

CONTRACT #9
RFS # NA
Edison # NA

Tennessee Board of Regents
Middle Tennessee State
University (MTSU)

VENDOR:
NIKE USA, Inc.



TENNESSEE BOARD OF REGENTS

Office of Business & Finance | Division of Purchasing & Contracts

1415 Murfreesboro Road, Suite 346 | Nashville, TN 37217-2833 | Phone 615.366.4436 | Fax 615.366.2243 | www.tbr.edu

February 1, 2015

Ms. Leni Chick
Fiscal Analyst
Rachel Jackson Building, 8th Floor
Nashville, TN 37243

Dear Leni:

Per Fiscal Review's request to see non-competitive agreements/amendments, enclosed please find an Agreement between Middle Tennessee State University and NIKE USA, Inc. providing for apparel, accessories, and footwear for each sponsored intercollegiate athletics program, support personnel, and support programs.

Although this Agreement was competitively bid, Nike has requested a right of first refusal provision that would require approval by the Committee. This non-competitive provision is the same one presented to the University of Memphis by Nike and approved by Fiscal Review in 2008.

Please contact me regarding the date this will go before the Fiscal Review Committee and I will inform the appropriate representatives to insure they are present for the meeting in which the contract will be discussed. If you have any questions or need additional information, please feel free to contact me at (615) 366-4436 or by email at angela.flynn@tbr.edu

Sincerely,

Angela Gregory Flynn
Assistant Vice Chancellor for Purchasing and Contracts

cc: Chancellor Morgan
Dale Sims
John Cothorn

Supplemental Documentation Required for
Fiscal Review Committee

| | | | | | |
|---|-----------------------------------|------------------------------------|--------------|------------|----|
| *Contact Name: | Angela Gregory Flynn | *Contact Phone: | 615-366-4436 | | |
| *Presenter's name(s): | Dale Sims, John W. Cothorn | | | | |
| Edison Contract Number: <i>(if applicable)</i> | N/A | RFS Number: <i>(if applicable)</i> | N/A | | |
| *Original or Proposed Contract Begin Date: | 7/1/2015 | *Current or Proposed End Date: | 6/30/2020 | | |
| Current Request Amendment Number: <i>(if applicable)</i> | N/A | | | | |
| Proposed Amendment Effective Date: <i>(if applicable)</i> | N/A | | | | |
| *Department Submitting: | Tennessee Board of Regents | | | | |
| *Division: | Middle Tennessee State University | | | | |
| *Date Submitted: | | | | | |
| *Submitted Within Sixty (60) days: | Yes | | | | |
| <i>If not, explain:</i> | | | | | |
| *Contract Vendor Name: | NIKE USA, Inc. | | | | |
| *Current or Proposed Maximum Liability: | \$2,500,000.00 | | | | |
| *Estimated Total Spend for Commodities: | N/A | | | | |
| *Current or Proposed Contract Allocation by Fiscal Year: (as Shown on Most Current Fully Executed Contract Summary Sheet) | | | | | |
| FY: 2015-16 | FY: 2016-17 | FY: 2017-18 | FY: 2018-19 | FY 2019-20 | FY |
| \$500,000 | \$500,000 | \$500,000 | \$500,000 | \$500,000 | \$ |
| *Current Total Expenditures by Fiscal Year of Contract: (attach backup documentation from Edison) | | | | | |
| FY: | FY: | FY: | FY: | FY | FY |
| \$ N/A | \$ N/A | \$ N/A | \$ N/A | \$ N/A | \$ |
| IF Contract Allocation has been greater than Contract Expenditures, please give the reasons and explain where surplus funds were spent: | | | N/A | | |
| IF surplus funds have been carried forward, please give the reasons and provide the authority for the carry forward provision: | | | N/A | | |
| IF Contract Expenditures exceeded Contract Allocation, please give the reasons and explain how funding was acquired to pay the overage: | | | N/A | | |

Supplemental Documentation Required for
Fiscal Review Committee

| | | | |
|--|--|---|--|
| *Contract Funding Source/Amount: | | | |
| State: | | Federal: | |
| <i>Interdepartmental:</i> | | <i>Other:</i> | |
| If “ <i>other</i> ” please define: | | | |
| If “ <i>interdepartmental</i> ” please define: | | | |
| Dates of All Previous Amendments or Revisions: <i>(if applicable)</i> | | Brief Description of Actions in Previous Amendments or Revisions: <i>(if applicable)</i> | |
| N/A | | N/A | |
| | | | |
| | | | |
| Method of Original Award: <i>(if applicable)</i> | | Competitive Procurement Process | |
| *What were the projected costs of the service for the entire term of the contract prior to contract award? How was this cost determined? | | The projected costs of the service for the entire 5-year term are estimated to be \$2.5 million. This cost was determined on the basis of the spreadsheet of the Nike offer in the cost evaluation process. | |
| *List number of other potential vendors who could provide this good or service; efforts to identify other competitive procurement alternatives; and the reason(s) a sole-source contract is in the best interest of the State. | | N/A - This contract was the result of a competitive procurement process. | |

REQUEST: NON-COMPETITIVE CONTRACT

APPROVED

Commissioner of Finance & Administration

Date:

Each of the request items below indicates specific information that must be individually detailed or addressed as required. A request can not be considered if information provided is incomplete, non-responsive, or does not clearly address each of the requirements individually as required.

| | | |
|--|---|--|
| 1) RFS # | N/A | |
| 2) State Agency Name : | Middle Tennessee State University | |
| 3) Service Caption : | Athletic footwear, apparel, accessory and equipment products for all NCAA Division I sports teams and official cheer and spirit squads and athletic footwear, apparel, accessories and equipment sponsorship for each team – This contract was the result of a competitive procurement process. | |
| 4) Proposed Contractor : | NIKE USA, Inc. | |
| 5) Contract Start Date : (attached explanation required if date is < 60 days after F&A receipt) | 7/1/2015 | |
| 6) Contract End Date IF <u>all</u> Options to Extend the Contract are Exercised : | 6/30/2020 | |
| 7) Total Maximum Cost IF <u>all</u> Options to Extend the Contract are Exercised : | \$2,500,000.00 | |
| 8) Approval Criteria : (select one) | <input type="checkbox"/> use of Non-Competitive Negotiation is in the best interest of the state | |
| | <input type="checkbox"/> only one uniquely qualified service provider able to provide the service | |
| N/A | | |
| 9) Description of Service to be Acquired : | Nike will be designated as exclusive supplier of athletic footwear, apparel, accessory and equipment products for all NCAA Division I sports teams and official cheer and spirit squads fielded by University's Athletic Department, and designated as exclusive athletic footwear, apparel, accessories and equipment sponsor for each team. | |
| 10) Explanation of the Need for or Requirement Placed on the Procuring Agency to Acquire the Service : | Obtain an all-sports contract with one company to supply footwear, apparel, accessory and equipment products for each of the University's Division I athletic teams, along with sponsorship of the teams. | |
| 11) Explanation of Whether the Procuring Agency Bought the Service in the Past, & if so, What Procurement Method It Used : | The services were competitively bid in the past. After the expiration of a previous 5 year contract, the athletic apparel for major sports was non-competitively procured on a per-team basis until new competitive process was initiated. | |
| 12) Name & Address of the Proposed Contractor's Principal Owner(s) : (<u>not</u> required if proposed contractor is a state education institution) | NIKE USA, Inc., One Bowerman Drive, Beaverton, Oregon 97005-6453 | |

13) Evidence of the Proposed Contractor's Experience and Length of Experience Providing the Service :

Company has been in business since 1964; 51 years

14) Documentation of Office for Information Resources Endorsement :
(required only if the subject service involves information technology)

select one:



Documentation Not Applicable to this Request



Documentation Attached to this Request

15) Documentation of Department of Personnel Endorsement :
(required only if the subject service involves training for state employees)

select one:



Documentation Not Applicable to this Request



Documentation Attached to this Request

16) Documentation of State Architect Endorsement :
(required only if the subject service involves construction or real property related services)

select one:



Documentation Not Applicable to this Request



Documentation Attached to this Request

17) Description of Procuring Agency Efforts to Identify Reasonable, Competitive, Procurement Alternatives :

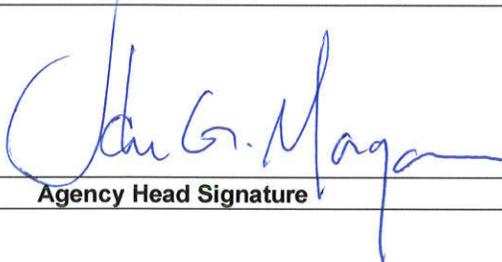
This contract was competitively bid. However, the successful bidder, Nike, has requested an industry-standard right of first refusal provision that is potentially non-competitive. The provision is the same as one that Nike presented to the University of Memphis in 2008 and which was approved by the Fiscal Review Committee. The University is requesting approval to include this provision in order to secure the contract.

18) Justification of Why the State Should Use Non-Competitive Negotiation Rather Than a Competitive Process :
(Being the "only known" or "best" service provider to perform the service as desired will not be deemed adequate justification.)

While this contract resulted from a competitive procurement process, Nike included a potentially non-competitive right of first refusal provision that is based upon an industry standard. However, this provision does include flexibility for the University by allowing the provision to expire after 90 days before a new bid is issued.

REQUESTING AGENCY HEAD SIGNATURE & DATE :

(must be signed & dated by the ACTUAL procuring agency head as detailed on the Signature Certification on file with OCR— signature by an authorized signatory will be accepted only in documented exigent circumstances)



Agency Head Signature

1-30-15

Date

CONTRACT SUMMARY SHEET

021406

| | | | |
|--|--|--|--|
| RFS # | | Contract # | |
| | | | |
| State Agency | | State Agency Division | |
| Middle Tennessee State University | | Athletics | |
| Contractor Name | | Contractor ID # (FEIN or SSN) | |
| Nike USA Inc. | | <input type="checkbox"/> C- or <input type="checkbox"/> V- | |
| Service Description | | | |
| Designation as exclusive supplier of athletic footwear, apparel, accessory and equipment products for all NCAA Division I sports teams and official cheer and spirit squads fielded by University's Athletic Department, and designation as exclusive athletic footwear, apparel, accessories and equipment sponsor for each team - Contract was result of competitive process | | | |
| Contract BEGIN Date | Contract END Date | Subrecipient or Vendor? | CFDA # |
| 7/1/2015 | 6/30/2020 | Vendor | |
| Mark Each TRUE Statement | | | |
| <input type="checkbox"/> Contractor is on STARS | | <input checked="" type="checkbox"/> Contractor's Form W-9 is on file in Accounts | |
| Allotment Code | Cost Center | Object Code | Funding Grant Code |
| | | | |
| FY | State | Federal | Interdepartmental |
| 2015-16 | \$ 500,000.00 | | |
| 2016-17 | \$ 500,000.00 | | |
| 2017-18 | \$ 500,000.00 | | |
| 2018-19 | \$ 500,000.00 | | |
| 2019-20 | \$ 500,000.00 | | |
| | | | |
| TOTAL: | \$ 2,500,000.00 | \$ - | \$ - |
| — COMPLETE FOR AMENDMENTS ONLY — | | State Agency Fiscal Contact & Telephone # | |
| FY | Base Contract & Prior Amendments | THIS Amendment ONLY | John W. Cothorn (615) 898-2852 |
| | | | |
| | | | State Agency Budget Officer Approval |
| | | | Senior Vice President |
| | | | Funding Certification (certification, required by T.C.A., § 9-4-5113, that there is a balance in the appropriation from which the obligated expenditure is required to be paid that is not otherwise encumbered to pay obligations previously incurred) |
| TOTAL: | \$ - | \$ - |  |
| End Date | | | |
| Contractor Ownership (complete only for base contracts with contract # prefix: FA or GR) | | | |
| <input type="checkbox"/> African American | <input type="checkbox"/> Person w/ Disability | <input type="checkbox"/> Hispanic | <input checked="" type="checkbox"/> Small Business |
| <input type="checkbox"/> Asian | <input type="checkbox"/> Female | <input type="checkbox"/> Native American | <input type="checkbox"/> NOT disadvantaged |
| <input type="checkbox"/> OTHER minority/disadvantaged— | | | |
| Contractor Selection Method (complete for ALL base contracts— N/A to amendments or delegated authorities) | | | |
| <input type="checkbox"/> RFP | <input type="checkbox"/> Competitive Negotiation | <input checked="" type="checkbox"/> Alternative Competitive Method | |
| <input type="checkbox"/> Non-Competitive Negotiation | <input type="checkbox"/> Negotiation w/ Government(eg, ID, GG, GU) | <input type="checkbox"/> Other | |
| Procurement Process Summary (complete for Alternative Method, Competitive Negotiation, Non-Competitive Negotiation, OR Other) | | | |

As a result of a competitive procurement process, NIKE is the selected contractor to supply athletic footwear, apparel, accessory and equipment products for the University's NCAA Division I athletic teams and official cheer and spirit squads, and the official sponsor of these teams. During competitive negotiations and based upon industry standards, NIKE included a potentially non-competitive provision that is essential to finalizing the contract. For 90 days after the conclusion of the 5-year contract, the provision allows NIKE to match the best bid response received when the services are re-bid. This provision does offer flexibility for the University by allowing the provision to expire after 90 days before a new bid is issued.

MIDDLE TENNESSEE STATE UNIVERSITY ALL-SPORT AGREEMENT

THIS IS AN AGREEMENT made and entered into by and between MIDDLE TENNESSEE STATE UNIVERSITY (hereinafter "UNIVERSITY"), having an administrative office at 1500 Greenland Drive, Murfreesboro, Tennessee 37132, and NIKE USA, Inc. (hereinafter "NIKE"), an Oregon corporation having its principal offices at One Bowerman Drive, Beaverton, Oregon 97005-6453.

WITNESSETH

WHEREAS, UNIVERSITY fields and maintains nationally recognized athletic teams in numerous sports (and retains the coaches and staff in connection therewith) and owns all right, title and interest in and to the names, nicknames, mascots, trademarks, service marks, logographics and/or symbols, and any other recognized reference to UNIVERSITY or its "Covered Programs" (as defined below);

WHEREAS, NIKE is a sports and fitness company engaged in the design, manufacture, distribution and sale of athletic and athleisure footwear, apparel and related accessories, and desires to support UNIVERSITY and its Covered Programs as described below;

NOW, THEREFORE, in consideration of the mutual promises, terms and conditions set forth herein, it is agreed as follows:

1. DEFINITIONS.

As used in this Agreement, the terms set forth below shall be defined as follows:

- (a) "NIKE Group" shall mean NIKE USA, Inc., NIKE Retail Services, Inc. (d/b/a NikeTown), their parent company NIKE, Inc., their licensees, distributors, subsidiaries, affiliates and any successor company.
- (b) "Covered Program(s)" shall mean any and all NCAA Division I intercollegiate athletic teams that are fielded by UNIVERSITY's Athletic Department during the term of this Agreement (including any that are hereafter added) which, unless otherwise specified include: football, men's basketball, women's basketball, women's soccer, baseball, softball, cross country (men's and women's), golf (men's and women's), tennis (men's and women's), track and field (men's and women's), and volleyball. For purposes of this Agreement, Covered Programs shall also include the UNIVERSITY's official cheer squad and spirit squad.
- (c) "Flagship Program(s)" shall mean any of the following Covered Programs: Football; Men's Basketball; and Women's Basketball.
- (d) "UNIVERSITY Marks" shall mean the names, nicknames, mascots, trademarks, service marks, logographics and/or symbols, and any other recognized reference to UNIVERSITY or its Covered Programs.
- (e) "Team" shall mean that group of athletes attending UNIVERSITY during the term of this Agreement and comprising the roster of each Covered Program.
- (f) "Game" shall mean game, match, meet, test or such other competition reference as is appropriate to each individual sport.
- (g) "Coach" shall mean an individual employed during the term of this Agreement to act as a head coach of a Covered Program.
- (h) "Coach Endorsement" shall mean the right to use a Coach's name, nickname, initials, autograph, facsimile signature, voice, video or film portrayals, photographs, likeness and image or facsimile image, and any other means of endorsement used

by such Coach, in connection with the advertisement, promotion and sale of NIKE Products.

- (i) "Staff" shall mean, collectively, all assistant coaches and strength coaches, equipment managers, trainers, any on-field/courtside staff (e.g., ballpersons, basketball stat crews, etc.) and any upper level athletics administrators employed by UNIVERSITY during the term of this Agreement to provide services to or oversight of Covered Programs.
- (j) "Contract Year" shall mean each consecutive twelve (12) month period from July 1 through June 30 during the term of this Agreement.
- (k) "NCAA" shall mean the National Collegiate Athletic Association.
- (l) "Conference" shall mean Conference USA ("CUSA") and such other intercollegiate athletic conferences of which UNIVERSITY is a member or becomes a member during the Term.
- (m) "Covered Program Activity" shall mean the Games, practices, exhibitions, events and public appearances of a Covered Program, in which a Team member, Coach and/or Staff member appears as an official representative of the UNIVERSITY.
- (n) "Products" shall mean:
 - (1) all athletic and athletically inspired or derived footwear that members of any Team, Coaches and/or Staff wear or may be reasonably expected to wear while participating in a Covered Program Activity;
 - (2) authentic competition apparel consisting of uniforms, sideline or courtside jackets and sweaters, game-day warm-ups, basketball shooting shirts, football player capes, wool and fitted caps, windsuits, rainsuits, sideline or courtside pants, shorts and shirts, "base-layer" apparel (i.e., compression/tight gear including padded and non-padded compression products), and similar apparel, practice wear, thermal wear, and performance undergarments (collectively, "Authentic Competition Apparel") that members of any Team, Coaches and/or Staff wear or may be reasonably expected to wear while participating in a Covered Program Activity;
 - (3) all other apparel articles of an athletic or athleisure nature including but not limited to tank-tops, T-shirts, sweatsuits, separates and other body coverings, and accessories of an athletic or athleisure nature, including but not limited to headwear, headbands, wristbands, bags, socks, hand-towels, football gloves, golf gloves, sleeves (e.g., single or double arm protective sleeves whether or not padded), batting gloves, weight training gloves, and elbow and knee pads that members of any Team, Coaches and/or Staff wear or use or may be reasonably expected to wear or use while participating in a Covered Program Activity;
 - (4) footballs, men's basketballs, women's basketballs and soccer balls;
 - (5) baseball equipment bags;
 - (6) golf bags and travel bags;
 - (7) protective eyewear (e.g., football face mask eyeshields), eyewear with performance attributes and sunglasses;

- (8) recovery products (e.g., compression wear, suits, sleeves, tights, hose, footwear, etc.);
 - (9) training equipment (e.g., parachutes, power bands, agility webs, speed ladders, power and quick react balls, etc.);
 - (10) "smart products" (e.g., fuel bands, etc.), body-worn (or handheld) activity tracking/monitoring devices (e.g., pedometers, etc.) and/or performance or fitness improvement and/or activity enhancing electronic or digital devices including, but not limited to, watches (GPS and non-GPS enabled) and performance tracking monitors (collectively, "Fitness Devices") but specifically excluding any device that functions as a heart rate monitor; and
 - (11) such other sports equipment as NIKE may add to its Product lines at any time during the term of this Agreement; provided, however, that NIKE shall have first given specific written notice to UNIVERSITY designating any such item of merchandise as included in this sports equipment category of Products, and that as of UNIVERSITY's receipt of such notice UNIVERSITY has not already entered into a third-party product endorsement agreement with respect to such item of sports equipment.
- (o) "NIKE Products" shall mean all Products in connection with which, or upon which, the NIKE name, the Swoosh Design, the NIKE AIR Design, the Basketball Player Silhouette ("Jumpman") Design or any other trademarks or brands (e.g., Jordan Brand, Converse, Hurley) now or hereafter owned and/or controlled by NIKE (collectively, "NIKE Marks") appear singly or in any combination.
 - (p) "Digital Features" shall mean digital content or applications whether or not used in conjunction with a NIKE Product (e.g., an add-on Nike+ or a mobile device application), designed to improve, encourage, support or inspire performance, fitness and/or activity.
 - (q) "Activity Based Information" shall mean performance and/or activity information/data digitally collected from the Teams or Team members during competition, training or other activities, including, but not limited to, speed, distance, vertical leap height, maximum time aloft, shot attempts, ball possession, heart rate, running route, etc.

2. TERM.

This Agreement shall remain in full force and effect for a period of five (5) Contract Years, from July 1, 2015 through June 30, 2020, unless sooner terminated in accordance with the terms and conditions hereof (collectively, the "Term"). This Agreement shall be interpreted in its entirety and not as a series of one-year agreements.

3. GRANT OF RIGHTS.

UNIVERSITY hereby grants to NIKE, and NIKE hereby accepts:

- (a) The designation as "the exclusive supplier of the athletic footwear, apparel, accessory and equipment products of (each Covered Program)" and "the exclusive athletic footwear, apparel, accessories and equipment sponsor of (each Covered Program)", and/or such similar designations as the parties may agree upon (collectively, the "Designations").

- (b) The right to utilize (subject to the approval provisions of Paragraph 10 below) the UNIVERSITY Marks, Coach Endorsements, Activity Based Information, and/or Designations worldwide, in any media (now known or hereafter created) including, but not limited to, the worldwide web, CD-ROM and other interactive and multi-media technologies, in connection with the manufacture, advertising, marketing, promotion and sale of NIKE Products and Digital Features and programming. Such rights shall specifically include, but shall not be limited to, the following:
- (1) The exclusive right to supply Products for each Covered Program and to use the Designations.
 - (2) The right to manufacture and sell NIKE Products bearing or incorporating UNIVERSITY Marks and to conduct promotions with and through NIKE retail accounts, provided, however, NIKE must secure a license through UNIVERSITY or UNIVERSITY's licensing agent for the use of UNIVERSITY Marks in the manufacture and sale of NIKE Products bearing or incorporating UNIVERSITY Marks.
 - (3) The right to use game photographs ("Game Photos"), videotape and/or film footage ("Game Footage") of any and all Covered Programs subject to applicable NCAA rules and regulations or conference agreements with respect to the depiction of eligible athletes. In connection therewith, at NIKE's request, UNIVERSITY shall permit NIKE to utilize, consistent with this Paragraph 3, Game Photos and Game Footage (owned and/or controlled by UNIVERSITY), without a use fee, other than reasonable search and edit charges, subject to the student-athletes' general consent.

4. NIKE'S PRODUCT SUPPLY OBLIGATIONS.

In partial consideration of the rights granted under this Agreement, each Contract Year, UNIVERSITY shall be entitled to order directly from NIKE, and receive, the below indicated amounts of NIKE Products for use by (or in connection with) the Covered Programs, clinics, camps, Coaches, Staff and such other purposes as UNIVERSITY and/or the Director of Athletics may deem appropriate to support the relationship between the parties. The aggregate retail value of supplied product that UNIVERSITY may order for each Contract Year shall be as set forth in the table below (the "Annual Product Allotment").

| Women's Basketball: | Quantity/Amount |
|--|---------------------------|
| Footwear | 75 Pair |
| Balls | 18* |
| Bags | 25 |
| Warm Ups | 25 |
| Socks | 48 |
| Camp Allotment | \$5,000 (wholesale value) |
| NIKE Elite (for w. Basketball Staff use) | \$2,500 (retail value) |
| | |
| Men's Basketball: | |
| Footwear | 75 |
| Bags | 24 |
| Warm Ups | 24 |
| Camp Allotment | \$3,000 (wholesale value) |

| | |
|---|--|
| NIKE Elite (for m. Basketball Staff use) | \$7,500 (retail value) |
| Football: | |
| NIKE Elite (for Coaching Staff use) | \$25,000 (retail value) |
| Team Product Allotment | \$75,000 (retail value) |
| Jerseys (Contract Year 1 only) | 100 |
| Jerseys (Contract Year 3 only) | 100 |
| Camp Allotment | 500 T-shirts |
| Each Bowl Game berth | 100 Pairs of cleats |
| Conference Championship Game win | \$5,000 (retail value) and \$5,000 cash |
| Athletic Department: | |
| NIKE Elite (allocated at AD's discretion) | \$4,000 (retail value) |

All NIKE Product ordered under the NIKE Elite program must be placed through an Athletic Department member designated in writing to NIKE by the Athletic Director. No carry-over of NIKE Elite Credit from one Contract Year to another shall be allowed. NIKE shall provide to UNIVERSITY and/or Athletic Department members, as applicable, such documentation as may be required with regard to such orders to facilitate the UNIVERSITY's, and such individuals', compliance with federal and state tax laws.

5. PRODUCT ORDERING, DELIVERY & LOGO USE ON PRODUCT.

- (a) The exact styles, sizes and delivery dates and, where appropriate, quantities of NIKE Products ordered under this Agreement shall be as reasonably specified by the UNIVERSITY and consistent with NIKE's overall product marketing strategy. NIKE shall propose styles each year, at least two months prior to UNIVERSITY's order date for each sport, to allow UNIVERSITY adequate time for consideration.
- (b) In consideration of the product supply and preferential pricing provided by NIKE under this Agreement, the UNIVERSITY agrees that all Product for the Covered Programs use shall be purchased directly from NIKE and that the UNIVERSITY shall not purchase or accept any Products from any party other than NIKE.* All Product purchased pursuant to this provision shall be sold to the UNIVERSITY at the discount rate set opposite the indicated category of product:

| Product Description | Discount |
|---------------------|-------------|
| Apparel | @ wholesale |
| Uniforms | @ wholesale |
| Footwear | @ wholesale |
| Equipment | @ wholesale |

Exceptions:

- Members of the golf program shall have the right to use golf clubs and golf balls of their choice (but not any other golf equipment or products) from any manufacturer, and with such manufacturer's logo camera-visible, so long as no significant promotional benefit of any kind shall accrue to either the source of such item(s) or to University.
- Members of the baseball and softball programs shall have the right to use fielding gloves and bats of their choice (but not any other baseball or softball equipment or

products) from any manufacturer, and with such manufacturer's logo camera-visible, so long as no significant promotional benefit of any kind shall accrue to either the source of such item(s) or to University.

- If during the term of the contract, NIKE shall add tennis racquets to its product line, members of the tennis program shall have the right to use racquets of their choice (but not any other equipment) from any manufacturer, and with such manufacturer's logo camera-visible, so long as no significant promotional benefit of any kind shall accrue to either the source of such item(s) or to University.
- (c) All Products to be supplied by NIKE hereunder shall be delivered F.O.B. to UNIVERSITY at the location designated on the UNIVERSITY's purchase order. Only properly submitted orders from UNIVERSITY's Athletic Director or any authorized representative of UNIVERSITY's Athletic Director shall be filled by NIKE.
- (d) UNIVERSITY acknowledges that:
- (1) The placement of the NIKE logo, as it is currently permitted by the NCAA and now placed by NIKE (in terms of size, location placement, color contrast/prominence and/or number of placements), on Authentic Competition Apparel is a bargained for material benefit contemplated by NIKE under this Agreement and that such continued degree of manufacturer logo prominence on competition product is of the essence of this Agreement. Accordingly, during the Term, UNIVERSITY shall take no action that shall have the effect of relocating (except for a more favorable placement should a subsequent relaxation in rules so permit), reducing, or restricting NIKE's logo placement rights on product as such logo now appears and is permitted by current relevant NCAA rules or regulations including, but not limited to, NCAA Rule 12.5.4. Notwithstanding anything contained in this subparagraph, UNIVERSITY further acknowledges that nothing herein shall be construed as a restriction of any right of NIKE to avail itself of such more favorable presentation or placement of its logo (e.g., size, color contrast, number of placements, location of placement, etc.) as may be currently permitted under NCAA, Conference and/or other applicable rules, or hereafter permitted by any subsequent relaxation in NCAA, Conference and/or other applicable rules.

6. PROMOTIONAL APPEARANCES.

In connection with the promotion of NIKE Products and/or the NIKE brand, each Contract Year, upon reasonable prior notice and subject to any coaching commitment, if so requested by NIKE, UNIVERSITY shall make the Coach of the Women's Basketball Program available for a minimum of three (3) personal appearances, the Coach of the Men's Basketball Program available for a minimum of two (2) personal appearances and the Coach of the Football Program available for one (1) personal appearance each, on behalf of NIKE. No single appearance shall exceed twenty-four (24) hours in duration, including travel time, unless otherwise agreed upon in advance. Such appearances may include, but are not limited to, photo shoots for posters, brochures or in-store displays, production sessions related to filming commercials and/or video productions and/or advertising, retail store appearances, trade shows, appearances at sports clinics, celebrity events and other public appearances. UNIVERSITY shall receive no additional compensation for such appearances, it being understood that the consideration for such

appearances is encompassed by the consideration provided to UNIVERSITY by NIKE.⁷ NIKE shall pay all reasonable and necessary travel and related expenses of the relevant team and coaching staff in connection with any appearance hereunder.

7. NIKE SPONSOR BENEFITS.

(a) As a sponsor of UNIVERSITY's Covered Programs, each Contract Year, UNIVERSITY shall provide NIKE with the following promotional benefits at no additional cost to NIKE except as otherwise indicated:

(1) NIKE shall receive tickets to home games (and neutral site games as indicated below in which a Covered Program is participating) for each Covered Program in accordance with the following:

| PROGRAM | No. TICKETS |
|---------------------------------|--|
| Football | 2 sideline passes for 1 predetermined game |
| CUSA Football Championship Game | 2 |
| Bowl Games | 2 |
| Basketball (M) | 4 |
| CUSA Basketball Tournament (M) | 4 |
| NCAA Basketball Tournament (M) | 4 |
| Basketball (W) | 10 |
| CUSA Basketball Tournaments (W) | 10 |
| NCAA Basketball Tournaments (W) | 10 |

For home basketball and football games, UNIVERSITY shall use best efforts to provide the best available lower level tickets, which tickets UNIVERSITY shall use best efforts to provide in blocks of seats (however, NIKE acknowledges that for neutral site games the availability of lower level seats and blocks of seats may be more limited). UNIVERSITY shall use best efforts to fulfill NIKE's requests for such additional quantities of tickets as it may reasonably request, such tickets to be best available.

- (2) At each home game of the Men's Basketball Program at which a public address system and/or electronic message board (or other electronic messaging systems) is used, as applicable, suitable, mutually agreed number of, in-game P.A. announcements and/or board messages using the appropriate Designation.
- (3) For Men's and Women's Basketball Program, full-page, 4-color NIKE advertisements (camera-ready ad to be produced and provided by NIKE at its cost) in every game program or media guides published that includes advertisements.
- (4) Reasonable access to Covered Program activities, where appropriate, for the purpose of shooting Game Photos or Game Footage and/or conducting and taping post-game interviews.
- (5) In addition to the above, UNIVERSITY shall afford NIKE advance notice and the opportunity to consider participation in any and all additional promotional opportunities, in any media, made available by UNIVERSITY during the Term, at the lowest cost made available to other corporate sponsors.

(b) NIKE acknowledges and agrees that any recognition, name or logo identification, statement or acknowledgement provided by the UNIVERSITY under

this Paragraph or this Agreement shall comply with the requirements of 26 USC 513 to qualify the payment to the UNIVERSITY as a "qualified sponsorship payment" and as such NIKE shall not have the right to display a message that contains a comparative or qualitative description of NIKE Products, price information or other indications of savings or value, an endorsement, or an inducement to purchase, sell or use NIKE Products. All creative materials proposed for display by NIKE shall be supplied by NIKE at NIKE's cost and are subject to reasonable approval by the UNIVERSITY. All such recognition is subject to and shall comply with all NCAA and Conference rules and regulations.

8. USE OF NIKE PRODUCTS.

- (a) Throughout the Term, UNIVERSITY shall make NIKE Products available on an exclusive basis to each Covered Program, to be worn and/or used by Team members, Coaches, and Staff during Covered Program Activities and other official or UNIVERSITY sanctioned activities (including but not limited to photo sessions and interviews) during which Team members, Coaches and Staff of such programs wear and/or use Products. UNIVERSITY shall require all such Coaches and Team and Staff members to wear and/or use NIKE Products that have been designated by NIKE (including color and style) during such activities. NIKE acknowledges that any Coach's wearing of non-athletic footwear and apparel (e.g., formal attire) in connection with his or her official coaching duties, as appropriate, shall not constitute a breach of this Paragraph.
- (b) UNIVERSITY shall ensure that no Team member, Coach or Staff member shall:
 - (1) Alter or permit the alteration of any NIKE Products worn or used by them to resemble a non-NIKE Product; or
 - (2) Wear any non-NIKE Products which have been altered to resemble NIKE Products.
- (c) UNIVERSITY shall ensure that during all Covered Program activities no Team member, Coach or Staff member shall wear and/or use any athletic footwear, or other Products, manufactured by companies other than NIKE.
- (e) UNIVERSITY acknowledges that "spatting" or otherwise taping the NIKE athletic shoes worn by members of the Teams during practices, games, exhibitions, clinics, sports camps and other occasions during which Team members wear athletic shoes, is inconsistent with the purpose of this Agreement and the benefits to be derived from it by NIKE and is a material breach of this Agreement.
- (f) UNIVERSITY shall not permit: (i) the trade name, trademark, name, logo or any other identification of any person, company or business entity other than NIKE, or UNIVERSITY if approved by NIKE, to appear on NIKE Products (specifically including product supplied for camp use) worn or used by Coaches, Staff or Team members, or (ii) any third party to screenprint upon, or otherwise embellish, any NIKE Products worn or used by Coaches, Staff or Team members.
- (g) UNIVERSITY shall not re-sell any Products provided by NIKE pursuant to this Agreement except through an on-campus "tent" sale, "garage" sale or the like and in no event shall Products be sold to liquidators, jobbers, distributors, wholesalers, retailers, or any other individual or entity in the trade.

9. DESIGN & MARKETING CONSULTATION.

- (a) UNIVERSITY acknowledges NIKE's industry leadership in the design of performance product and its expertise and innovation in the area of sports marketing and that such leadership, expertise and innovation is a material

inducement to UNIVERSITY's entrance into this Agreement. NIKE shall continue its efforts to produce high quality Products through consultation with coaches and staff of successful athletic programs such as UNIVERSITY and whose full cooperation is important to NIKE, as such individuals have knowledge that can be useful in the research, development and production of NIKE Products, and is of the essence of this Agreement. Upon request by NIKE, UNIVERSITY shall require designated Coaches and Staff to provide NIKE with written or oral reports concerning the NIKE Products supplied to each through NIKE's product development and testing program. Such reports shall address the fit, wear characteristics, materials and construction techniques of such Products.

- (b) UNIVERSITY acknowledges that a material inducement to NIKE's entrance into this Agreement is to provide broad and prominent exposure for the NIKE brand and particular Product models and styles. Accordingly, UNIVERSITY shall require the use, in practices and games, by such Teams and Coaches, such specific models and/or styles of NIKE Products as NIKE may designate from time-to-time and UNIVERSITY further acknowledges that this undertaking is a material term, and of the essence, of this Agreement.

10. ADVERTISING APPROVALS.

- (a) In the event NIKE desires to use the UNIVERSITY Marks or Coach Endorsement in any consumer advertising or promotion, NIKE shall first submit a sample or the concept of the proposed advertisement or promotion to UNIVERSITY for approval, which approval shall not be unreasonably withheld. UNIVERSITY shall use its best efforts to advise NIKE of its approval or disapproval of the sample or concept within five (5) business days of its receipt thereof. UNIVERSITY's approval, or disapproval, shall be in writing. (If a submission is disapproved, UNIVERSITY's written notice thereof shall set forth in reasonable detail the basis for such disapproval.) Any submitted item that has not been disapproved within ten (10) calendar days of receipt by UNIVERSITY shall be deemed approved. Once a submitted sample or concept is approved, NIKE shall not depart therefrom in any material respect without re-submission of the item and obtaining UNIVERSITY's further approval.
- (b) In the event UNIVERSITY desires to use the NIKE Marks in any advertising or promotion, UNIVERSITY shall first submit a sample or the concept of the proposed advertisement or promotion to NIKE for approval, which approval shall not be unreasonably withheld.

11. TRADEMARK OWNERSHIP.

- (a) NIKE recognizes the value of the UNIVERSITY Marks and acknowledges that the goodwill attached thereto belongs to UNIVERSITY and that nothing in this Agreement serves to assign, convey or transfer to NIKE any rights, title or interest in or to the UNIVERSITY Marks.
- (b) UNIVERSITY recognizes the value of the NIKE Marks and acknowledges that the goodwill attached thereto belongs to NIKE and that nothing in this Agreement serves to assign, convey or transfer to UNIVERSITY any rights, title or interest in or to the NIKE Marks.

12. RIGHT OF FIRST DEALING & FIRST REFUSAL.

Nike shall have the right of first dealing and first refusal as follows:

- (a) This Contract is subject to Fiscal Review prior to inception. At NIKE's request, UNIVERSITY shall negotiate with NIKE in good faith with respect to the terms of a renewal of this Contract. The parties shall not be obligated to enter into an agreement if they cannot settle on mutually satisfactory terms. Prior to January 1, 2020 (the "Exclusive Negotiating End Date), UNIVERSITY shall not engage in discussions or negotiations with any third party regarding product supply with respect to any Products, or sponsorship of any Covered Program (or similar supply or promotional arrangement) with respect to any Products, ("Product Supply/Endorsement") to become effective upon expiration of this Contract.
- (b) During the Term and for a period of ninety (90) days thereafter, NIKE shall have the right of first refusal for Product Supply/Endorsements, as follows: If UNIVERSITY receives any bona fide third party offer at any time on or after the Exclusive Negotiating End Date with respect to any Product Supply/Endorsements, and UNIVERSITY finds such offer acceptable to it such that it is prepared to enter into an agreement on such terms, UNIVERSITY shall submit to NIKE in writing the specific terms of such bona fide third party offer in the form of a true copy which shall be on the offeror's letterhead or other identifiable stationery or imprint readily authenticatable by NIKE as having originated with such third-party offeror. NIKE shall have fifteen (15) business days from the date of its receipt of such true copy of the third party offer to notify UNIVERSITY in writing if it will enter into a new contract with UNIVERSITY on terms no less favorable to UNIVERSITY than the material, measurable and matchable terms of such third party offer. If NIKE so notifies UNIVERSITY within such 15-day period, UNIVERSITY shall enter into a contract with NIKE on the terms of NIKE's offer. If NIKE fails or declines to match or better the material, measurable and matchable terms of such third party offer within such 15-day period, UNIVERSITY may thereafter consummate an agreement with such third party on the terms of the offer made to UNIVERSITY. Prior to the Exclusive Negotiating End Date, UNIVERSITY shall not solicit, consider or present to NIKE, and NIKE shall not be obligated to respond to, any third party offer for any Product Supply/Endorsements.

13. RIGHT OF TERMINATION BY UNIVERSITY.

Without prejudice to any other right UNIVERSITY may have hereunder or otherwise, UNIVERSITY shall have the right to terminate this Agreement immediately upon written notice to NIKE if:

- (a) NIKE is adjudicated insolvent or declares bankruptcy;
- (b) NIKE fails to make payment to UNIVERSITY of any sum due pursuant to this Agreement within thirty (30) days following NIKE's receipt of written notice from UNIVERSITY that such payment is past due; or
- (c) NIKE shall be in material breach of this Agreement, which breach NIKE fails to cure within thirty (30) days of NIKE's receipt of written notice from UNIVERSITY specifying such breach.
- (d) Any act or omission of NIKE causes UNIVERSITY, a Team member, Coach, or Staff to be in violation of any NCAA rule or regulation resulting in NCAA sanctions against the UNIVERSITY, a Team member, Coach or Staff.

14. RIGHT OF TERMINATION BY NIKE.

- (a) Without prejudice to any other right NIKE may have hereunder or otherwise, NIKE

shall have the right to terminate this Agreement immediately upon written notice to UNIVERSITY if:

- (1) Any Flagship Program is placed on NCAA probation (or UNIVERSITY self-imposes sanctions) that results in a television or post-season appearance ban for greater than one playing season, or UNIVERSITY ceases for any reason to field a Division I team in any of the Flagship Programs;
- (2) Members of any Team fail to wear or use NIKE Products during practices, games, exhibitions, clinics, sports camps or other occasions during which Team members wear or use Products (including but not limited to photo sessions and interviews), or wear NIKE Products altered, spatted or taped, in violation of the provisions of Paragraph 8; provided, however, that NIKE shall have first provided written notice to UNIVERSITY of any such violation and such violation shall then recur during the same Contract Year;
- (3) Any Coach, Staff or Team member fails to perform any material obligations provided for in this Agreement, which breach UNIVERSITY fails to cure, if curable, within thirty (30) days of NIKE's delivery of written notice to UNIVERSITY of any such breach;
- (4) UNIVERSITY, the NCAA, the Conference or any assignee thereof (including any licensing agent or broadcast partner of the foregoing) enacts, adopts or accedes to any regulation, restriction, prohibition or practice that materially deprives NIKE of the promotional benefits and/or product/brand exposure contemplated by this Agreement including, but not limited to, (i) any diminution of NIKE's logo placement rights (in terms of size, location placement, color prominence and/or number of placements) on Products, including any total ban on the placement of camera-visible logo identification on Authentic Competition Apparel, (ii) "air brushing" NIKE identification from still photography or footage, or (iii) use of L-VIS technology or other "virtual signage" or electronic/computer imaging technology that alters, substitutes or replaces NIKE's stadium/arena signage (including NIKE logo identification that appears on uniforms) with other commercial identification that is seen by home television viewers;
- (5) UNIVERSITY, the NCAA, the Conference or any assignee thereof (including any licensing agent or broadcast partner of the foregoing) enacts, adopts or accedes to any regulation, restriction, prohibition or practice, or takes any action, or causes or induces UNIVERSITY, the Athletic Department or any Team to take any action, that would materially adversely affect any rights conveyed to NIKE under this Agreement (e.g., limiting the right of NIKE to supply brand-identified footwear for Team use, requiring the use of competitive product, or to display competitor-identification, etc.);
- (6) UNIVERSITY breaches any warranty or other material term of this Agreement, which breach UNIVERSITY fails to cure, if curable, within thirty (30) days of NIKE's delivery of written notice to UNIVERSITY of any such breach.

15. NIKE POST-TERMINATION RIGHTS.

Upon expiration or termination of this Agreement for any reason, NIKE shall have the right to:

- (a) For a period of six (6) months, run any non-cancelable media involving the UNIVERSITY Marks and exhaust all advertising and promotional materials which

were produced prior to the effective date of expiration or termination;

- (b) Use, in perpetuity, Game Photos or Game Footage for in-house exhibition for historical, educational or commemorative purposes.

16. REMEDIES.

UNIVERSITY and NIKE agree that, in the event that either party breaches any material term or condition of this Agreement, the non-breaching party may seek all available remedies to the fullest extent permitted by law. Nothing in this Agreement shall affect any rights the UNIVERSITY may have under products liability law, nor shall this Agreement be interpreted to waive any warranty rights of UNIVERSITY.

17. NOTICES.

All notices, statements and payments provided for herein shall be in writing and deemed given if sent postage prepaid via registered or certified mail, or by express courier service or facsimile with confirmed delivery, to the parties at the addresses given below, or such other addresses as either party may designate to the other. Any written notice shall be deemed to have been given at the time it is sent addressed to the parties as set forth below. It is UNIVERSITY's obligation to notify NIKE of any address change.

| | |
|---|--|
| NIKE USA, Inc. One Bowerman Drive Beaverton, OR 97005-6453 Attn: Legal Dept., Sports Marketing Contracts Specialist | Middle Tennessee State University Attn: Director of Athletics 1500 Greenland Drive Murfreesboro, TN 37132 |
|---|--|

18. RELATIONSHIP OF PARTIES.

The performance of services for NIKE by UNIVERSITY is in the capacity of independent contractors. Accordingly, nothing contained in this Agreement shall be construed as establishing an employer/employee, partnership, agency or joint venture relationship between UNIVERSITY and NIKE.

19. ASSIGNMENT/DELEGATION/PASS THROUGH.

- (a) This Agreement and the rights and obligations of UNIVERSITY hereunder are personal to UNIVERSITY and shall not be assigned or delegated by UNIVERSITY. Any assignment by UNIVERSITY shall be invalid and of no force or effect and upon any such unauthorized assignment, NIKE may, at its option, immediately terminate this Agreement upon written notice to UNIVERSITY.
- (b) The rights granted to NIKE by UNIVERSITY hereunder are personal to NIKE and shall not be assigned, delegated or passed-through outside of the NIKE Group and its retail accounts without UNIVERSITY's prior approval, which approval shall not be unreasonably withheld.

20. WAIVER.

The failure at any time of UNIVERSITY or NIKE to demand strict performance by the other of any of the terms, covenants or conditions set forth herein shall not be construed as a continuing waiver or relinquishment thereof, and either party may, at any time, demand strict and complete performance by the other party of such terms, covenants and conditions.

21. SEVERABILITY.

Every provision of this Agreement is severable. If any term or provision hereof is held to be illegal, invalid or unenforceable for any reason whatsoever, such illegality, invalidity or unenforceability shall not affect the validity of the remainder of this Agreement or any other provision and the illegal, invalid or unenforceable provision shall be deemed by the parties as replaced by such substitute provision as shall be drafted by NIKE, in such form and substance as shall be legally valid, and as shall accomplish as near as possible the purpose and intent of the invalidated provision.

22. ADDITIONAL WARRANTIES.

UNIVERSITY represents that:

- (a) No agreement, contract, understanding or rule of any national, international or collegiate governing body exists which would prevent or limit performance of any of the obligations of either party hereunder.
- (b) Neither UNIVERSITY nor any Coach nor Staff member is party to any oral or written agreement, contract or understanding which would prevent, limit or hinder the performance of any obligations hereunder of UNIVERSITY, Coaches or Staff. UNIVERSITY further represents that during the Term UNIVERSITY will not knowingly, with respect to any Covered Program (or with respect to any camp or clinic related to any Covered Program sport):
 - i. Sponsor, endorse or allow any Coach or Staff member of any Covered Program to sponsor, endorse or wear and/or use Products licensed, manufactured, branded or sold by any person or entity other than NIKE;
 - ii. Enter into, or allow any Coach or Staff member of any Covered Program to enter into, any endorsement, promotional, consulting or similar agreement (including the sale of signage or other media) with any shoe company or other brand, licensor, manufacturer and/or seller of Products other than NIKE;
 - iii. Sell to any person or entity Products purchased or provided hereunder by NIKE, except for the sale of game-worn jerseys for fundraising/auction purposes or in the normal course of disposal of surplus property in accordance with Paragraph 10(f);
 - iv. Permit the trade name, trademark, name, logo or any other identification of any brand, licensor, manufacturer and/or seller of Products other than NIKE to appear on signage at practices, games, exhibitions, clinics, sports camps and other official or UNIVERSITY sanctioned Covered Program activities (including but not limited to photo sessions and interviews);
 - v. Permit any Team members, Coaches or Staff to wear or use products (other than Products) licensed, manufactured, branded or sold by any person or entity that licenses, manufactures, brands or sells Products other than NIKE; or
 - vi. Take any action inconsistent with the endorsement of NIKE Products, or allow any Coach or Staff member to take any such action.
 - a. It has the full legal right and authority to enter into and fully perform this Agreement in accordance with its terms and to grant to NIKE all the rights granted herein.

23. CONFIDENTIALITY.

The UNIVERSITY shall not (nor shall it permit or cause its agents, attorneys, accountants, representatives or employees to) disclose the financial or other material terms of this Agreement to any third-party, with the exception only of the UNIVERSITY's agents, attorneys, accountants, representatives or employees, except as may be required by law. This Paragraph shall survive the expiration or termination of this Agreement.

24. CAPTIONS.

Paragraph captions and other headings contained in this Agreement are for reference purposes only and are in no way intended to describe, interpret, define or limit the scope, extent or intent of the Agreement or any provision hereof.

25. NO THIRD-PARTY BENEFICIARIES.

No person or entity, other than UNIVERSITY and NIKE and their successors and permitted assigns shall have any rights, remedies, claims, benefits, or powers under this Agreement, and this Agreement shall not be construed or interpreted to confer any rights, remedies, claims, benefits, or powers upon any third party. There are no third-party beneficiaries of this Agreement.

26. ENTIRE CONTRACT.

As of the execution date hereof, this Agreement shall constitute the entire understanding between UNIVERSITY and NIKE and may not be altered or modified except by a written agreement, signed by both parties. Any previous agreements between UNIVERSITY and NIKE shall have no further force or effect.

27. CONFLICTS OF INTEREST.

NIKE 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 NIKE in connection with any work contemplated or performed relative to this Agreement.

28. NONDISCRIMINATION

NIKE 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 Agreement or in the employment practices of NIKE 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. NIKE shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

29. PROHIBITION OF ILLEGAL IMMIGRANTS. PROHIBITION HIRING ILLEGAL IMMIGRANTS.

Tennessee Public Chapter No. 878 of 2006, TCA 12-3-309, requires that NIKE attest in writing that it will not knowingly utilize the services of illegal immigrants in the performance of this Agreement and will not knowingly utilize the services of any subcontractor, if permitted under this Agreement, who will utilize the services of illegal immigrants in the performance of this Agreement. The attestation shall be made on the form, Attestation re Personnel Used in Contract Performance ("the Attestation"),

which is attached and hereby incorporated by this reference as Attachment 1. If NIKE is discovered to have breached the Attestation, the Commissioner of Finance and Administration shall declare that NIKE shall be prohibited from contracting or submitting a bid to any Tennessee Board of Regents institution or any other state entity for a period of one (1) year from the date of discovery of the breach.

30. RECORDS.

NIKE shall maintain documentation for all charges against the UNIVERSITY under this Agreement. The books, records, and documents of NIKE, insofar as they relate to work performed or money received under this Agreement, shall be maintained for a period of three (3) full years from the date of the final payment and shall be subject to annual audit (at such NIKE location as such records are regularly maintained) at any reasonable time and upon reasonable notice by the UNIVERSITY, the Tennessee Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.

31. GOVERNING LAW.

This Agreement shall be governed by and construed in accordance with the laws of the State of Tennessee. NIKE agrees that it will be subject to the exclusive jurisdiction of the Tennessee Claims Commission in actions that may arise under this Agreement. NIKE acknowledges and agrees that any rights or claims against the UNIVERSITY or its employees hereunder, and any remedies arising there from, 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.

32. SUBJECT TO FUNDS AVAILABLE.

The Agreement 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 Agreement upon written notice to NIKE. Termination under this shall not be deemed a breach of contract by the UNIVERSITY. Upon receipt of the written notice, NIKE shall cease all work associated with the Agreement. Should such an event occur, NIKE shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date.

33. HOLD HARMLESS.

NIKE 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 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 NIKE, its employees, or any person acting for or on its or their behalf relating to this Agreement. NIKE 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 the Agreement or otherwise enforce the obligations of NIKE to the UNIVERSITY.

In the event of any such suit or claim, NIKE shall give the UNIVERSITY immediate notice thereof and shall provide all assistance required by the UNIVERSITY in the UNIVERSITY's defense. The UNIVERSITY shall give NIKE written notice of any such claim or suit, and NIKE shall have full right and obligation to conduct NIKE's own defense thereof. Nothing contained herein shall be deemed to accord to NIKE, 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.

34. DEBARMENT AND SUSPENSION.

NIKE 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 Agreement been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offence in connection with obtaining attempting to obtain, or performing a public (Federal, State, or Local) transaction or grant under a public transaction, violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
- (c) Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or Local) with commission of any of the offenses listed in Section b. of this section; and
- (d) 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.

35. NIKE shall be registered with the Tennessee Department of Revenue for the collection of Tennessee sales and use tax **and** must provide a copy of its certificate of registration to UNIVERSITY, This registration requirement is a material requirement of this Agreement.

However, nothing in this section shall require NIKE to register if NIKE does not make sales to customers in Tennessee of taxable goods or services. If NIKE does not make sales to customers in Tennessee of taxable goods or services and marks **Not Applicable** below, its authorized signature on this Agreement shall serve as certification of compliance with this requirement.

Mark as appropriate below:

Certificate provided _____ **OR** **Not applicable** _____

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date written below.

MIDDLE TENNESSEE STATE
UNIVERSITY

NIKE USA, Inc.

By: _____

By: _____

Tommy Kain
VP, North America Sports Marketing

Its: _____

Dated: _____

Dated: _____

ATTACHMENT 1

**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 service 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.