



Middle Tennessee State University Executive and Governance Committee Special Called Meeting

1:30 p.m.
Tuesday
November 27, 2018

Miller Education Center
MEC Meeting Room – 2nd Floor
503 East Bell Street
Murfreesboro, Tennessee



**Middle Tennessee State University
Executive and Governance Committee
Special Called Meeting**

Tuesday, November 27, 2018 – 1:30 p.m.

ORDER OF BUSINESS

1. Call to Order
2. Roll Call
3. Statement of Necessity
4. Remarks by Chairman and President
5. President's Contract (Action) Tab 1



**Middle Tennessee State University
Executive and Governance**

**Statement of
Necessity**



**Middle Tennessee State University
Board of Trustees**

MEETING: Special Called Executive & Governance Committee

SUBJECT: [Statement of Necessity](#)

DATE: November 27, 2018

PRESENTER: Board Secretary Heidi Zimmerman

ACTION REQUIRED: Roll Call Vote

STAFF RECOMMENDATION: Approval



Middle Tennessee State University
Executive and Governance Committee

Tuesday, November 27, 2018 – 1:30 p.m.

Tab 1

President's Contract



**Middle Tennessee State University
Board of Trustees**

MEETING: Special Called Executive and Governance Committee

SUBJECT: [President's Contract](#)

DATE: November 27, 2018

ACTION REQUIRED: Roll Call Vote

BACKGROUND INFORMATION:

At its meeting on March 13, 2018, the Executive and Governance Committee voted to have Trustee Joey Jacobs, as Chairman of the Finance and Personnel Committee, negotiate the terms of the president's contract, to include consideration of tenure and length of contract. At its meeting on November 13, 2018, the Executive and Governance Committee voted to defer action on the contract and to call a special called meeting prior to the December 11, 2018, Board of Trustees meeting on this matter.

EMPLOYMENT AGREEMENT

This EMPLOYMENT AGREEMENT is entered by and between MIDDLE TENNESSEE STATE UNIVERSITY, a public educational institution of the State of Tennessee (“University”), by and through its Board of Trustees (“Board”), and SIDNEY A. MCPHEE (“Dr. McPhee”). The effective date of this Agreement shall be December 11, 2018.

WITNESSETH:

In consideration of the covenants and agreement herein contained, the University and Dr. McPhee agree as follows:

1. Employment as President

A. The University currently employs Dr. McPhee as President of the University. The parties are desirous to retain Dr. McPhee as President of the University and maintain this relationship under the terms and conditions and for the compensation and other benefits described or referred to in this Agreement.

2. Duties as President

A. Dr. McPhee shall serve as President of the University. Dr. McPhee’s duties and responsibilities as President shall be those stated in the Board’s By-Laws and Policies as they now exist or as amended from time to time, which are incorporated herein by reference as if fully set out, and such other duties as may be assigned to him from time to time by the Board or required of him by federal or state law, Board and University rules, policies and procedures, or custom and practice for university presidents generally.

B. Dr. McPhee shall devote his full time and attention and his best efforts to the performance of his duties as President and shall not hold any position of employment outside the University or engage in any outside activity that may interfere with or prevent, in any way or at any time, his performance of his duties as President, except as outlined in Section 3.E. of this Agreement.

3. Salary and Other Compensation as President

A. Dr. McPhee’s annual base salary as President shall be \$400,000.00 (“Base Salary”), payable in twelve monthly installments of \$33,333.33 and subject to all requirements of state and federal law with respect to withholding or other deductions. When funds are available for a general salary increase for University employees, the Board, on the recommendation of the Executive and Governance Committee, may act to increase the Base Salary during the term of this Agreement based on meritorious performance by Dr. McPhee. During the term of this Agreement, Dr. McPhee’s Base Salary may be increased, but not decreased.

B. The Base Salary shall not be adjusted in accordance with any across-the-board salary increase authorized by the State of Tennessee for University employees. As set forth above, the Board, on recommendation of the Executive and Governance Committee, shall determine Dr. McPhee's salary increases.

C. During the term of this Agreement, for the benefit and convenience of the University in having the functions of the Office of President efficiently discharged and, in order to enable Dr. McPhee to fully perform the extensive duties of his position, Dr. McPhee agrees to live in the President's residence on campus. The University shall pay expenditures required to furnish, maintain, repair, renovate and operate the residence as provided in MTSU Policy 607, Expenditures for University-Owned Residence of the President as it now exists or as it may be amended from time to time. For the benefit and convenience of the University, the President's residence shall be available, and shall be used, for University-related business at Dr. McPhee's sole discretion. Costs associated with such University events shall be borne by the University. Dr. McPhee and his family shall be responsible for expenditures not provided in MTSU Policy 607. Except as provided otherwise herein, upon Dr. McPhee's resignation, reassignment, termination, or expiration of this Agreement, Dr. McPhee shall vacate the President's residence no later than 30 days after the effective date of his resignation, reassignment, termination, or expiration of this Agreement.

D. The University shall provide an automobile to Dr. McPhee suitable for his position as President consistent with MTSU Policy 606, Assignment of Motor Pool Vehicle to the President as it now exists or as it may be amended from time to time. Dr. McPhee recognizes that the personal use of the automobile is taxable to him. Dr. McPhee will be required to maintain a mileage log of his personal use of the automobile, in accordance with University policy and procedures and IRS regulations.

E. Dr. McPhee shall not receive salary, benefits, or other compensation for service as President from any source other than from University, except with the prior written approval of the Chair of the Board, and subject to compliance with the conflict of interests laws and policies described in Section 7. pertaining to University Policies and Procedures - Conflict of Interests Policies and Disclosure Statements, of this Agreement. Dr. McPhee from time to time may hold outside directorships or engage in consulting activities with respect to which he shall be entitled to retain any compensation or fees. Dr. McPhee shall report annual leave for any time spent on directorship or consulting activities.

F. Subject to the restrictions pertaining to payment of travel expenses set forth in Section 6.E. below, Dr. McPhee may retain any honorarium he receives for speaking engagements or other professional activities in which he is representing the University, but only if the University does not pay related travel expenses for Dr. McPhee.

G. The Board, on no less than an annual basis, shall consider all compensation related matters pertaining to Dr. McPhee, including, but not limited to, deferred compensation, bonuses, fringe benefits, additional increases to the Base Salary and/or other compensation as it deems appropriate and needed.

H. Dr. McPhee is eligible for a discretionary performance bonus established by the Board that may be between zero and twenty percent of his Base Salary. This performance bonus will

be determined at the sole discretion of the Board based upon the Board's assessment of the degree to which Dr. McPhee has met the performance metrics set forth in accordance with Section 5., Performance Reviews, below.

I. Upon the University receiving a favorable fifth year review of regional accreditation, Dr. McPhee will be paid an accreditation bonus in the amount of \$50,000.

J. If Dr. McPhee remains President of the University at the conclusion of the original term of this Agreement on December 10, 2023, the University agrees to pay Dr. McPhee a bonus of \$250,000.

4. Faculty Appointment

A. Concurrently with his appointment as President, Dr. McPhee will continue to hold a tenured faculty appointment as Professor of Educational Leadership at the University.

B. Dr. McPhee shall have no regular duties as Professor of Educational Leadership, and he shall receive no additional compensation for this faculty appointment. From time to time, with the prior written approval of the Chair of the Board, Dr. McPhee may teach a course if doing so will not interfere with performance of his duties as President.

C. If Dr. McPhee voluntarily resigns in good standing as President, or the Board allows, with required notice, this Agreement to expire without renewing it, Dr. McPhee shall be permitted to continue as a tenured Professor of Educational Leadership on a full-time basis for the remainder of the term of this Agreement, or a twelve (12) month period, whichever is longer, at a salary of 85% of his final Base Salary as President in effect at the time of his voluntary resignation or the expiration of this Agreement, as applicable. Eighty-five percent is consistent with University policy and practice for administrators returning to the faculty. All other compensation, allowances, bonuses, privileges, benefits, and perquisites related to the position of President shall end on a date mutually agreed to by the parties, but no later than thirty (30) days after Dr. McPhee ceases to serve as President.

D. If the Board terminates Dr. McPhee's employment as President without cause for any reason other than those specified in Section 4.C. above, and/or reassigns Dr. McPhee to other full-time duties at the University, he shall be permitted to continue as a tenured Professor of Educational Leadership on a full-time basis for the remainder of the term of this Agreement, or a twelve (12) month period, whichever is longer, at a salary of 85% of his final Base Salary as President in effect at the time of: (1) the expiration of this Agreement; (2) his termination, except for cause; (3) or reassignment. In addition, the University shall pay liquidated damages to Dr. McPhee in an amount equal to 25% of Dr. McPhee's final Base Salary as President times the number of years (or pro-rata portion of a year) remaining in the term of the Agreement, or a twelve (12) month period, whichever is longer. All other compensation, allowances, bonuses, privileges, benefits, and perquisites related to the position of President shall end on a date mutually agreed to by the parties, but no later than thirty (30) days after Dr. McPhee ceases to serve as President.

5. Performance Reviews

A. Dr. McPhee's performance as President shall be reviewed annually in accordance with the Board Policy on Selection, Evaluation and Retention of the President, as it now exists and as it may be amended in the future. The Executive and Governance Committee shall consider Dr. McPhee's performance evaluations in developing recommendations to the Board concerning his compensation, including discretionary performance bonuses, and other terms of employment.

6. Benefits and Reimbursements

A. Dr. McPhee shall be eligible for University fringe benefits to the same extent as other full-time, exempt employees of the University.

B. The University shall reimburse Dr. McPhee for entertainment and travel expenses in accordance with University fiscal policies governing entertainment and travel as they now exist and as they may be amended in the future, including, but not limited to, MTSU Policy 658, Travel. Copies of the current policies have been provided to Dr. McPhee prior to execution of this Agreement, and by signing this Agreement, Dr. McPhee certifies that he has read these policies, understands them, and will comply with them. Dr. McPhee is not authorized to make exceptions to these policies for himself and/or his spouse. Exceptions for Dr. McPhee and/or his spouse must be approved by the Chair of the Audit & Compliance Committee in writing and in advance of any reimbursement, and approved exceptions shall be reported by the Vice President for Business and Finance to the Audit & Compliance Committee at its next meeting.

C. Dr. McPhee agrees that he is authorized to use the University airplane but such use is limited to University business. Dr. McPhee agrees that he is not authorized to use the University airplane for commuting or any other personal purpose and that no exceptions may be made to this provision.

D. The University shall provide Dr. McPhee with an annual non-accountable expense allowance of \$10,000.00 (net) payable in equal monthly installments. The University agrees to increase the gross allowance in the appropriate amount necessary to cover all applicable withholding, Federal Insurance Contributions Act (FICA) and Medicare taxes that Dr. McPhee is required to pay. The non-accountable expense allowance is for the discretionary use of Dr. McPhee and is intended primarily to compensate Dr. McPhee for business expenses that cannot be reimbursed under University policy. The University will report the non-accountable expense allowance as income for federal tax purposes and include it on the W-2 form issued annually to Dr. McPhee.

E. If the University pays related travel expenses for a speaking engagement or other professional activity of Dr. McPhee, he must remit any honorarium he might receive to the University for credit against the account charged for the travel expenses. Dr. McPhee will receive the balance of any honorarium remitted after travel expenses are deducted as permitted by University policy. If Dr. McPhee elects to pay his own travel expenses, he may retain the honorarium in full, however, he must use annual leave for the event.

F. The Board recognizes that the spouse of the University President is often called upon to devote substantial time and energy to activities which benefit the University. Dr. McPhee's spouse is hereby authorized to serve when called upon as a representative of the institution, and to accept reimbursement from the University or Foundation for expenses incurred in connection with such activity, to the extent such reimbursements are requested by Dr. McPhee and must be approved for payment by the Vice President for Business and Finance, the Foundation, or the Chair of the Audit & Compliance Committee in writing and in advance of any reimbursement, and approved exceptions shall be reported by the Vice President for Business and Finance to the Audit & Compliance Committee at its next meeting. It is understood that Dr. McPhee's spouse may use facilities and other resources of the University in the same matter as an employee when involved in such activities. The institution shall also assume the travel expenses for Dr. McPhee's spouse on business trips to which she is officially invited or for which her presence is regarded by Dr. McPhee as necessary to carry out his official representational duties to promote a favorable image of the institution. Dr. McPhee will be responsible for any tax consequences resulting from benefits provided to Dr. McPhee's spouse pursuant to this Section F.

G. The University shall pay the annual dues and membership fees for Dr. McPhee in professional associations, clubs and organizations of benefit to the University. The University agrees to reimburse Dr. McPhee for any related initiation fees, monthly dues and charges. Dr. McPhee is responsible for payment of any costs or charges incurred which are not for University related businesses.

7. University Policies and Procedures - Conflict of Interests Policies and Disclosure Statements

A. Dr. McPhee shall comply with all University rules, policies and procedures applicable to exempt employees, now in effect or hereafter adopted or amended, including, but not limited to, MTSU Policy 10, Ethics and Code of Conduct. A copy of MTSU Policy 10 has been provided to Dr. McPhee prior to execution of this Agreement, and by signing this Agreement, Dr. McPhee certifies that he has read Policy 10, understands it, and will comply with it as it now exists and as it may be amended in the future. Dr. McPhee is not authorized to make an exception to any University policy or procedure for himself and/or his spouse.

B. Dr. McPhee shall comply with MTSU Policy 12, Conflict of Interest, a copy of which has been provided to Dr. McPhee prior to execution of this Agreement. By signing this Agreement, Dr. McPhee certifies that he has read this policy, understands it, and will comply with it as it now exists and as it may be amended in the future. In addition, the position of President of the University is subject to the provisions of Tennessee Code Annotated §§ 8-50-501 *et seq.* requiring the filing of a disclosure statement and timely amended statements with the Tennessee Ethics Commission.

8. Term and Termination

A. The term of this Agreement shall be from December 11, 2018 through December 10, 2023, unless sooner terminated as provided hereinafter.

B. This Agreement may be extended for additional terms upon written agreement of the parties. Six (6) months prior to the expiration of the initial term of this Agreement, the Board must notify Dr. McPhee, in writing, of its intent to: (1) allow this Agreement to expire at the end of its term; (2) enter into negotiations for a new Agreement; or (3) amend and extend the term of this Agreement. If the Board fails to notify Dr. McPhee of its decision within the prescribed period of time, this Agreement shall be extended automatically for two (2) additional years with a two and one half (2 1/2%) percent increase in the Base Salary per year. After the initial two (2) year extension, Dr. McPhee and Board may revisit/negotiate the terms at that time.

C. Acknowledging that his service as President is without tenure and solely at the will and pleasure of the Board, except as outlined in Section 4 of this Agreement, Dr. McPhee agrees that the Board, without complying with any University personnel policy or procedure requiring progressive discipline or any other policy or procedure applicable either to exempt employees or to faculty, and with the required notification, may: (1) allow this Agreement to expire and elect not to renew his appointment as President as outlined in Section 8.B.; (2) terminate this Agreement without cause upon ninety (90) days' written notice to Dr. McPhee; or (3) reassign Dr. McPhee for the remaining term of this Agreement from the position of President to other full-time duties within the University, including, but not limited to, full-time duties as Professor of Educational Leadership, upon ninety (90) days' written notice to him.

D. If Dr. McPhee elects not to accept reassignment to other full-time duties under Section 8.C.(3) above, his non-acceptance shall be considered a termination by the Board, without cause, under the terms of this Agreement in which event the University shall pay liquidated damages to Dr. McPhee in an amount equal to Dr. McPhee's final Base Salary as President times the number of years (or pro-rata portion of a year) remaining in the term of the Agreement, or a twelve (12) month period, whichever is longer. All other compensation, allowances, bonuses, privileges, benefits, and perquisites related to the position of President shall end no later than thirty (30) days after he ceases to serve as President.

E. If the Board terminates this Agreement without cause under Section 8.C.(2) above and Dr. McPhee elects to continue employment with the University in his tenured faculty appointment, as permitted under Section 4 of this Agreement, he will receive compensation as outlined in Section 4.D.

F. If the Board terminates this Agreement without cause under Section 8.C.(2) above and Dr. McPhee elects to resign his tenured faculty appointment and terminate his employment with the University in its entirety, the University shall pay liquidated damages to Dr. McPhee in an amount equal to Dr. McPhee's final Base Salary as President times the number of years (or pro-rata portion of a year) remaining in the term of the Agreement or a twelve (12) month period, whichever is longer. All other compensation, allowances, bonuses, privileges, benefits, and perquisites related to the position of President shall end no later than thirty (30) days after he ceases to serve as President.

G. The University's payment of the liquidated damages, as outlined in this Agreement, shall be made in equal monthly installments over the remaining term of the Agreement, subject to all requirements of state and federal law with respect to withholding and other deductions with the first payment due on the University's next regular payday that follows the expiration of sixty (60) days from the date of termination of this Agreement. The obligation of the University to pay liquidated damages shall be conditioned, however, on Dr. McPhee's signing and returning to the University (without revoking) a timely and effective release of claims mutually agreed to by the parties. The mutually agreed upon release shall be returned by Dr. McPhee no later than the sixtieth (60th) day from the date of termination.

H. The University agrees to pay Dr. McPhee's legal expenses, including, but not limited to, attorney fees, mediation fees and other costs in the event the University removes or attempts to remove Dr. McPhee as President of the University for any reason other than for cause. In the event the University terminates Dr. McPhee's employment for cause as provided in Section 8.I. below, Dr. McPhee shall be responsible for his own legal expenses.

I. The Board may terminate this Agreement at any time for cause without complying with any University personnel policy or procedure related to employee discipline or progressive discipline, or any other policy or procedure applicable to exempt employees. "Cause" shall include any one or more of the following as determined in the sole discretion of the Board:

1. Failure to cure, after reasonable notice and opportunity to cure, deficiencies identified by the Board in a performance review or other writing;

2. Indictment, admission of guilt, pleas of *nolo contendere*, or conviction of a felony or a non-felony (except minor traffic citations);

3. Theft or misappropriation of state or University funds, property, services, or other resources, which includes, but is not limited to, misappropriation of state or University resources for personal purposes;

4. Conduct in violation of MTSU Policy 10, Ethics and Code of Conduct, or other conduct which is unbecoming to the office of President or otherwise reflects adversely on the University;

5. Refusal to comply with a lawful directive of the Board or its designee(s);

6. Intentional violation of University policies or procedures now in effect and hereafter adopted or amended;

7. Dishonesty or other violation of professional ethics or responsibility;

8. Acts constituting a conflict of interest under applicable University policies or state law;

9. Any material breach of this Agreement; or

10. Any act of gross misconduct, as defined by University personnel policy now in effect or hereafter adopted by the University.

The grounds for termination contained in this Section 8.I. are separate and independent grounds for termination, and one ground for termination shall not be interpreted in any manner to modify, explain, or restrict any other ground for termination.

J. Prior to terminating this Agreement for cause under Section 8.I. of this Agreement, Dr. McPhee shall be given written notice of the cause for termination and an explanation of the evidence supporting termination. Dr. McPhee shall also be given an opportunity to respond to the proposed termination in a meeting of the Board or the Executive and Governance Committee of the Board to be held not less than seven (7) and not more than fourteen (14) calendar days after the date of the written notice. At the meeting, Dr. McPhee may be represented by counsel of his choice at his own expense but not by counsel for the University.

K. If the Board terminates this Agreement for a cause as described in Subsections 2. through 10. of Section 8.I. of this Agreement, Dr. McPhee agrees that the termination shall constitute a simultaneous relinquishment of his tenured faculty appointment, waiving all rights to hearings, appeals, or other procedures otherwise available by holding a faculty appointment.

L. The Board may suspend Dr. McPhee with pay pending an investigation or decision relating to termination for cause under Section 8.I. of this Agreement. However, in no circumstance may the Board suspend Dr. McPhee without pay pending an investigation or decision relating to termination for cause under Section 8.I. of this Agreement.

M. For any one or more acts, omissions, or events that could be grounds for termination for cause under Section 8.I. of this Agreement, the Board may take other disciplinary or corrective action against Dr. McPhee short of terminating this Agreement. Other disciplinary or corrective action may include, but is not limited to, one or more of the following:

1. Written reprimand;

2. Suspension with pay; or

3. For a cause described in Subsections 2. through 10. of Section 8.I. of this Agreement, suspension without pay.

No such disciplinary or corrective action shall be construed to conflict with or limit the Board's right to terminate this Agreement during or after such disciplinary or corrective action.

N. Upon the Board's termination of this Agreement for cause pursuant to Section 8.I. of this Agreement, Dr. McPhee shall not be entitled to further salary, non-accountable expense allowance, automobile, housing, bonuses, fringe benefits, privileges, perquisites, or any other form of compensation as President. In the event of a termination for cause under Subsection 1. of Section 8.I., Dr. McPhee may be permitted to continue employment in his tenured faculty appointment pursuant to the provision of Section 4. of this Agreement, his compensation and benefits shall be limited to that described in Section 4. of this Agreement.

O. This Agreement shall terminate automatically upon the death of Dr. McPhee, and all salary, non-accountable expense allowance, bonuses, fringe benefits, privileges, perquisites, and any other form of compensation shall terminate on the last day of the calendar month in which death occurs, except that Dr. McPhee's personal representatives or other designated beneficiary shall be paid any death benefits due under University policy now in effect or hereafter adopted by the University, and Dr. McPhee's widow and/or family living with him at the time of his death in the President's residence shall have the right to live there for a period of no more than ninety (90) days. The automatic termination of this Agreement pursuant to this Section 8.O. shall not give rise to any obligation on the part of the University to pay liquidated damages to Dr. McPhee under any provision of this Agreement.

P. This Agreement shall terminate automatically on the date Dr. McPhee is disabled as defined herein.

1. "Disabled" shall mean: In the opinion of a qualified physician retained by the University, Dr. McPhee has a physical or mental impairment that prevents him from performing one or more essential function of President with or without reasonable accommodation and will prevent him from doing so for one hundred twenty (120) consecutive calendar days or longer.

2. Upon termination of this Agreement pursuant to this Section 8.P., all salary, non-accountable expense allowance, bonuses, fringe benefits, privileges, perquisites, and any other form of compensation shall terminate on the last day of the calendar month in which Dr. McPhee is diagnosed as disabled by the qualified physician retained by the University, except that Dr. McPhee shall receive any disability benefits due him under University policy now in effect or hereafter adopted by the University, and Dr. McPhee and the family members living with him in the President's residence shall have the right to live there for a period of no more than ninety (90) days after the diagnosis.

3. If this Agreement terminates pursuant to this Section 8.P., Dr. McPhee shall be permitted to return to his tenured faculty appointment pursuant to Section 4. of this Agreement, and determinations concerning his continued employment with the University shall be made in accordance with University policies, procedures, and practices applicable to tenured faculty.

4. The automatic termination of this Agreement pursuant to this Section 8.P. shall not give rise to any obligation on the part of the University to pay liquidated damages to Dr. McPhee under any provision of this Agreement.

Q. The Board and Dr. McPhee may reach an agreement for termination of this Agreement at any time prior to expiration of this Agreement, provided that such agreement is evidenced in writing signed by both parties.

R. This Agreement shall terminate on the effective date of Dr. McPhee's resignation or retirement from his employment as President. Dr. McPhee shall provide the Chair of the Board a minimum of ninety (90) days' prior written notice of resignation of his employment as President. Dr. McPhee shall provide the Vice Chair of the Board a minimum of one hundred and eighty (180) days' prior written notice of his retirement from his employment as President. In its sole discretion, the Board or the Executive and Governance Committee may elect to waive these notice requirements and accept Dr. McPhee's resignation or retirement effective as of any date certain. In its sole discretion, the Board or the Executive and Governance Committee may elect to place Dr. McPhee on administrative leave with pay for all or any portion of time from the date of notice until the effective date of his resignation or retirement.

S. In accordance with requirements of state law, and notwithstanding anything in this Agreement to the contrary, this Agreement is subject to the appropriation and availability of funds. If funds are not appropriated or are otherwise unavailable, the University reserves the right to terminate this Agreement as of June 30 of any year upon written notice to Dr. McPhee; provided, however, that Dr. McPhee's right under Section 4. of this Agreement to continue in a tenured faculty appointment shall survive the termination of this Agreement under this Section 8.S. Dr. McPhee agrees that termination of this Agreement under this Section 8.S. shall not be deemed a breach of this Agreement by the University and that upon such termination, he shall have no right to recover from the University any liquidated, actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

9. Mediation

A. The parties agree that any controversy or claim either party may have against the other arising out of or relating to the construction, application or enforcement of this Agreement, as well as any controversy or claim based upon an alleged breach of any legal right relating to or arising from Dr. McPhee's employment and/or termination of his employment shall be submitted to non-binding mediation. Within fifteen (15) days after written notice of request for mediation from one party to the other, the dispute shall be submitted to a single mediator chosen by mutual agreement of the parties in Nashville, Tennessee. The costs of the mediation shall be borne by the University.

10. Notice

A. Any notice or communication contemplated by this Agreement shall be deemed to be given when in writing and mailed, registered or certified, postage pre-paid with return receipt requested, to a party at the address set forth below or such other address as may hereafter be designated in writing:

To Dr. Sidney McPhee:

To the University:

Chair of the Board of Trustees
Middle Tennessee State University

1301 E. Main St., CAB 211
Murfreesboro, TN 37132

11. Miscellaneous

A. This Agreement contains the complete agreement between the parties concerning Dr. McPhee's appointment as President. Neither party has made any representation with respect to the subject matter of this Agreement not specifically included in this Agreement, nor has either party relied on any such representation in entering into this Agreement.

B. This Agreement may only be modified by a writing signed by both parties.

C. The invalidity of any portion of this Agreement shall not and shall not be deemed to affect the validity of any other provision. In the event any provision of this Agreement is held to be invalid, the parties agree that the remaining provisions shall be deemed to be in full force and effect as if they had been executed by both parties after the expungement of the invalid provision.

D. This Agreement shall be interpreted in accordance with Tennessee law.

E. A party's failure to respond to a breach by the other party shall not operate as a waiver of their rights under this Agreement or otherwise. Any delay or omission by a party in its exercise of any right or power accruing upon any breach shall not impair or constitute a waiver of such right or power by that party, and any such right or power may be exercised from time to time and as often as may be deemed expedient. The waiver of any breach of any of the terms and conditions of this Agreement shall not be construed as subsequently waiving any such terms and conditions, but the same shall continue and remain in full force and effect as if no forbearance or waiver had occurred.

F. The titles to the sections of this Agreement are solely for the convenience of the parties and shall not be used to explain, modify, simplify, or aid in the interpretation of the provisions of this Agreement.

G. This Agreement may be executed in multiple counterparts, each of which shall be regarded for all purposes as an original constituting but one and the same instrument.

H. All documents, files, records, papers, reports, materials, correspondence, and copies thereof (in any format, including electronically stored information), received or prepared by Dr. McPhee during performing, or as an incident to, Dr. McPhee's duties and responsibilities under this Agreement are and shall remain the sole property of the University. Within fourteen (14) days of the expiration or termination of this Agreement, Dr. McPhee shall return all University property in his possession. Dr. McPhee may copy, at his own expense, all documents, files, records, papers, reports, materials, correspondence, and copies thereof (in any format, including electronically stored information) he received or prepared for his records. Dr. McPhee shall submit to the University for approval, in writing, all requests to receive the aforementioned information. Such approval shall not be unreasonably withheld. The foregoing provisions shall not apply to Dr. McPhee's personal notes, personal memorabilia, diaries, and similar personal property of Dr. McPhee which he is entitled to retain.

I. Dr. McPhee may not assign, pledge, or encumber his rights, interests, or obligations under this Agreement.

J. Each party hereto shall be viewed as an equal participant to the drafting of this Agreement, and each party agrees that there shall be no presumption against the drafting party.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates appearing below.

Sidney A. McPhee, President

Date

MIDDLE TENNESSEE STATE UNIVERSITY

Stephen B. Smith, Chairman of the Board

Date