**PROFESSIONAL SERVICES AGREEMENT**

**BETWEEN**

**CONTRACTOR**

**AND**

**MIDDLE TENNESSEE STATE UNIVERSITY**

This Professional Services Agreement (“Agreement”) is entered into as of the date of the final signature below (“Execution Date”), by and between **MIDDLE TENNESSEE STATE UNIVERSITY** (“Institution”) and [**INSERT NAME OF CONTRACTOR**] (“Contractor”) and shall become effective commencing upon the start date of the contract term as outlined in the Agreement (“Effective Date”). The Contractor and the Institution are sometimes referred to individually as a “party” and collectively as the “parties.”

W I T N E S S E T H:

In consideration of the mutual promises herein contained, the parties have agreed and do hereby enter into this Agreement according to the provisions set forth herein:

1. Scope of Contractor’s Services. The Contractor agrees to perform the following services under this Agreement:

[INSERT DETAILED DESCRIPTION OF SERVICES TO BE PERFORMED BY CONTRACTOR]

1. Payment Terms. **The Institution shall pay the Contractor $[INSERT AMOUNT OF PAYMENT] USD NET 30 upon the completion of all of the following payment prerequisites: (1) full and satisfactory performance of all services under this Agreement (i.e., Institution will not make any advance payment or deposit under this Agreement); and (2) receipt of a conforming invoice at** invoice@mtsu.edu (i.e., invoices sent to any other email address will not be considered received, and no payment will be owed). Failure to meet these payment prerequisites may result in delayed or non-processing of payment, and the Institution shall bear no liability for any resulting delay or non-payment. A conforming invoice must include: (1) the Contractor’s full legal name, business address, and a reference to Middle Tennessee State University; (2) a unique invoice number and invoice date; (3) the Institution-issued purchase order (“PO”) number; (4) a detailed description of the goods or services provided, including relevant dates; and (5) the total amount due, itemized if necessary. This Service Fee encompasses all expenses incurred by the Contractor under this Agreement, including, but not limited to, travel, accommodation, meals, and any other ancillary costs, with no additional reimbursements or charges. As a public institution, the Institution is exempt from most Tennessee taxes, including, but not limited to, Tennessee Sales Tax and Tennessee Property Tax. The Contractor is responsible for ensuring that invoices do not include any taxes from which the Institution is legally exempt. A tax exemption certificate will be provided upon request.
2. Compliance for Non-Resident Alien Contractors. If the Contractor is a non-resident alien, payment will not be processed by the Institution until the Contractor has completed and submitted the Institution’s Foreign National Information Form, along with the appropriate documents, including the Internal Revenue Service (IRS) Form W-8BEN.
3. Maximum Financial Obligation. The Institution’s maximum financial obligation (“MFO”) is limited to the Service Fee. This provision establishes the maximum amount the Institution will be required to pay under this Agreement and serves as a limitation of the Institution’s financial liability. Any increase in this maximum financial obligation shall only occur through a written amendment executed by authorized representatives of both parties.
4. Term. The term of this Agreement shall be from [INSERT START DATE IN MM/DD/YYYY FORMAT] (“Effective Date”) until [INSERT END DATE ON MM/DD/YYY FORMAT]. Notwithstanding the foregoing, the total term of this Agreement, including any renewals, shall not exceed five (5) years.
5. Required Approval. The Institution is not bound by this Agreement until it is executed by its authorized official(s). The person signing on behalf of the Contractor represents that they are authorized to enter into this Agreement on behalf of the Contractor named in the Agreement. The parties agree that the Agreement may be executed in counterparts, executed electronically, and transmitted electronically.
6. Sales and Use Tax. The Contractor certifies that the Contractor has either registered with the State of Tennessee’s Department of Revenue for or does not make sales of goods or services that are subject to the collection of Tennessee sales and use tax, as required by Tenn. Code Ann. § 12-3-306, and will provide proof of compliance upon request.
7. Audit. The Contractor shall maintain documentation for all charges against the Institution under the Agreement. The books, records, and documents of the Contractor, insofar as they relate to work performed or money received under the Agreement, shall be maintained for a period of five (5) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the Institution, the Comptroller of the Treasury, or their duly appointed representatives. Any financial statements required by the Agreement shall be prepared in accordance with generally accepted accounting principles.
8. Non-discrimination. The Contractor shall abide by all applicable Federal and State law pertaining to discrimination and hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or otherwise be subjected to discrimination in the performance of the Agreement or in the employment practices of the Contractor on the grounds of classifications protected by Federal or State law.
9. Conflict 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 Agreement. The Contractor acknowledges, understands, and agrees that this Agreement shall be null and void if the Contractor is, or within the past six months has been, an employee of the State of Tennessee or if the Contractor is an entity in which a controlling interest is held by an individual who is, or within the past six months has been, an employee of the State of Tennessee.
10. Illegal Immigrants. Tenn. Code Ann. § 12-3-309 prohibits State entities from contracting to acquire goods or services from any person who knowingly utilizes the service of illegal immigrants in the performance of the Agreement and by signing the Agreement, the Contractor attests, certifies, warrants, and assures that the Contractor shall not knowingly utilize the services of illegal immigrants in the performance of the Agreement and will not knowingly utilize the services of any subcontractor, if permitted under the Agreement, who will utilize the services of illegal immigrants in the performance of the Agreement.
11. Iran Divestment Act. The Contractor certifies, under penalty of perjury, that to the best of its knowledge and belief the Contractor is not on the list created pursuant to Tenn. Code Ann. § 12-12-106. The Contractor further certifies that it shall not utilize any subcontractor that is on the list created pursuant to Tenn. Code Ann. § 12-12-106.
12. Debarment and Suspension. The Contractor certifies, to the best of its knowledge and belief, that it and its principals:
	1. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal or State department or agency;
	2. have not within a three (3) year period preceding this Agreement been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offense in connection with, obtaining attempting to obtain, or performing a public (Federal, State, or Local) transaction or grant under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
	3. are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or Local) with commission of any of the offenses listed in subsection (b) of this certification; and
	4. have not within a three (3) year period preceding this Agreement had one or more public transactions (Federal, State, or Local) terminated for cause or default.
13. Compliance with Institution Policies. The Contractor agrees to comply with all applicable Institution policies, rules, and regulations, as well as all relevant federal, state, and local laws. Institution will provide the Contractor with copies of, or access to, any specific policies relevant to the Contractor’s activities under this Agreement. The Contractor is responsible for reviewing these policies and ensuring full compliance, including but not limited to policies related to safety, security, facility use, sales, and conduct.
14. Accessibility. Institution is committed to providing accessible information, materials and technologies to assure that individuals with disabilities have access to university resources comparable to access that is available to others.
15. Progress Reports. The Contractor shall be required to submit Institution progress reports if requested by the Institution.
16. Independent Contractor**.** The parties hereto, in the performance of this Agreement, 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 Agreement 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 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.
17. Assignment. Contractor shall not assign this Agreement or enter into sub-contracts for any of the work described herein without obtaining the prior written approval of the Institution. Approval shall not be given if the proposed subcontractor was or is currently ineligible to bid on the Agreement.
18. Governing law. This Agreement shall be governed by and construed in accordance with the laws of the State of Tennessee without regard to its conflict of law provisions.
19. Liability of the Institution. The Institution shall have no liability except as specifically provided in this Agreement. The Contractor acknowledges and agrees that any rights or claims against the Institution 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.
20. Hold Harmless. The Contractor agrees to indemnify and hold harmless the Institution as well as its officers, agents, employees, and affiliates, from and against any and all claims, liabilities, losses, damages, costs, and causes of action which may arise, accrue, or result to any person (including Institution), 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, subcontractors, or any person acting for or on its or their behalf relating to this Agreement. The Contractor further agrees it shall be liable for the reasonable cost of attorneys for the Institution in the event such service is necessitated to enforce the terms of this Agreement or otherwise enforce the obligations of the Contractor to the Institution. In the event of any such suit or claim, the Institution shall give the Contractor written notice of any such claim or suit, and the Contractor shall have full right and obligation to conduct the Contractor’s own defense thereof and shall provide all assistance required by the Institution in the Institution’s defense. Nothing contained herein shall be deemed to accord to the Contractor, through its attorney(s), the right to represent the Institution in any legal matter, such rights being governed by Tennessee Code Annotated, Section 8-6-106.
21. Termination for Convenience. The Institution may terminate this Agreement, without cause for any reason. Termination under this Section shall not be deemed a Breach of Contract by the Institution. The Institution shall give the Contractor at least thirty (30) days’ notice in accordance with the notice provision herein, 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 Institution 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 based upon such termination.
22. Termination for Cause. If the Contractor fails to perform its obligations under this Agreement in a timely or proper manner, or if the Contractor violates any terms of this Agreement (“Breach Condition”), the Institution shall have the right to immediately terminate this Agreement upon written notice in accordance with the notice provision herein and withhold payments in excess of fair compensation for completed services (if any). At its discretion, the Institution may allow the Contractor a specific period to cure the breach before termination becomes effective. Termination does not relieve the Contractor of liability for damages sustained by the Institution due to the breach, and the Institution retains all rights to seek additional remedies as allowed by applicable law.
23. Notice.
	1. For a notice or other communication under this Agreement to be valid (unless exempted from notice herein), it must be in writing and delivered (1) by hand, (2) by a national transportation company, with all fees prepaid, (3) by registered or certified mail, return receipt requested and postage prepaid, or (4) by electronic mail (email), with confirmation of receipt (such as a manual reply or read receipt).
	2. Subject to sub-section (d) below, a valid notice or other communication under this Agreement will be effective when received by the party to which it is addressed. It will be deemed to have been received as follows:
		1. if it is delivered by hand, delivered by a national transportation company, with all fees prepaid, or delivered by registered or certified mail, return receipt requested and postage prepaid, upon receipt as indicated by the date on the signed receipt;
		2. if it is sent by email, upon the sender receiving a reply email from the recipient acknowledging receipt, or, in the absence of such a reply, proof that the email was sent to the correct email address and not returned as undeliverable;
		3. if the party to which it is addressed rejects or otherwise refuses to accept it, or if it cannot be delivered because of a change in address for which no notice was given, then upon that rejection, refusal, or inability to deliver.
	3. For a notice or other communication to a party under this Agreement to be valid, it must be addressed using the information specified below for that party or any other information specified by that party in a notice in accordance with this section.

Contractor: Notices to the Contractor shall be sent to the Contractor's last known email address or physical address as provided by the Contractor to the Institution at the time of contract execution or as later updated by written notice to the Institution.

Institution: Middle Tennessee State University

1301 E. Main St.,

Cope Admin. Bldg., Ste. 114

Murfreesboro, TN 37132

ATTN: Contract Office – Notice

E-mail: Andrew.Vance@mtsu.edu; with a copy to Zach.Lebarts@mtsu.edu and Sherry.Preston@mtsu.edu

* 1. If a notice or other communication addressed to a party is received after 4:30 p.m. CST on a business day at the location specified in the address for that party, or on a day that is not a business day, then the notice will be deemed received at 8:00 a.m. CST on the next business day.
1. Insurance.
	1. General Insurance Requirements. The Contractor shall maintain insurance coverage as specified in this Section. The Institution reserves the right to amend or require additional insurance coverage, coverage amounts, and endorsements required under this Agreement. The Contractor’s failure to maintain or submit evidence of insurance coverage, as required, is a material breach of this Agreement. If the Contractor loses insurance coverage, fails to renew coverage, or for any reason becomes uninsured during the Term, the Contractor shall immediately notify the Institution. The Contractor shall maintain workers’ compensation coverage or a self-insured program as required under Tennessee law. All insurance companies providing coverage must be: (a) acceptable to the Institution; (b) authorized by the Tennessee Department of Commerce and Insurance (“TDCI”); and (c) rated A- / VII or better by A.M. Best. All coverage must be on a primary basis and noncontributory with any other insurance or self-insurance carried by the Institution. **THE CONTRACTOR AGREES TO NAME THE INSTITUTION AS AN ADDITIONAL INSURED ON ANY INSURANCE POLICY WITH THE EXCEPTION OF WORKERS’ COMPENSATION (EMPLOYER LIABILITY) AND PROFESSIONAL LIABILITY (ERRORS AND OMISSIONS) INSURANCE**. The Contractor agrees that the insurance requirements specified in this Section do not reduce any liability the Contractor has assumed under this Agreement.
	2. Specific Coverage Provisions. To achieve the required coverage amounts, a combination of an otherwise deficient specific policy and an umbrella policy with an aggregate meeting or exceeding the required coverage amounts is acceptable. For example: If the required policy limit under this Agreement is for two million dollars ($2,000,000) in coverage, acceptable coverage would include a specific policy covering one million dollars ($1,000,000) combined with an umbrella policy for an additional one million dollars ($1,000,000). If the deficient underlying policy is for a coverage area without aggregate limits (generally Automobile Liability and Employers’ Liability Accident), the Contractor shall provide a copy of the umbrella insurance policy documents to ensure that no aggregate limit applies to the umbrella policy for that coverage area. In the event that an umbrella policy is being provided to achieve any required coverage amounts, the umbrella policy shall be accompanied by an endorsement at least as broad as the Insurance Services Office, Inc. (also known as “ISO”) “Noncontributory—Other Insurance Condition” endorsement or shall be written on a policy form that addresses both the primary and noncontributory basis of the umbrella policy if the Institution is otherwise named as an additional insured.
	3. Certificate of Insurance and Proof of Coverage. The Contractor shall provide the Institution a certificate of insurance (“COI”) evidencing the coverages and amounts specified in this Section. The COI must be provided to the Institution on the standard ACORD form. The COI must list each insurer’s National Association of Insurance Commissioners (“NAIC”) number and be signed by an authorized representative of the insurer. **THE COI MUST LIST MIDDLE TENNESSEE STATE UNIVERSITY, 1301 EAST MAIN STREET, MURFREESBORO, TN 37132-0001 USA AS THE CERTIFICATE HOLDER AND MUST CLEARLY SHOW THAT MIDDLE TENNESSEE STATE UNIVERSITY HAS BEEN ADDED AS AN ADDITIONAL INSURED, AS REQUIRED HEREIN**. The Contractor shall provide the COI ten (10) business days prior to the Effective Date and again thirty (30) calendar days before renewal or replacement of coverage. The Contractor shall provide the Institution evidence that all subcontractors maintain the required insurance or that subcontractors are included under the Contractor’s policy. At any time, the Institution may require the Contractor to provide a valid COI. The Parties agree that failure to provide evidence of insurance coverage as required is a material breach of this Agreement. If the Contractor self-insures, then a COI will not be required to prove coverage. Instead, the Contractor shall provide a certificate of self-insurance or a letter, on the Contractor’s letterhead, detailing its coverage, policy amounts, and proof of funds to reasonably cover such expenses. The Institution reserves the right to require complete copies of all required insurance policies, including endorsements required by these specifications, at any time.
	4. Notification and Documentation Requirements. The Institution agrees that it shall give written notice to the Contractor as soon as practicable after the Institution becomes aware of any claim asserted or made against the Institution, but in no event later than thirty (30) calendar days after the Institution becomes aware of such claim. The failure of the Institution to give notice shall only relieve the Contractor of its obligations under this Section to the extent that the Contractor can demonstrate actual prejudice arising from the failure to give notice. This Section shall not grant the Contractor or its insurer, through its attorneys, the right to represent the Institution in any legal matter, as the right to represent the Institution is governed by Tenn. Code Ann. § 8-6-106.
	5. Comprehensive Insurance Requirements. The insurance obligations under this Agreement shall be: (1)—all the insurance coverage and policy limits carried by the Contractor; or (2)—the minimum insurance coverage requirements and policy limits shown in this Agreement; whichever is greater. Any insurance proceeds in excess of or broader than the minimum required coverage and minimum required policy limits, which are applicable to a given loss, shall be available to the Institution. No representation is made that the minimum insurance requirements of the Agreement are sufficient to cover the obligations of the Contractor arising under this Agreement. **The Contractor shall obtain and maintain, at a minimum, the following insurance coverages and policy limits:**
		1. Commercial General Liability Insurance. The Contractor must maintain Commercial General Liability Insurance with the following coverage levels:
			1. A minimum of $1,000,000 per occurrence limit for liability arising from property damage, premises and operations products and completed operations, bodily injury, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).
			2. A minimum of $3,000,000 general aggregate limit for all covered occurrences within the policy period.
2. Entire Agreement and Additional Terms. This Agreement constitutes the entire understanding and agreement between the parties with respect to the subject matter herein and supersedes all prior and contemporaneous agreements, negotiations, representations, and understandings, whether oral or written. The Institution shall only be bound by any terms, provisions, or requirements set forth in any agreements, addenda, or other documents provided by the Contractor if such terms are expressly disclosed to, reviewed, and agreed to in writing by the Institution prior to the execution of this Agreement. Any such terms must be incorporated into this Agreement in writing and signed by the Institution to be enforceable. No modification, amendment, or waiver of any provision of this Agreement shall be valid unless made in writing and signed by both parties. In the event that the Contractor maintains terms and conditions on its website, software, invoices, or any other external document, such terms shall not apply to the Institution unless expressly incorporated into this Agreement. If any provision of this Agreement is found to be invalid or unenforceable, the remaining provisions shall remain in full force and effect.

In witness whereof, the parties, through their authorized representatives, have affixed their signatures below.

**CONTRACTOR MIDDLE TENNESSEE STATE UNIVERSITY**

Signature: Signature:

Printed Name: Printed Name: Shirman A. Thomas

Title: Title: Executive Director, Procurement Logistic Services

Date: Date: