



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

INTENT TO BID (ITB) - ELECTRONIC

1. FILE NUMBER: 22-021
2. DUE DATE – NO LATER THAN: 4:30 PM (CST), Thursday, September 16, 2021
3. FOR THE PURCHASE OF: Event Staging and Sound
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 Intent to Bid.
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 & 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. This quotation must be manually signed by Seller’s person with proper signature authority. Failure to sign and submit **signature** on this document will result in **REJECTION** of your quotation. **Quotation must be received in the Procurement and Contract Services by the designated time or bid will be REJECTED. Electronic bids will 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



QUOTATION CERTIFICATION FORM

THIS FORM MUST BE RETURNED WITH THE INTENT TO BID

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

*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 ITB 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 ITB 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.

- 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 any LGI 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 ITB 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
ITB 22-021
EVENT STAGING AND SOUNDSCHEDULE 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).

ITB 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 (<u>all</u> dates are Institution business days)
1. Institution Issues ITB		Wednesday, September 1, 2021
2. Written Questions Deadline		Wednesday, September 8, 2021
3. Institution Responds to Written Questions		Monday, September 13, 2021
4. Bid Deadline – Procurement & Contract Services	4:30 pm	Thursday, September 16 2021
5. Contract Effective Date		Upon Full Execution

2 INTRODUCTION

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

Successful vendor shall provide Event Staging and Sound as needed for Austin Peay State University.

2.2 ITB Communications

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

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

Judy Blain
Austin Peay State University
505 York Street
(931) 221-7022
(931) 221-6300
ap-bids@apsu.edu

2.2.3 The Institution has assigned the following ITB identification number that must be referenced in all communications regarding the ITB 22-021.

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

2.3 Written Questions/Answer Period

A question and answer period deadline is in the ITB 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 ITB Section 1, Schedule of Events.

3 GENERAL REQUIREMENTS

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

3.2 Assignment and Subcontracting

3.2.1 The Bidder awarded a Contract pursuant to this ITB may not subcontract, transfer, or assign any portion of the Contract without the Institution's prior, written approval.

3.2.2 A subcontractor may only be substituted for a proposed subcontractor at the discretion of the Institution and with the Institution's prior, written approval.

3.2.3 At its sole discretion, the Institution reserves the right to refuse approval of any subcontract, transfer, or assignment.

3.2.4 Notwithstanding Institution approval of each subcontractor, the Bidder, if awarded a contract pursuant to this ITB, shall be the prime contractor and shall be responsible for all work performed.

3.3 Right to Refuse Personnel

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

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 Order 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 Order 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 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.

3.6 Policy and Guideline Compliance This ITB 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

4.1 Austin Peay State University is seeking quotations to provide Event Staging and Sound per bid specifications.

4.2 Terms and Conditions

4.2.1 Austin Peay's terms and conditions apply to this bid and can be found at www.apsu.edu/procurement under terms and conditions.

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

4.2.3 Sales and Use Tax: The Contractor shall be registered 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.

4.3 Agreement

4.3.1 The form of the contract shall be a standard University contract referencing these specifications and intent to bid (22-021).

4.3.2 The Institution intends to enter into a contract with an expected effective period for commencing on October 1, 2021 and ending on June 30, 2022. The Institution reserves the right to renew the contract on an annual basis for up to four (4) additional one-year terms at its option. 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.

4.3.3 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.

4.3.4 The contractor, being an independent contractor and not an employee of the University, agrees to protect and hold harmless the University from any and all liability arising out of all aspects of performance of this contract.

4.3.5 Entering into this agreement, APSU does not agree or imply that there will be any specific amount of Event Staging and Sound will be purchased.

4.3.6 The Proposer awarded a contract pursuant to this ITB may not subcontract, transfer, or assign any portion of the Contract without the Institution's prior, written approval.

4.4 Cost

4.4.1 The University reserves the right to receive proof of contractor's cost, when desired, for auditing purposes.

4.4.2 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.

4.4.3 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

4.5. Evaluation Factors

To determine the low bid for purposes of awarding the contract only, per specifications the identified hypothetical annual conditions will be used.

5.0 Contract Approval and Contract Payments

The *Pro Forma* Contract substantially represents the contract document that the Proposer selected by the Institution MUST agree to and sign. A response that limits or changes any of the terms or conditions contained in the Pro Forma Contract may be considered non-responsive.

5.1 This ITB and its contractor selection processes do not obligate the Institution and do not create rights, interests, or claims of entitlement in either the Respondent with the apparent best- evaluated response or any other Respondent. Institution obligations pursuant to a contract award shall commence only after the Contract is signed by the Institution and the Contractor and after the Contract is approved by all other Institution officials as required by applicable laws and regulations.

5.2 No payment will be obligated or made until the relevant Contract is approved as required by applicable statutes and rules of the State of Tennessee.

5.3 The Institution shall not be liable for payment of any type associated with the Contract resulting from this ITB (or any amendment thereof) or responsible for any goods delivered or services rendered by the Contractor, even goods delivered or services rendered in good faith and even if the Contractor is orally directed to proceed with the delivery of goods or the rendering of services, if it occurs before the Contract Effective Date or after the Contract Term.

5.4 All payments relating to this procurement will be made in accordance with the Payment Terms and Conditions of the Contract resulting from this ITB.

5.5 If any provision of the Contract provides direct funding or reimbursement for the competitive purchase of goods or services as a component of contract performance or otherwise provides for the reimbursement of specified, actual costs, the Institution will employ all reasonable means and will require all such documentation that it deems necessary to ensure that such purchases were competitive and costs were reasonable, necessary, and actual. The Contractor shall provide reasonable assistance and access related to such review. Further, the Institution shall not remit, as funding or reimbursement pursuant to such provisions, any amounts that it determines do not represent reasonable, necessary, and actual costs.

5.6 Contractor Performance

The Contractor who is awarded a contract will be responsible for the delivery of all acceptable goods or the satisfactory completion of all services set out in this ITB (including attachments) as may be amended. All goods or services are subject to inspection and evaluation by the Institution. The Institution will employ all reasonable means to ensure that goods delivered or services rendered are in compliance with the Contract, and the Contractor must cooperate with such efforts.

5.7 Contract Amendment

After Contract award, the Institution may request the Contractor to deliver additional goods or perform additional services within the general scope of the Contract and this ITB, but beyond the specified Scope, and for which the Contractor may be compensated. In such instances, the Institution will provide the Contractor a written description of the additional goods or services. The Contractor must respond to the Institution with a time schedule for delivering the additional goods or accomplishing the additional services based on the compensable units included in the Contractor's response to this ITB. If the Institution and the Contractor reach an agreement regarding the goods or services and associated compensation, such agreement must be effected by means of a contract amendment. Further, any such amendment requiring additional goods or services must be signed by both the Institution and the Contractor and must be approved by other Institution officials as required by applicable statutes, rules, policies and procedures of the State of Tennessee. The Contractor must not provide additional goods or render additional services until the Institution has issued a written contract amendment with all required approvals.

5.8 **Severability**

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

5.9 **Next Ranked Respondent**

The Institution reserves the right to initiate negotiations with the next ranked Respondent should the Institution cease doing business with any Respondent selected via this ITB process.

5.10 **Contract Term**

The Institution intends to enter into a contract with an expected effective period for upon full execution for one (1) year. The Institution reserves the right to renew the contract on an annual basis for up to four (4) additional one-year terms at its option. 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.

5.11 **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.).

5.12 **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.

AUSTIN PEAY STATE UNIVERSITY
ITB 22-021
EVENT STAGING AND SOUND

Dates – For Homecoming 2021 – (Dates will vary per year)

Tuesday, October 5, 2021 – Homecoming Comedy Show, 7 pm
Thursday, October 7, 2021 – Gobs Got Talent (Talent Show), 7 pm
Friday, October 8, 2021 — Lip Sync Competition, 7 pm
Saturday, October 9, 2021 – NPHC Step Show, 7 (Agree to work with additional contract through Sorority/Fraternity Affairs for NPHC Step Show)

Dates - For Freshman Convocation 2022 – (Dates will vary per year)

Friday, August 19, 2022 - Freshman Convocation, 12:30 pm

SOUND, PRODUCTION AND BACKLINE

All should be setup and operated by at least two competent technicians through sound check and actual performance.

SOUNDCHECK

Each event will be granted an agreed upon opportunity for sound check prior to doors opening.

Crew Call / Load-in / Load-Out

There will be adequate amounts of student, staff, and production crew available for Load-in and Load-out. Must be advanced. Show call will include one (1) house sound monitor/electrician and two (2) spotlight operators (subjective and dependent on room).

Staging/Lighting (Artist and purchaser agreed upon during contract phase)

The company must provide the following:

Consoles of various makes and models are available

Staging/Audio

- 40' X 30' X 4' stage
- 44' X 34' 12" box Truss lighting grid, lifted by 6 Eventer 24 lifts
- 12 DB Tech T-12 Hi packs
- 8 EV X-Line Sub's
- 4 DB Tech T-8 Hi pack front fills

Lighting

- 32 18X12 watt LED washes
- 8 Martin Mac 2K Profile 2's
- 8 Sharpy knock off's
- 2 Lycian 1275 spot lights

Risers: Two (2) rolling (with locking casters) quality, black-skirted riser sections, should be 8' X 8' X 24" high.

Backdrop/Drapery: Access to and utilize any and all house black drapery in the upstage, wings, legs, etc. at the discretion of Production Manager (to be discussed during advance).

Barricade: Request strong, unbroken MOJO style barricade placed at closest possible safe and legal distance from downstage edge.

Power: six (6) quad boxes (20-amp) electrical outlets/power distribution for sole use of the band.

**AUSTIN PEAY STATE UNIVERSITY
ITB 22-021
EVENT STAGING AND SOUND**

Description	Year 1 (2021-2022)	Year 2 (2022-2023)	Year 3 (2023-2024)	Year 4 (2024-2025)	Year 5 (2025-2026)
Lump Sum for Freshman Convocation					
Lump Sum for Homecoming Comedy Show					
Lump Sum price for Gobs Got Talent					
Lump Sum price for Lip Sync Competition					
Lump Sum price for NPHC Step Show					
Total					

AUSTIN PEAY STATE UNIVERSITY
ITB 22-021
EVENT STAGING AND SOUND

This Contract, by and between Austin Peay State University, hereinafter referred to as the "University" and [CONTRACTOR LEGAL ENTITY NAME], hereinafter referred to as the "Contractor," is for the purpose of providing athletic executive search, 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. [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 C.

B. CONTRACT TERM:

- B.1. Contract Term. This Contract shall be effective for the period commencing on October 1, 2021 and ending on September 30, 2022. 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. The Institution reserves the right to extend this Contract for an additional period of time representing increments of no more than five (5) years and a total contract term of no more than ten (10) years, provided that the Institution notifies the Contractor in writing of its intention to do so at least thirty (30) 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 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 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.
The Contractor shall not be compensated or reimbursed for travel, meals, or lodging.
- 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. – N/A
- 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 thirty (30) 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.
- 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 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.

- 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 State and Federal laws and regulations, including University policies and guidelines 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. – N/A

- 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

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 Intent to Bid ITB #22-021 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 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 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.**
- E.15. Iran Divestment Act: The requirements of Tenn. Code Ann. § 12-12-101 et. seq., addressing contracting with persons with investment activities in Iran, shall be material provision of this Contract. The 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.16. Red Flags and Identity Theft. – N/A
- E.17. Sales and Use Tax - 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.18. 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 confidentiality, integrity, and availability of all electronically managed Protected Information. Contractor shall ensure that such security measures are regularly reviewed and revised to address evolving threats and vulnerabilities.

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

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

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

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

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

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

- a. provide the University with the name and contact information for an employee of Contractor who shall serve as the University's primary security contact and shall be available to assist the University twenty-four (24) hours per day, seven (7) days per week as a contact in resolving obligations associated with a Security Incident;
- b. notify the University of a Security Incident as soon as practicable, but no later than twenty-four (24) hours after Contractor becomes aware of it, except where disclosure is prohibited by law; and

- c. Notify the University Chief Information Officer of any such Security Incident by telephone at the following number: 931-221-7331 and via e-mail at taylors@apsu.edu; with a copy by read receipt email to the University IT Security Office at apitsecurity@apsu.edu; and with a copy by read receipt e-mail to Contractor's primary business contact at the University.

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

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

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

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

Any Security Incident may be grounds for immediate termination of this Agreement.

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

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

- E.19. 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.20. 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.21. Limited Tobacco-Use Campus. Austin Peay State University is a Limited Tobacco-Use Campus, reference Policy 5:002 Smoking, Vaping, and Tobacco Usage. The use of tobacco is prohibited on the APSU campus, 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.22. 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.23. 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.24. 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.25. 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.26. The Institution is not bound by this Contract until it is executed by the President or her/his delegate per APSU Delegation of Authority for Approval and Execution of Contracts and Agreements Policy 4:022. The person signing on behalf of the Contractor represents she/he is authorized to enter into the Contract on behalf of the entity named in the Contract. The Parties agree that this Contract may be executed in counterparts, executed electronically, and transmitted electronically.

Signature Page to Follow:

IN WITNESS WHEREOF:

[CONTRACTOR LEGAL ENTITY NAME]:

[NAME AND TITLE]

Date

AUSTIN PEAY STATE UNIVERSITY

MICHAEL LICARI, 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.

CONTRACTOR RESPONSIBILITIES

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CONTRACT RATES

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

Description	Year 1 (2021-2022)	Year 2 (2022-2023)	Year 3 (2023-2024)	Year 4 (2024-2025)	Year 5 (2025-2026)
Lump Sum for Freshman Convocation					
Lump Sum for Homecoming Comedy Show					
Lump Sum price for Gobs Got Talent					
Lump Sum price for Lip Sync Competition					
Lump Sum price for NPHC Step Show					
Total					

**LISTING OF LGIs, TBR SYSTEM INSTITUTIONS
AND
THE UT SYSTEMS OF HIGHER EDUCATION**

Tennessee Board of Regents, Central Office	Jackson State Community College
Austin Peay State University	TTC-Jackson
East Tennessee State University	TTC-Whiteville
Middle Tennessee State University	TTC-Crump
Tennessee State University	TTC-McKenzie
Tennessee Technological University	TTC-Paris
University of Memphis	Motlow State Community College
Chattanooga State Technical Community College	TTC-Shelbyville
Cleveland State Community College	TTC-Murfreesboro
TTC-Athens	TTC-McMinnville
Columbia State Community College	Nashville State Community College
TTC-Pulaski	TTC-Nashville
TTC-Hohenwald	TTC-Dickson
Dyersburg State Community College	Northeast State Technical Community College
TTC-Newbern	TTC-Elizabethton
TTC-Ripley	Pellissippi State Technical Community College
TTC-Covington	TTC-Knoxville
Roane State Community College	TTC-Livingston
TTC-Oneida/Huntsville	TTC-Hartsville
TTC-Harriman	Walters State Community College
TTC-Jacksboro	TTC-Morristown
TTC-Crossville	University of Tennessee – Chattanooga
Southwest Tennessee Community College	University of Tennessee – Knoxville
TTC-Memphis	University of Tennessee – Martin
Volunteer State Community College	University of Tennessee – Memphis
	University of Tennessee – Tullahoma