold it harmless for any costs to the Institution arising from Contractor's failure to fulfill its PPACA responsibilities for itself or its employees.
- D.17. Limitation of Institution's Liability. The Institution shall have no liability except as specifically provided in this Contract. In no event will the Institution be liable to the Contractor or any other party for any lost revenues, lost profits, loss of business, decrease in the value of any securities or cash position, time, goodwill, or any indirect, special, incidental, punitive, exemplary or consequential damages of any nature, whether based on warranty, contract, statute, regulation, tort (including but not limited to negligence), or any other legal theory that may arise under this Contract or otherwise. The Institution's total liability under this Contract (including any exhibits, schedules, amendments or other attachments to the Contract) or otherwise shall under no circumstances exceed the Maximum Liability. This limitation of liability is cumulative and not per incident.
- D.18. Limitation of Contractor's Liability. In accordance with Tenn. Code Ann. § 12-3-701, the Contractor's liability for all claims arising under this Contract shall be limited to an amount equal to two (2) times the Maximum Liability amount detailed in Section C.1. and as may be amended, PROVIDED THAT in no event shall this Section limit the liability of the Contractor for: (i) intellectual property or any Contractor indemnity obligations for infringement for third-party intellectual property rights; (ii) any claims covered by any specific provision in the Contract providing for liquidated damages; or (iii) any claims for intentional torts, criminal acts, fraudulent conduct, or acts or omissions that result in personal injuries or death.
- D.19. Hold Harmless. The Contractor agrees to indemnify and hold harmless the Institution as well as its officers, agents, and employees from and against any and all claims, liabilities, losses, and causes of action 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 Institution to enforce the terms of this Contract.

In the event of any suit or claim, the Parties shall give each other immediate notice and provide all necessary assistance to respond. The failure of the Institution to give notice shall only relieve the Contractor of its obligations under this Section to the extent that the Contractor can demonstrate actual prejudice arising from the failure to give notice. This Section shall not grant the Contractor, through its attorneys, the right to represent the Institution in any legal matter, as the right to represent the Institution is governed by Tenn. Code Ann. § 8-6-106.

- D.20. HIPAA Compliance. The Institution and Contractor shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), Health Information Technology for Economic and Clinical Health ("HITECH") Act and any other relevant laws and regulations regarding privacy (collectively the "Privacy Rules"). The obligations set forth in this Section shall survive the termination of this Contract.
- a. Contractor warrants to the Institution that it is familiar with the requirements of the Privacy Rules, and will comply with all applicable requirements in the course of this Contract.

- b. Contractor warrants that it will cooperate with the Institution, including cooperation and coordination with Institution privacy officials and other compliance officers required by the Privacy Rules, in the course of performance of the Contract so that both parties will be in compliance with the Privacy Rules.
 - c. The Institution and the Contractor will sign documents, including but not limited to business associate agreements, as required by the Privacy Rules and that are reasonably necessary to keep the Institution and Contractor in compliance with the Privacy Rules. This provision shall not apply if information received or delivered by the parties under this Contract is NOT “protected health information” as defined by the Privacy Rules, or if the Privacy Rules permit the parties to receive or deliver the information without entering into a business associate agreement or signing another document.
 - d. The Contractor will indemnify the Institution and hold it harmless for any violation by the Contractor or its subcontractors of the Privacy Rules. This includes the costs of responding to a breach of protected health information, the costs of responding to a government enforcement action related to the breach, and any fines, penalties, or damages paid by the Institution because of the violation.
- D.21. Tennessee Consolidated Retirement System. Subject to statutory exceptions contained in Tenn. Code Ann. §§ 8-36-801, *et seq.*, the law governing the Tennessee Consolidated Retirement System (“TCRS”), provides that if a retired member of TCRS, or of any superseded system administered by TCRS, or of any local retirement fund established under Tenn. Code Ann. §§ 8-35-101, *et seq.*, accepts State employment, the member’s retirement allowance is suspended during the period of the employment. Accordingly and notwithstanding any provision of this Contract to the contrary, the Contractor agrees that if it is later determined that the true nature of the working relationship between the Contractor and the Institution under this Contract is that of “employee/employer” and not that of an independent contractor, the Contractor, if a retired member of TCRS, may be required to repay to TCRS the amount of retirement benefits the Contractor received from TCRS during the Term.
- D.22. Tennessee Department of Revenue Registration. The Contractor shall comply with all applicable registration requirements contained in Tenn. Code Ann. §§ 67-6-601 – 608. Compliance with applicable registration requirements is a material requirement of this Contract.
- D.23. Debarment and Suspension. The Contractor certifies, to the best of its knowledge and belief, that it, its current and future principals, its current and future subcontractors and their principals:
- a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency;
 - b. 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;
 - c. are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed in section b. of this certification; and
 - d. 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.

The Contractor shall provide immediate written notice to the Institution if at any time it learns that there was an earlier failure to disclose information or that due to changed circumstances, its principals or the principals of its subcontractors are excluded, disqualified, or presently fall under any of the prohibitions of sections a-d.

- D.24. Force Majeure. “Force Majeure Event” means fire, flood, earthquake, elements of nature or acts of God, wars, riots, civil disorders, rebellions or revolutions, acts of terrorism or any other similar cause beyond the reasonable control of the Party except to the extent that the non-performing Party is at fault in failing to prevent or causing the default or delay, and provided that the default or delay cannot reasonably be circumvented by the non-performing Party through the use of alternate sources, workaround plans or other means. A strike, lockout or labor dispute shall not excuse either Party from its obligations under this Contract. Except as set forth in this Section, any failure or delay by a Party in the performance of its obligations under this Contract arising from a Force Majeure Event is not a default under this Contract or grounds for termination. The non-performing Party will be excused from performing those obligations directly affected by the Force Majeure Event, and only for as long as the Force Majeure Event continues,

provided that the Party continues to use diligent, good faith efforts to resume performance without delay. The occurrence of a Force Majeure Event affecting Contractor's representatives, suppliers, subcontractors, customers or business apart from this Contract is not a Force Majeure Event under this Contract. Contractor will promptly notify the Institution of any delay caused by a Force Majeure Event (to be confirmed in a written notice to the Institution within one (1) day of the inception of the delay) that a Force Majeure Event has occurred, and will describe in reasonable detail the nature of the Force Majeure Event. If any Force Majeure Event results in a delay in Contractor's performance longer than forty-eight (48) hours, the Institution may, upon notice to Contractor: (a) cease payment of the fees until Contractor resumes performance of the affected obligations; or (b) immediately terminate this Contract or any purchase order, in whole or in part, without further payment except for fees then due and payable. Contractor will not increase its charges under this Contract or charge the Institution any fees other than those provided for in this Contract as the result of a Force Majeure Event.

- D.25. Institution and Federal Compliance. The Contractor shall comply with all applicable Institution and Federal laws and regulations, including Institution policies and guidelines in the performance of this Contract.
- D.26. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Tennessee Claims Commission or the state or federal courts in Tennessee shall be the venue for all claims, disputes, or disagreements arising under this Contract. The Contractor acknowledges and agrees that any rights, claims, or remedies against the State of Tennessee or its employees arising under this Contract shall be subject to and limited to those rights and remedies available under Tenn. Code Ann. §§ 9-8-101 - 407.
- D.27. Entire Agreement. This Contract is complete and contains the entire understanding between the Parties relating to its subject matter, including all the terms and conditions of the Parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the Parties, whether written or oral.
- D.28. Severability. If any terms or conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions of this Contract shall not be affected thereby and shall remain in full force and effect. The terms and conditions of this Contract are severable.
- D.29. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.
- D.30. Incorporation of Additional Documents. Each of the following documents is included as a part of this Contract by reference. In the event of a discrepancy or ambiguity regarding the Contractor's duties, responsibilities, and performance under this Contract, these items shall govern in order of precedence below:
- a. any amendment to this Contract, 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 [identify attachments and exhibits];
 - c. any clarifications of or addenda to the Contractor's proposal seeking this Contract;
 - d. the Institution solicitation, 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.
- D.31. Iran Divestment Act. The requirements of Tenn. Code Ann. § 12-12-101 et.seq., addressing contracting with persons as defined at T.C.A. §12-12-103(5) that engage in investment activities in Iran, shall be a material provision of this Contract. The Contractor certifies, 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.
- D.32. Insurance. Contractor shall maintain insurance coverage as specified in this Section. The Institution reserves the right to amend or require additional insurance coverage, coverage amounts, and endorsements required under this Contract. Contractor's failure to maintain or submit evidence of insurance coverage, as required, is a material breach of this Contract. If Contractor loses insurance coverage, fails to renew coverage, or for any reason becomes uninsured during the Term, Contractor shall immediately notify the Institution. All insurance companies providing coverage must be: (a) acceptable to

the Institution; (b) authorized by the Tennessee Department of Commerce and Insurance ("TDCI"); and (c) rated A- / VII or better by A.M. Best. All coverage must be on a primary basis and noncontributory with any other insurance or self-insurance carried by the Institution. Contractor agrees to name the Institution as an additional insured on any insurance policy with the exception of workers' compensation (employer liability) and professional liability (errors and omissions) insurance. All policies must contain an endorsement for a waiver of subrogation in favor of the Institution. Any deductible over fifty thousand dollars (\$50,000) must be approved by the Institution. The deductible and any premiums are the Contractor's sole responsibility. The Contractor agrees that the insurance requirements specified in this Section do not reduce any liability the Contractor has assumed under this Contract including any indemnification or hold harmless requirements.

To achieve the required coverage amounts, a combination of an otherwise deficient specific policy and an umbrella policy with an aggregate meeting or exceeding the required coverage amounts is acceptable. For example: If the required policy limit under this Contract is for two million dollars (\$2,000,000) in coverage, acceptable coverage would include a specific policy covering one million dollars (\$1,000,000) combined with an umbrella policy for an additional one million dollars (\$1,000,000). If the deficient underlying policy is for a coverage area without aggregate limits (generally Automobile Liability and Employers' Liability Accident), Contractor shall provide a copy of the umbrella insurance policy documents to ensure that no aggregate limit applies to the umbrella policy for that coverage area. Contractor shall provide the Institution a certificate of insurance ("COI") evidencing the coverages and amounts specified in this Section. The COI must be on a form approved by the TDCI (standard ACORD form preferred). The COI must list each insurer's National Association of Insurance Commissioners (NAIC) number and be signed by an authorized representative of the insurer. The COI must list Austin Peay State University, 601 College Street, Clarksville, TN 37040 as the certificate holder. Contractor shall provide the COI ten (10) business days prior to the Effective Date and again thirty (30) calendar days before renewal or replacement of coverage. Contractor shall provide the Institution evidence that all subcontractors maintain the required insurance or that subcontractors are included under the Contractor's policy. At any time, the Institution may require Contractor to provide a valid COI. The parties agree that failure to provide evidence of insurance coverage as required is a material breach of this Contract. If Contractor self-insures, then a COI will not be required to prove coverage. Instead Contractor shall provide a certificate of self-insurance or a letter, on Contractor's letterhead, detailing its coverage, policy amounts, and proof of funds to reasonably cover such expenses.

The Institution agrees that it shall give written notice to the Contractor as soon as practicable after the Institution becomes aware of any claim asserted or made against the Institution, but in no event later than thirty (30) calendar days after the Institution becomes aware of such claim. The failure of the Institution to give notice shall only relieve the Contractor of its obligations under this Section to the extent that the Contractor can demonstrate actual prejudice arising from the failure to give notice. This Section shall not grant the Contractor or its insurer, through its attorneys, the right to represent the Institution in any legal matter, as the right to represent the Institution is governed by Tenn. Code Ann. § 8-6-106.

The Contractor shall obtain and maintain, at a minimum, the following insurance coverages and policy limits.

a. Commercial General Liability Insurance

- 1) The Contractor shall maintain commercial general liability insurance, which shall be written on an Insurance Services Office, Inc. (also known as ISO) occurrence form (or a substitute form providing equivalent coverage) and shall cover liability arising from property damage, premises/operations, independent contractors, contractual liability, completed operations/products, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).

The Contractor shall maintain bodily injury/property damage with a combined single limit not less than one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) aggregate for bodily injury and property damage, including products and completed operations coverage with an aggregate limit of at least two million dollars (\$2,000,000).

b. Workers' Compensation and Employer Liability Insurance

- 1) For Contractors statutorily required to carry workers' compensation and employer liability insurance, the Contractor shall maintain:

- i. Workers' compensation in an amount not less than **one million dollars (\$1,000,000)** including employer liability of one million dollars (**\$1,000,000**) per accident for bodily injury by accident, **one million dollars (\$1,000,000)** policy limit by disease, and **one million dollars (\$1,000,000)** per employee for bodily injury by disease.
 - 2) If the Contractor certifies that it is exempt from the requirements of Tenn. Code Ann. §§ 50-6-101 – 103, then the Contractor shall furnish written proof of such exemption for one or more of the following reasons:
 - i. The Contractor employs fewer than five (5) employees;
 - ii. The Contractor is a sole proprietor;
 - iii. The Contractor is in the construction business or trades with no employees;
 - iv. The Contractor is in the coal mining industry with no employees;
 - v. The Contractor is a Institution or local government; or
 - vi. The Contractor self-insures its workers' compensation and is in compliance with the TDCI rules and Tenn. Code Ann. § 50-6-405.
- c. Automobile Liability Insurance
 - 1) The Contractor shall maintain automobile liability insurance which shall cover liability arising out of any automobile (including owned, leased, hired, and non- owned automobiles).
 - 2) The Contractor shall maintain bodily injury/property damage with a limit not less than **one million dollars (\$1,000,000)** per occurrence or combined single limit.

D.33. Major Procurement Contract Sales and Use Tax. Pursuant to Tenn. Code Ann. § 4-39-102 and to the extent applicable, the Contractor and the Contractor's subcontractors shall remit sales and use taxes on the sales of goods or services that are made by the Contractor or the Contractor's subcontractors and that are subject to tax.

E. ADDITIONAL TERMS AND CONDITIONS:

- E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, the special terms and conditions shall be subordinate to the Contract's other terms and conditions.
- E.2. Copyrights and Patents/Institution Ownership of Work Products. Contractor grants Institution a world-wide, perpetual, non-exclusive, irrevocable, fully paid up license to use any proprietary software products delivered under this Contract. The Institution shall have royalty-free and unlimited rights to use, disclose, reproduce, or publish, for any purpose whatsoever, as well as share in any financial benefits derived from the commercial exploitation of all work products created, designed, developed, or derived from the goods and/or services provided under this Contract. The Institution shall have the right to copy, distribute, modify and use any training materials delivered under this Contract for internal purposes only.

The Contractor agrees to indemnify and hold harmless the Institution as well as its officers, agents, and employees from and against any and all claims or suits which may be brought against the Institution for infringement of any third party's intellectual property rights, including but not limited to, any alleged patent or copyright violations. The Institution shall give the Contractor written notice of any such claim or suit and full right and opportunity to conduct the Contractor's own defense thereof. In any such action brought against the Institution, the Contractor shall take all reasonable steps to secure a license for Institution to continue to use the alleged infringing product or, in the alternative, shall find or develop a reasonable, non-infringing alternative to satisfy the requirements of this Contract.

The Contractor further agrees that it shall be liable for the reasonable fees of attorneys for the Institution in the event such service is necessitated to enforce the obligations of the Contractor to the Institution.

- E.3. Performance Bond. **[ADD ONLY IF APPLICABLE]** Contractor shall furnish a performance bond in the amount equal to **[WRITTEN DOLLAR AMOUNT]** (**[\$NUMBER AMOUNT]**), guaranteeing full and faithful performance of all undertakings and obligations under this Contract for the initial Contract term and all extensions thereof. The bond shall be in the manner and form prescribed by the Institution, must be issued through a company licensed to issue such a bond in the Institution of Tennessee.

The Contractor shall provide the bond to the Institution no later than the effective date of this Contract. Failure to provide the performance bond prior to the deadline as required shall result in contract termination.

In lieu of a performance bond, a surety deposit, in the sum of [WRITTEN DOLLAR AMOUNT] [\$NUMBER DOLLAR AMOUNT], may be substituted if approved by the Institution prior to its submittal.

E.4. Competitive Procurements. If this Contract provides for reimbursement of the cost of goods, materials, supplies, equipment, and/or services, such procurements shall be made on a competitive basis, when practical.

E.5. Inventory/Equipment Control. [CHOOSE ONE]

The Contractor agrees to be responsible and accountable for the maintenance, management, and inventory of all property purchased totally or in part with funds provided under this Contract. The Contractor shall maintain a perpetual inventory system for all equipment purchased with funds provided under this Contract and shall submit an inventory control report with the required progress reports.

The Contractor shall notify the Institution, in writing, of any equipment loss describing reason(s) for the loss. Should the equipment be destroyed, lost, or stolen, the Contractor shall be responsible to the Institution for the *pro rata* amount of the residual value at the time of loss based upon the Institution's original contribution to the purchase price.

Upon completion or cancellation of this Contract, all equipment purchased with funds provided under this Contract shall be returned to the Institution.

[OR]

No equipment shall be purchased under this Contract.

E.6. Institution Furnished Property. The Contractor shall be responsible for the correct use, maintenance, and protection of all articles of nonexpendable, tangible, personal property furnished by the Institution for the Contractor's temporary use under this Contract. Upon termination of this Contract, all property furnished shall be returned to the Institution in good order and condition as when received, reasonable use and wear thereof excepted. Should the property be destroyed, lost, or stolen, the Contractor shall be responsible to the Institution for the residual value of the property at the time of loss.

E.7. Prohibited Advertising. The Contractor shall not refer to this Contract or the Contractor's relationship with the Institution hereunder in commercial advertising in such a manner as to Institution or imply that the Contractor or the Contractor's goods and/or services are endorsed.

E.8. Red Flags and Identity Theft. (Include only if applicable) The Contractor shall have policies and procedures in place to detect relevant Red Flags that may arise in the performance of the Contractor's activities under the Agreement, or review the Institution's Red Flags identity theft program and report any Red Flags to Institution.

E.9. Data Privacy and Security.

Data Privacy. "Personal Information" means information provided to Contractor by or at the direction of Institution, or to which access was provided to Contractor by or at the direction of Institution, in the course of Contractor's performance under this Agreement that: (i) identifies or can be used to identify an individual (including, without limitation, names, signatures, addresses, telephone numbers, e-mail addresses 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 Personal Information complies with all applicable federal and Institution privacy and data protection laws, including without limitation, the Gramm-Leach-Bliley Act ("GLBA"); the Health Information Portability and Accountability Act ("HIPAA"); the Family Educational Rights and Privacy Act ("FERPA") of 1974 (20 U.S.C.1232g), the FTC's Red Flag Rules and any applicable federal or Institution laws, as amended, together with regulations promulgated thereunder.

Some Personal Information provided by Institution to Contractor is subject to FERPA. Contractor acknowledges that its improper disclosure or re-disclosure of Personal Information covered by FERPA

RFQ NUMBER – NAME OF RECURRING GOODS AND/OR SERVICE

may, under certain circumstances, result in Contractor's exclusion from eligibility to contract with Institution for at least five (5) years and agrees to become a "school official" as defined in the applicable Federal Regulations for the purposes of this Agreement.

Data Security. Contractor represents and warrants that Contractor will maintain compliance with the SSAE 16 standard, and shall undertake any audits and risk assessments Contractor deems necessary to maintain compliance with SSAE16.

Incident Response. "Security Incident" means any reasonably suspected breach of information security, unauthorized access to any system, server or database, or any other unauthorized access, use, or disclosure of Personal Information or Highly-Sensitive Personal Information occurring on systems under Contractor's control. Contractor shall: (i) provide Institution with the name and contact information for an employee of Contractor who shall serve as Customer's primary security contact and shall be available to assist Customer twenty-four (24) hours per day, seven (7) days per week as a contact in resolving obligations associated with a Security Incident; (ii) notify Institution of a Security Incident as soon as practicable, but no later than forty eight (48) hours after Contractor becomes aware of it, except where disclosure is prohibited by law; and (iii) notify Institution of any such Security Incident by telephone at the following number: Judy Molnar: Office: 931-221-7129 Fax: 931-221-7875 and e-mail molnarj@apsu.edu with a copy by e-mail to Contractor's primary business contact at the Institution.

Contractor shall use best efforts to immediately mitigate or resolve any Security Incident, at Contractor's expense and in accordance with applicable privacy rights, laws, regulations and standards. Contractor shall reimburse Institution for actual costs incurred by Institution in responding to, and mitigating damages caused by, any Security Incident, including all costs of notice and/or remediation incurred under all applicable laws as a result of the Security Incident.

Return of Personal Information. At any time during the term of this Agreement, at the Institution's written request or upon the termination or expiration of this Agreement, Contractor shall return to the Institution all copies, whether in written, electronic or other form or media, of Confidential, Highly-Sensitive, or Personal Information in its possession, or at Customer's direction, securely dispose of all such copies.

- E.10. Service and Software Accessibility Standards. The Contractor warrants and represents that the service and software, including any updates, provided to the Institution 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 Contractor will provide Institution with a fully completed Accessibility Statement and Conformance and Remediation forms (Attachments X & X). The Contractor shall indemnify and hold the Institution harmless in the event of claims arising from inaccessibility related to the Contractor's product and/or services.
- E.11. Contractor Commitment to Diversity. The Contractor shall assist the Institution in monitoring the Contractor's performance 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 Institution in form and substance as required by Institution.
- E.12. Click-Wrap Agreements. The Contractor agrees that click-wrap agreements shall not be binding upon the Institution. No employee has the actual or apparent authority to enter into click-wrap agreements on behalf of the Institution without the approval of the Institution's Procurement and/or Contracts Office. No employee has the authority to modify, amend, or supplement this Agreement through a click-wrap agreement. This Agreement can only be modified, amended, or supplemented under these terms through a written amendment in accordance with the Institution's procedures, policies, and guidelines.
- E.13. The Contractor fully understands that this Agreement is not binding except and until all appropriate Institution officials' approvals and signatures have been obtained, and the fully executed document returned to the Contractor.

IN WITNESS WHEREOF, CONTRACTOR LEGAL ENTITY NAME:

RFQ NUMBER – NAME OF RECURRING GOODS AND/OR SERVICE

CONTRACTOR SIGNATURE

DATE

PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)

AUSTIN PEAY STATE UNIVERSITY:

NAME & TITLE

DATE

PRINTED NAME AND TITLE OF SIGNATORY (above)

DRAFT

CONTRACTOR RESPONSIBILITIES

THIS ATTACHMENT SHOULD CONTAIN, AT A MINIMUM, THE RFP SPECIFICATIONS WHEN THE RFP IS ISSUED.

DRAFT

CONTRACT RATES

Note: The final contract rates to be added upon contract award.

THIS ATTACHMENT SHOULD CONTAIN, AT A MINIMUM, THE BASE COST ITEMS REQUESTED IN THE RFP WHEN THE RFP IS ISSUED.

	Year 1	Year 2	Year 3	Year 4	Year 5
Cost Item Description					
The Proposers costs for this RFP must be addressed by line item, as follows:					

DRAFT

ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE

<p>If the attestation applies to more than one contract, modify this row accordingly.</p> <p>SUBJECT CONTRACT NUMBER:</p>	
<p>CONTRACTOR LEGAL ENTITY NAME:</p>	

If the attestation applies to more than one contract, modify the following paragraph accordingly.

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.

CONTRACTOR SIGNATURE

NOTICE: This attestation MUST be signed by an individual empowered to contractually bind the Contractor. Attach evidence documenting the individual's authority to contractually bind the Contractor, unless the signatory is the Contractor's chief executive or president.

PRINTED NAME AND TITLE OF SIGNATORY DATE OF ATTESTATION
