***PRO FORMA* CONTRACT**

**The *pro forma* Contract detailed in this attachment contains some “blanks,” signified by descriptions in capital letters, describing material to be added, along with appropriate additional information in the final Contract resulting from this RFP/RFQ.**

**CONTRACT
BETWEEN THE UNIVERSITY OF MEMPHIS
AND
[CONTRACTOR NAME]**

This Contract, by and between The University of Memphis, hereinafter referred to as the “University” and [CONTRACTOR LEGAL ENTITY NAME], hereinafter referred to as the “Contractor,” is for the purpose of providing [BRIEF DESCRIPTION OF THE SERVICE], as further defined in the "SCOPE OF GOODS AND/OR SERVICES."

The Contractor is a [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 [STATE OF ORGANIZATION].

A. SCOPE OF SERVICES:

A.1. [DESCRIBE IN DETAIL THE GOODS AND/OR SERVICES THE CONTRACTOR IS TO PROVIDE TO THE UNIVERSITY AND THE GOODS AND/OR SERVICES THAT THE UNIVERSITY IS TO PROVIDE TO THE CONTRACTOR – THIS MAY BE A SUMMARY WITH DETAILED SPECIFICATIONS IN AN ATTACHMENT. THIS SCOPE OF GOODS AND/OR SERVICES SHOULD BE SUBSTANTIALLY COMPLETE WHEN THE RFP IS ISSUED. The scope of goods and/or services and Contractor’s specific responsibilities are defined in Attachment A of this Agreement.

A.2. ADD THIS AND ATTACHMENT IF APPLICABLE. The Contractor agrees to provide goods and/or services to the University as well as the eligible institutions listed in Attachment 6.9.

B. CONTRACT TERM:

B.1. Contract Term. This Contract shall be effective for the period commencing on [START DATE] and ending on [END DATE]. The University 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. This agreement shall not be extended for more than a five (5) year period.

C. PAYMENT TERMS AND CONDITIONS:

C.1. Maximum Liability. In no event shall the maximum liability of the University under this Contract exceed [WRITTEN DOLLAR AMOUNT] ($[NUMBER AMOUNT]). 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 University 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 University under this Contract are firm for the duration of the Contract and are not subject to escalation for any reason unless the Contract is amended.

C.3. Payment Method. The Contractor agrees that University shall issue payment for all goods and/or services under this Contract via a virtual card by Payment Plus through U.S. Bank

 [OR]

 via the method agreed upon by the Contractor and the University.

C.4. Payment Methodology. The Contractor shall be compensated based on the Service Rates in Attachment B for units of service authorized by the University 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 University 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. (PICK ONE OF THESE OPTIONS)

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

 OR

Compensation to the Contractor for travel, meals and/or lodging in connection to work performed under this Contract shall be in the amount of actual cost to the Contractor, subject to the maximum amounts and limitations specified in the State Comprehensive Travel Regulations and pursuant to University Travel Policy, as they may be from time to time amended. [YOU SHOULD MAKE THIS DECISION BEFORE THE RFP IS ISSUED]

C.6. Payment of Invoice. The payment of the invoice by the University shall not prejudice the University's right to object to or question any invoice or matter in relation thereto. Such payment by the University 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 theretofore made which are determined by the University, on the basis of audits conducted in accordance with the terms of this Contract, not to constitute proper remuneration for compensable goods and/or services.

C.8. Deductions. The University 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 University any amounts which are or shall become due and payable to the University by the Contractor.

C.9. Retention of Final Payment. An amount of [WRITTEN DOLLAR AMOUNT] ($[NUMBER AMOUNT]), representing [WRITTEN NUMBER] percent ([NUMBER] %) of the maximum total compensation payable under this Contract, shall be withheld by the University until [WRITTEN NUMBER] ([NUMBER]) days after final completion of the services to be performed by the Contractor under this Contract. [THIS MAY BE DELETED IF NOT APPLICABLE]

D. TERMS AND CONDITIONS:

D.1. Required Approvals. The University is not bound by this Contract until it is approved by the appropriate officials in accordance with applicable Tennessee state laws and regulations and University policies as shown on the signature page of this Contract.

D.2. Modification and Amendment. This Contract may be modified only by a written amendment executed by all parties hereto and approved by the appropriate officials.

D.3. Ethnicity. This Contract shall not be executed until the Contractor has completed the Minority/Ethnicity Form.

D.4. Termination for Convenience. The University may terminate this Contract without cause for any reason. Such termination under this Section D.4 shall not be deemed a Breach of Contract by the University. The University shall give the Contractor at least [WRITTEN NUMBER] ([NUMBER]) days written notice before the effective termination date. The Contractor shall be entitled to receive compensation for satisfactory, authorized service completed as of the termination date, but in no event shall the University be liable to the Contractor for compensation for any service which has not been rendered. Upon such termination, the Contractor shall have no right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

D.5. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor violates any terms of this Contract, the University shall have the right to immediately terminate the Contract and withhold payments in excess of fair compensation for completed goods and/or services; provided, however, University shall have the option to give Contractor written notice and a specified period of time in which to cure. Notwithstanding the above, the Contractor shall not be relieved of liability to the University for damages sustained by virtue of any breach of this Contract by the Contractor.

D.6. Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the goods and/or services performed under this Contract without obtaining the prior written approval of the University. If such subcontracts are approved by the University, they shall contain, at a minimum, sections of this Contract pertaining to "Conflicts of Interest" and "Nondiscrimination." Notwithstanding any use of approved subcontractors, the Contractor shall be the prime contractor and shall be responsible for all work performed.

D.7. Conflicts of Interest. The Contractor 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, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed relative to this Contract.

D.8. 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, color, religion, sex, veteran status, national origin, or any other classification protected by Federal, or State 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.9. Records. The Contractor shall maintain documentation for all charges against the University under this Contract. The books, records, and documents of the Contractor, 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 University, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.

D.10. Monitoring. 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.

D.11. Progress Reports. The Contractor shall submit brief, quarterly, progress reports to the University as requested. (**OR** specify time period – monthly, quarterly, semi-annually, annually, etc.)

D.12. Strict Performance. Failure by any party to this Contract to insist in any one or more cases upon 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 such 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 hereto.

D.13. Independent Contractor. 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.

 The Contractor, being an independent contractor and not an employee of the University, agrees to carry adequate public liability and other appropriate forms of insurance on the Contractor’s employees, and to pay all applicable taxes incident to this Contract.

 **OR**

 The Contractor, being an independent contractor and not an employee of the University, agrees to carry public liability insurance, issued by a carrier licensed to do business in the State of Tennessee, in the amount of at least one million dollars per occurrence, with an endorsement naming the University as an additional insured under the policy, and any other forms of insurance required by law, including, but not limited to workers compensation insurance. The Contractor shall provide proof of all insurance required under this section prior to execution of this Contract. Contractor shall pay applicable taxes incident to this Contract.

 [If the Contract calls for the Contractor to do work on the property of the University or to do acts on behalf of the University that have any risk of injury to others, choose the second option]

D.14. University Liability. The University shall have no liability except as specifically provided in this Contract.

D.15. 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.

D.16. State and Federal Compliance. The Contractor shall comply with all applicable Federal, State, and municipal laws, rules and regulations, as well as all University policies and guidelines, including but not limited to, Parking on Campus, Drug Free Campus and Alcohol Abuse Prevention, Non-Discrimination and Anti-Harassment, and Sexual Misconduct and Domestic Violence in the performance of this Contract.

D.17. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Contractor agrees that it will be subject to the exclusive jurisdiction of the Tennessee Claims Commission in actions that may arise under this Contract. The Contractor 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.

D.18. 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.

D.19. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.

E. ADDITIONAL TERMS AND CONDITIONS:

E.1. Communications and Contacts.

 The University:
 [NAME AND TITLE OF UNIVERSITY CONTACT PERSON]
 [UNIVERSITY 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 sent in a manner that verifies proof of delivery. Any communication by facsimile transmission shall also be sent by United States mail on the same date of the facsimile transmission. All communications which relate to any changes to the Contract shall not be considered effective until agreed to, in writing, by both parties.

E.2. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State and/or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the University reserves the right to terminate the Contract upon written notice to the Contractor. Termination under this Section E.2 shall not be deemed a breach of Contract by the University. 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. Upon such termination, the Contractor shall have no right to recover from the University any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

E.3. Breach. A party shall be deemed to have breached the Contract if any of the following occurs (However, this list is not exclusive):

— failure to perform in accordance with any term or provision of the Contract;
— partial performance of any term or provision of the Contract;
— any act prohibited or restricted by the Contract, or
— violation of any warranty.

For purposes of this Contract, these items shall hereinafter be referred to as a “Breach.”

a. Contractor Breach— University shall notify Contractor in writing of a Breach.

(1) In event of a Breach by Contractor, the University shall have available the remedy of actual damages and any other remedy available at law or equity.

 (2) Liquidated Damages— (Include this section **only** if applicable and add attachment as described below) In the event of a Breach, the University may assess Liquidated Damages. The University shall notify the Contractor of amounts to be assessed as Liquidated Damages. The parties agree that due to the complicated nature of the Contractor’s obligations under this Contract it would be difficult to specifically designate a monetary amount for a Breach by Contractor as said amounts are likely to be uncertain and not easily proven. Contractor hereby represents and covenants it has carefully reviewed the Liquidated Damages provisions contained in above referenced, Attachment [NUMBER] and agrees that the amounts represent a reasonable relationship between the amount and what might reasonably be expected in the event of Breach, and are a reasonable estimate of the damages that would occur from a Breach. It is hereby agreed between the parties that the Liquidated Damages represent solely the damages and injuries sustained by the University in losing the benefit of the bargain with Contractor and do not include any injury or damage sustained by a third party. The Contractor agrees that the liquidated damage amount is in addition to any amounts Contractor may owe the University pursuant to the indemnity provision or other section of this Contract.

The University may continue to withhold the Liquidated Damages or a portion thereof until the Contractor cures the Breach, the University exercises its option to declare a Partial Default, or the University terminates the Contract. The University is not obligated to assess Liquidated Damages before availing itself of any other remedy. The University may choose to discontinue Liquidated Damages and avail itself of any other remedy available under this Contract or at law or in equity; provided, however, Contractor shall receive a credit for Liquidated Damages previously withheld except in the event of a Partial Default.

(3) Partial Default— In the event of a Breach, the University may declare a Partial Default. In which case, the University shall provide the Contractor written notice of: (1) the date which Contractor shall terminate providing the service associated with the Breach; and (2) the date the University will begin to provide the service associated with the Breach. Notwithstanding the foregoing, the University may revise the time periods contained in the notice written to the Contractor.

 In the event the University declares a Partial Default, the University may withhold, together with any other damages associated with the Breach, from the amounts due the Contractor the greater of: (1) amounts which would be paid the Contractor to provide the defaulted service; or (2) the cost to the University of providing the defaulted service, whether said service is provided by the University or a third party. To determine the amount the Contractor is being paid for any particular service, the University shall be entitled to receive within five (5) days any requested material from Contractor. The University shall make the final and binding determination of the amount.

 The University may assess Liquidated Damages against the Contractor for any failure to perform. Upon Partial Default, the Contractor shall have no right to recover from the University any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount. Contractor agrees to cooperate fully with the University in the event a Partial Default is declared.

b. University Breach— In the event of a Breach of Contract by the University, the Contractor shall notify the University in writing within 30 days of any Breach of Contract by the University. The notice shall contain a description of the Breach. In the event of Breach by the University, the Contractor may avail itself of any remedy at law in the Claims Commission; provided, however, failure by the Contractor to give the University written notice and opportunity to cure as described herein operates as a waiver of the University’s Breach. Failure by the Contractor to file a claim before the Claims Commission within one (1) year of the written notice of Breach shall operate as a waiver of said claim in its entirety. It is agreed by the parties this provision establishes a contractual period of limitations for any claim brought by the Contractor.

E.4. Copyrights and Patents/University Ownership of Work Products. Contractor grants University a world-wide, perpetual, non-exclusive, irrevocable, fully paid up license to use any proprietary software products delivered under this Contract. The University 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 University 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 University as well as its officers, agents, and employees from and against any and all claims or suits which may be brought against the University for infringement of any third party’s intellectual property rights, including but not limited to, any alleged patent or copyright violations. The University 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 University, the Contractor shall take all reasonable steps to secure a license for University 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 University in the event such service is necessitated to enforce the obligations of the Contractor to the University.

E.5. Insurance.  The Contractor shall maintain a commercial general liability policy.  The commercial general liability 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 Contractor shall maintain workers’ compensation coverage or a self-insured program as required under Tennessee law.  The Contractor shall deliver to the University both certificates of insurance no later than the effective date of the Contract.  If any policy providing insurance required by the Contract is cancelled prior to the policy expiration date, the Contractor, upon receiving a notice of cancellation, shall give immediate notice to the University.

The enumeration in the Contract of the kinds and amounts of liability insurance shall not abridge, diminish or affect the Contractor’s legal responsibilities arising out of or resulting from the services under this Contract.

E.6. 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 University, must be issued through a company licensed to issue such a bond in the State of Tennessee.

 The Contractor shall provide the bond to the University 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 University prior to its submittal.

E.7. Competitive Procurements. If this Contract provides for reimbursement of the cost of goods, materials, supplies, equipment, or services, such procurements shall be made on a competitive basis, where practical.

E.8. 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 University, 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 University for the *pro rata* amount of the residual value at the time of loss based upon the University'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 University.

 [OR]

No equipment shall be purchased under this Contract.

E.9. University 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 University for the Contractor’s temporary use under this Contract. Upon termination of this Contract, all property furnished shall be returned to the University 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 University for the residual value of the property at the time of loss.

E.10. Contract Documents. Included in this Contract by reference are the following documents:

a***.*** This Contract document, its attachments and amendments
b***.*** The Request for Proposal RFP\_\_\_\_\_\_\_\_\_ and its associated amendments

c. The Contractor’s Proposal dated \_\_\_\_\_\_\_\_\_\_\_\_\_\_.

In the event of a discrepancy or ambiguity regarding the interpretation of this Contract, these documents shall govern in the order of precedence as listed above.

E.11. Prohibited Advertising. The Contractor shall not refer to this Contract or the Contractor’s relationship with the University hereunder in commercial advertising in such a manner as to state or imply that the Contractor or the Contractor's goods and/or services are endorsed.

E.12. Hold Harmless. The Contractor agrees to indemnify and hold harmless the University 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.

E.13. Debarment and Suspension. The Contractor certifies, to the best of its knowledge and belief, that it and its 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 offence 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 for 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.

E.14. Prohibition on Hiring Illegal Immigrants.  T.C.A. §12-3-309, prohibits State entities from contracting to acquire goods and/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 Contractor attests that the Contractor shall not knowingly utilize the goods and/or services of illegal immigrants in the performance of the Contract and will not knowingly utilize the goods and/or services of any subcontractor, if permitted under the Contract, who will utilize the goods and/or services of illegal immigrants in the performance of the Contract. **The Contractor hereby attests, certifies, warrants, and assures that the Contractor shall not knowingly utilize the goods and/or services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the goods and/or services of any subcontractor who will utilize the goods and/or services of an illegal immigrant in the performance of this Contract.**

(For contracts that require Fiscal Review Committee approval, the following language with the signed Attestation Form incorporated as an Attachment to the Agreement must be used)

 “T.C.A. § 12-3-309 requires that Contactor attest in writing that Contractor will not knowingly utilize the goods and/or services of illegal immigrants in the performance of this Contract and will not knowingly utilize the goods and/or services of any subcontractor, if permitted under this Contract, who will utilize the goods and/or services of illegal immigrants in the performance of this Contract.  The attestation shall be made on the form, Attestation re Personnel Used in Contract Performance (“the Attestation”), which is attached and hereby incorporated as Attachment C.

E.15. 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 Contract, or review the University’s Red Flags identity theft program and report any Red Flags to University.

E.16. Sales and Use Tax. (Include for goods and/or services contracts) The Contractor 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 Contractor 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 Contractor, or the Contractor’s subcontractor.

E.17. 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: (901) 678–8324 and via e-mail at cio@memphis.edu; with a copy by read receipt email to the University IT Security Office at itsec@memphis.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.

E.18. Service and Software Accessibility Standards.  The Contractor warrants and represents that the service and software, including any updates, provided to the University 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 University with a fully completed Accessibility Statement and Conformance and Remediation forms (Attachments 6.13 & 6.14).  The Contractor shall indemnify and hold the University harmless in the event of claims arising from inaccessibility related to the Contractor’s products and/or services.

E.19.    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 a material provision of this Contract.  The Contractor 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.

E.20.    Boycott of Israel.   The Contractor certifies that is not currently engaged in and will not for the duration of the contract engage in, a boycott of Israel as defined by Tenn. Code Ann. § 12-4-127. This provision shall not apply to contracts with a total value of less than two hundred fifty thousand dollars ($250,000) or to contractors with less than ten (10) employees.

E.21. Contractor Commitment to Diversity. The Contractor shall assist the University 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 University in form and substance as required by University.

E.22. Limited Tobacco-Use Campus. The University of Memphis is a Limited Tobacco-Use Campus, reference University Policy UM1738:  <http://policies.memphis.edu/UM1738.htm>.  The use of tobacco is prohibited on all University of Memphis campuses, except in certain locations stated in this policy.  Contractor and contractor’s employees are expected to abide by this policy to promote a healthy and safe educational living environment on our campuses.

E.23. Click-Wrap Agreements. The Contractor agrees that click-wrap agreements shall not be binding upon the University. No employee has the actual or apparent authority to enter into click-wrap agreements on behalf of the University without the approval of the University’s Procurement and Contract Services 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 University’s procedures, policies, and guidelines.

E.24. The Contractor fully understands that this Agreement is not binding except and until all appropriate State officials' approvals and signatures have been obtained, and the fully executed document returned to the Contractor.

E.25. Campus Parking.  **(Include if applicable) All** vehicles on campus are subject to parking fees to access the campus whether it is in a parking garage or ground surface lot, including contractors and contractor’s employees. Parking Permits are available in the Parking Office and are available for purchase by the individual or company. Hourly rates are charged for parking if you do not have a parking permit. The University will not assume liability for any parking hourly rates and permits. In addition, The University does not assume liability for any fines that may be incurred while a vehicle is parked on campus. The University will not reimburse the contractor for parking hourly rates, permits and fines. Any applicable charges for parking are the responsibility of the Contractor.

E.26. PCI Compliance. **(Include if applicable)** Contractor represents and warrants that for the life of the Contract, the software and services used for processing credit card transactions shall be compliant with standards established by the PCI Security Standards Council (<https://www.pcisecuritystandards.org/index.shtml>). Contractor must clearly define the managed PCI DSS requirements and provide a written agreement that the Contractor is responsible for the security of the cardholder data the Contractor possesses or otherwise stores, processes or transmits on behalf of the University.  Contractor agrees to indemnify and hold University, its officers, employees, and agents, harmless for, from and against any and all claims, causes of action, suits, judgments, assessments, costs (including reasonable attorneys’ fees) and expenses arising out of or relating to any loss of University customer credit card or identity information managed, retained or maintained by Contractor, including but not limited to fraudulent or unapproved use of such credit card or identity information. Contractor must annually submit the appropriate “Attestation of Compliance” to the University and clearly identify the services and system components that are included in the scope of their assessment.

E.27. This Contract may be executed in two or more counterparts, each of which together shall be deemed an original, but all of which together shall constitute one and the same instrument. In the event that any signature is delivered by facsimile transmission or by e-mail delivery of a “.pdf” format data file, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or “.pdf” signature page were an original thereof.

|  |
| --- |
| **IN WITNESS WHEREOF:** |
| **[CONTRACTOR LEGAL ENTITY NAME]:** |
|  |
| **[NAME AND TITLE]** | **Date** |
|  |
| **THE UNIVERSITY OF MEMPHIS** |
|  |
| **Bill Hardgrave, President** | **Date** |

|  |
| --- |
| **ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE**  |
| **CONTRACT NUMBER:** |  |
| **CONTRACTOR LEGAL ENTITY NAME:** |  |
| **FEDERAL EMPLOYER IDENTIFICATION NUMBER:** (or Social Security Number) |  |
| **The Contractor, identified above, does hereby attest, certify, warrant, and assure that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract.** |
| **SIGNATURE & DATE:** |   |
|  | NOTICE: This attestation MUST be signed by an individual empowered to contractually bind the Contractor. If said individual is not the chief executive or president, this document shall attach evidence showing the individual’s authority to contractually bind the Contractor. |