

EXHIBIT C

Schedule 3 of APPENDIX TWO

TRADEMARK SUBLICENSE AGREEMENT

This Trademark License Agreement ("**License**") is made as of _____, 20____, by and between _____, a _____ ("**Licensee**") on behalf of the **BOARD OF REGENTS OF THE UNIVERSITY OF TEXAS SYSTEM**, an agency of the State of Texas (hereinafter referred to as the "**Board**"), and _____, a _____ ("**Sponsor**").

Board is using the words and the designs shown on **SCHEDULE 1 to this EXHIBIT C** to the License, attached and incorporated for all purposes (collectively, "**Designated Marks**"), as trademarks in the State of Texas and elsewhere throughout the United States and has obtained a U.S. Trademark Registration covering at least some of those marks; and

Sponsor wishes to use the Designated Marks in accordance with the Sponsorship Agreement ("**Sponsorship Agreement**") dated effective _____, 20____, between Sponsor and Licensee, on behalf of *The University of at El Paso* during the term thereof;

In consideration of the mutual covenants of the parties, the parties hereby agree as follows:

1. **License.** Licensee grants to Sponsor the royalty-free right to use under the common law and under the auspices and privileges provided by any of the registrations covering the same during the term of this Agreement, and Sponsor hereby undertakes to use the Designated Marks in accordance with this License and the Sponsorship Agreement attached as **SCHEDULE 2 to this EXHIBIT C** to the License, and incorporated for all purposes.
2. **Scope and Quality of Performance.** Sponsor will use the Designated Marks only in connection the rights granted to Sponsor under the Sponsorship Agreement, subject to the obligations and restrictions specified in the Sponsorship Agreement, and in accordance with any other reasonable guidance and directions furnished to Sponsor by Board, or its representatives or agents, from time to time, if any, but always the quality of Sponsor's use of the Designated Marks will be reasonably satisfactory to Board. Board will be the sole judge of whether or not Sponsor has met or is meeting the standards of quality so established for the Designated Marks.
3. **Inspection.** Sponsor will permit duly authorized representatives of Board to inspect at all reasonable times the premises of Sponsor wherein the Designated Marks are used, after reasonable notice during normal business hours, for the purpose of ascertaining or determining compliance with **Sections 1 and 2** of this Agreement.
4. **Use of Designated Marks; Quality Control and Protection of Designated Marks.**
 - 4.1 Sponsor will obtain prior written approval from Board for all literature, brochures, signs, advertising copy, or audio-visual messages bearing the Designated Marks proposed for use by Sponsor. For purposes of this **Section 4**, the representative of Board is:

Director
Brand, Trademarks and Licensing
403 DeLoss Dodds Way
Austin Texas 78712
or
PO Box 7399
Austin, Texas 78713-7399

This Agreement will not entitle Sponsor to use a Trademark for any purpose other than performing its obligations under the Sponsorship Agreement; therefore, if Sponsor desires to use a Trademark on any product to be displayed, sold, or otherwise distributed, then such use must be authorized pursuant to a License Agreement issued by *Strategic Marketing Affiliates* or a successor identified by Board. When using the Designated Marks under this Agreement, Sponsor will comply with all applicable laws and regulations pertaining to trademarks, including without limitation compliance with marking requirements.

- 4.2** Sponsor shall ensure that the Sponsor and its agents (A) use the Designated Marks only in connection with goods and services of a level of quality equal to or greater than the quality of goods and services in connection with which, Board uses the Designated Marks, and (B) comply with all applicable laws and industry practice in connection with its use and distribution of the Designated Marks. Board shall have the right to inspect Sponsor's, its agents' and its assigns' goods and services that bear or use the Designated Marks to ensure compliance with the provisions of this Agreement. All goodwill and improved reputation generated by Sponsor and its agents use and distribution of the Designated Marks, inures solely to Board's benefit.
- 4.3** Sponsor and its agents may not nor attempt to, nor permit, enable or request any other person to: (A) use any Designated Marks in any manner, or engage in any other act or omission, that tarnishes, degrades, disparages or reflects adversely on a Designated Mark or Board's or its affiliates' business or reputation, or that might dilute or otherwise harm the value, reputation or distinctiveness of, or Board's goodwill in, any Designated Mark; (B) register or file applications to register in any jurisdiction any Trademark that consists of, incorporates, is confusingly similar to, or is a variation, derivation, modification or acronym of, any Trademark; or (C) contest the ownership or validity of any of the Designated Marks including in any litigation or administrative proceeding.
- 4.4** Board may direct Licensee to, and Licensee must at Board's direction, immediately terminate this Agreement if Board, in its sole discretion, determines that Sponsor, its agents or its assigns have failed to comply with the terms and conditions in this Agreement, or have otherwise failed to comply with Board's reasonable directions in relation to the use of the Designated Marks.
- 5. Extent of License.** The right granted in **Section 1** for use of the Designated Marks will be nonexclusive. The rights granted to Sponsor in this Agreement will not be assignable or transferable without prior written consent from the Board, nor will the Sponsor have the right to grant any sublicenses, except by prior written consent of the Board.
- 6. Indemnity.**
- 6.1** Except to the extent specified in **Section 6.2**, Board assumes no liability to Sponsor or to third parties with respect to the Sponsor's activities related to use of the Designated Marks, and the Sponsor will indemnify and defend Board and all component institutions of The University of Texas System against losses incurred as a result of claims by third parties caused by Sponsor as a result of Sponsor's use of the Designated Marks.
- 6.2** Licensee, on behalf of Board, represents and warrants to Sponsor that (i) the Designated Marks do not infringe on the rights of any third party; (ii) Licensee's execution and delivery of this Agreement and performance of its obligations under this Agreement will not violate or conflict with any current law, rule (including any of the Rules and Regulations of the Board of Regents of The University of Texas System), or any contract to which Licensee is a party. To the extent authorized by the Constitution and laws of the State of Texas, Licensee will save and hold harmless Sponsor and its officers, directors, owners and agents from all claims, demands, causes of action, and judgments that directly or indirectly

result from any breach of Licensee's representations and warranties in the preceding sentence.

7. Term; Default and Termination.

7.1 This Agreement will run coterminous with the Sponsorship Agreement, and will automatically terminate upon the expiration or earlier termination of the Sponsorship Agreement.

7.2 If either party is in default of the performance of any of its obligations under this Agreement, then the party that is not in default will give written notice of such default to the other party and, if the party notified fails to correct the default within 30 days or within such period fails to satisfy the party giving notice that the default does not exist, then the party giving notice may terminate this Agreement upon the expiration of the 30-day period and seek all remedies now or hereafter provided by law for recovery of damages caused by the other party's default.

7.3 In addition to the Board's right to terminate as specified in **Section 7.2**, the Board will have the right to direct Licensee to terminate, and Licensee must terminate at Board's direction, this Agreement immediately upon the occurrence of one or more of the following events: (i) The filing by or against Sponsor in a court of competent jurisdiction of a petition for relief in bankruptcy, whether voluntary or involuntary, for either adjudication of bankruptcy or for reorganization or rearrangement under the bankruptcy laws, or the filing of an action for receivership of any nature, and in the case of an involuntary bankruptcy filed against Sponsor, such filing has not been dismissed within 120 days after filing; or (ii) An assignment for the benefit of Sponsor's creditors.

8. Ownership of Designated Marks. The Sponsor acknowledges the Board's exclusive right, title and interest in and to the Designated Marks and any registrations that have issued or may issue thereon, and Sponsor will not at any time do or cause to be done any act or thing contesting or in any way impairing or tending to impair part of such right, title and interest. In connection with the use of the Designated Marks, Sponsor will not in any manner represent that it has any ownership in the Designated Marks or registrations thereof, and Sponsor acknowledges that its use of the Designated Marks will inure to the benefit of the Board. Upon the expiration or earlier termination of this Agreement in any manner provided herein, Sponsor will immediately cease and desist from all use of the Designated Marks, and Sponsor will, at University's request, execute a recordable document releasing all of Sponsor's rights under this Agreement. Sponsor will not at any time adopt or use, without the Board's prior written consent, any word or mark that is likely to be similar to or confusing with the Designated Marks or any other marks owned by the Board.

9. Approvals from the Board. Except as otherwise specified in this Agreement, in every circumstance in which an approval or consent from the Board is required under this Agreement, Sponsor must obtain that approval or consent from the Director, Trademark Licensing, or the successor in function.

10. Notices. Any notice required or provided for herein must be in writing and be delivered by courier or United States certified mail, return receipt requested, addressed as follows:

Notice to Board:

Director
Brand, Trademarks and Licensing
403 DeLoss Dodds Way
Austin Texas 78712
or
PO Box 7399

Austin, Texas 78713-7399

with copy to: The University of Texas at El Paso
Assistant VP for Business Affairs
500 West University Ave., Administration Bldg. Room 301
El Paso, TX 79902
ATTENTION: Victor Pacheco, Assistant VP Business Affairs, VP for Business Affairs

with copy to: The University of Texas at El Paso
Assistant Vice President Purchasing and General Services
500 West University Ave.
El Paso, TX 79938
Attention: Dr. Diane N. De Hoyos

Notice to Licensee:

Attention: _____
Fax: _____
Email: _____

with a copy to:

Attention: _____
Fax: _____
Email: _____

Notice to Sponsor:

Attention: _____
Fax: _____
Email: _____

Notices will be effective on the date received. The person or persons to be notified or the address for notification may be changed by giving notice as provided in this Section.

11. **Survival of Certain Provisions.** The rights and obligations of Board and Sponsor under **Sections 6 and 8** of this Agreement will survive the expiration or earlier termination hereof.

LICENSEE:

By: _____

Name: _____

Title: _____

Date: _____

SPONSOR:

By: _____

Name: _____

Title: _____

Date: _____

ATTACH:

SCHEDULE 1 TO EXHIBIT C – Trademarks

SCHEDULE 2 TO EXHIBIT C – Sponsorship Agreement

SCHEDULE 1 TO EXHIBIT C

TRADEMARKS

The University of Texas at El Paso

OFFICIAL UTEP LOGOS

THE CLASSIC LOGO

The classic logo is the primary identifier for The University of Texas at El Paso and creates an easily recognizable and memorable image to enhance the University's visibility.

Using the approved classic logo for publications, signs, clothing and other purposes develops a strong identity that connects the University to all of our constituencies, from students and faculty to alumni and donors. When produced in color, the classic logo should always appear in UTEP's signature colors: UTEP Orange, UTEP Blue and UTEP Silver (see page 21 for color use).



THE FLAT LOGO

The flat logo can be used in place of the classic. This mark gives the brand versatility as well as legibility across all platforms and mediums. Flat marks may be used for one-color applications.



THE BOX MARK

The box mark is intended for use in cases where added space and color is necessary to properly brand the University. This mark already contains the required clear space necessary for proper branding room. The box mark commonly will be used on posters, fliers and digital signage where busy images are used.



CREATING YOUR OWN LOGO

In order to ensure consistency in branding, all colleges, departments, programs and other entities within the University should refrain from creating their own logo. For questions related to branding colleges, departments or programs on individual projects, please contact the Office of University Communications by emailing brand@utep.edu.

FLAT VARIATIONS

If you choose to use the flat logo, limit to the following color applications. **DO NOT** use any other colors than the approved UTEP colors.



BOX MARK VARIATIONS

If you choose to use the box mark, you may select from these samples. **DO NOT** use any other colors than the approved UTEP colors.



THE MINER PICK

THE CLASSIC PICK

The Miner pick serves as a spirit mark and always should remain on its own. **DO NOT** combine it with any other graphic, logo or text.

The Miner pick is easily recognizable to UTEP students, faculty, employees and friends, and as such, should primarily be used when communicating with internal audiences familiar with the University. When produced in color, the Miner pick always should appear in UTEP's signature colors: UTEP Orange, UTEP Blue and UTEP Silver (see page 21 for color use).

As with the UTEP logos, refrain from manipulating or altering the Miner pick. **DO NOT** alter its colors or proportions in any way.

Please allow the Office of University Communications to review your use of the pick on your designs. The Miner pick logo is the property of the University and its use is limited to University employees, offices and departments for official purposes only.



FLAT VARIATIONS

If you choose to use the flat pick, limit them to the following color applications. **DO NOT** use any other colors than the approved UTEP colors.



THE FLAT PICK

The flat pick can be used in place of the classic pick. This mark gives the brand versatility as well as legibility across all platforms and mediums. Flat marks may be used for one-color applications.

DO NOT combine it with any other graphic, logo or text.



FOR ASSISTANCE
Email: brand@utep.edu

ATHLETIC LOGOS

The Paydirt Pete logo is the primary identifier for UTEP Athletics. Do not use the athletic logos with academic, business, official or legal communications. For those applications, use the classic or flat UTEP logo (see page 9).

When reproduced in color, the Paydirt Pete logo should always appear in The University of Texas at El Paso's signature colors: UTEP Orange, UTEP Blue and UTEP Silver (see page 2).

Refrain from:

- Using other colors, with the exception of black and white or grayscale for use on faxes, memos and in newspapers, and white for reverses on dark backgrounds.
- Manipulating or altering the Paydirt Pete logo in any way.

The Paydirt Pete logo is the property of the University and its use is limited to University employees, offices and departments for official purposes only.

NOTE: UTEP Athletic logos may not be used to promote UTEP club or intramural sports. For these applications, use the classic or flat UTEP logo or the Miner Pick (see pages 9 and 13).

PRIMARY



SECONDARY

The secondary athletics logo is a complementary mark to represent UTEP Athletics. The secondary logo is intended as a decorative or retail product image for use in contexts in which the name of the University already has been established. It should NEVER be used as the primary identifier of UTEP Athletics. The secondary logos should be used in strict adherence with the graphic identity guidelines mentioned here.



WORDMARK

The athletics wordmark may be used to represent UTEP Athletics when the primary and secondary marks are not practical (although use of the primary mark is preferred). This includes applications where vertical space is limited.

All athletic program uniforms and team gear will display the athletic primary logo, secondary logo and/or athletic wordmark.



FOR ASSISTANCE:

UTEP Athletics
Brumbelow Building
201 Clary Road
915-747-6822

Use good judgment to ensure legibility. A mark that is too small doesn't serve any communicative function. The recommended minimum size for printing on all material is 0.5" in width. Keep clear space in mind when using the athletics logos. Do not clutter the logos with additional logos, graphics or text.

SCHEDULE 2 TO EXHIBIT C
SPONSORSHIP AGREEMENT

THIS SPONSORSHIP AGREEMENT (this "**Agreement**") is between _____, a _____ **[Note: Insert type of entity (corporation, partnership, limited liability company) and state of organization. For example, "a Texas corporation."]** ("**Sponsor**"), and _____, a _____ ("**Licensee**").

RECITALS:

Subject to the approval of the **BOARD OF REGENTS OF THE UNIVERSITY OF TEXAS SYSTEM** ("**Board**") and **THE UNIVERSITY OF TEXAS AT EL PASO** ("**University of Texas at El Paso**"), Licensee has the right to grant Sponsor certain sponsorship benefits on behalf of University of Texas at El Paso's Intercollegiate Athletics Department ("**Athletics Department**"). Board and University of Texas at El Paso are sometimes collectively referred to as "**University**."

Sponsor desires to identify itself as an official sponsor ("**Official Sponsor**") of Athletics Department and receive the sponsorship rights provided for in this Agreement in exchange for the sponsorship payment described **Section 7** of this Agreement.

Sponsor is aware that the terms of this Agreement will not incorporate or affect any philanthropic gifts issued to University by Sponsor.

In consideration of good and valuable consideration received and hereby acknowledged to be adequate, Sponsor and Licensee agree as follows:

1. Sponsorship Recognition.

1.1 **Recognition.** Sponsor will be recognized as set forth on **Attachment X to SCHEDULE 2 of EXHIBIT C**, attached and incorporated for all purposes, so long as such recognition complies with **Section 1.2** and satisfies the qualified sponsorship requirements under the then current Treasury Regulations. All sponsorship recognition provided under this Agreement is collectively referred to as "**Sponsorship Recognition**." All Sponsorship Recognition materials provided or permitted under this Agreement are collectively referred to as "**Sponsorship Recognition Material**."

1.2 **No Endorsements or Calls to Action.** Notwithstanding any other term or condition of this Agreement to the contrary, no Sponsorship Recognition Material or recognition of Sponsor of any other any kind, may state or imply that University endorses a particular company, organization or any other entity, including Sponsor, or any other entity's goods or services, including Sponsor's goods or services. Sponsor will not have the right to display a message in Sponsorship Recognition Material that contains a comparative or qualitative description of Sponsor's goods or services, price information about Sponsor's goods or services, or any other message that is a call to action related to Sponsor's goods or services.

2. Term; Termination.

2.1 **Term.** The term ("**Term**") of this Agreement will commence on _____, **20**____ (the "**Effective Date**"), and will expire on _____, **20**____ ("**Expiration Date**"). "**Contract Year**" means that period of time beginning on the Effective Date and ending twelve calendar months thereafter, and each following twelve (12) month period during the Term of this Agreement.

2.2 Term Subject to Rights Agreement; Termination upon Expiration or Termination of Rights Agreement. Sponsor acknowledges and agrees that the rights and privileges granted by Licensee under this Agreement are subject to (1) that certain Trademark License Agreement dated _____, _____, between Licensee and Board; and (2) that certain Agreement for Use of Designated Marks in connection with Multimedia Rights Marketing Program dated _____, _____, between Licensee and University of Texas at El Paso, (collectively, the "**Rights Agreement**"). If the Rights Agreement expires or terminates at any time during the Term of this Agreement, University may, at its option, assume all obligations and rights under this Agreement. If the Rights Agreement expires or terminates at any time during the Term of this Agreement and if University does not assume all obligations and rights under this Agreement, Licensee may, at its option, terminate this Agreement. Any amounts that have accrued and are due to Licensee at the time of termination of this Agreement will be paid to Licensee within ten (10) days after Sponsor's receipt of written notice of termination. Any amounts that accrue and are due after the termination of this Agreement will be paid to University of Texas at El Paso in accordance with the terms of this Agreement.

If Licensee terminates this Agreement under this Section, the parties acknowledge that Sponsor will only be required to pay for a pro-rata portion of the Sponsorship Payment based on Sponsorship Recognition actually provided to Sponsor prior to termination of this Agreement. If Sponsor has, as of the effective date of termination of this Agreement, paid to Licensee more than that pro-rata amount, Licensee will promptly refund the difference to Sponsor.

2.3 Termination with Cause. Either party may terminate this Agreement, effective upon delivery of a written termination notice, without prejudice to any other legal or equitable rights to which such terminating party may be entitled, if (i) the other party fails to perform a material duty or obligation under this Agreement, and that failure is not (a) cured to the satisfaction of the non-defaulting party within thirty (30) days following written notice of the failure to the defaulting party, or (b) to the extent not reasonably curable within the thirty (30) day time period, attempted to be cured within the thirty (30) day period and, thereafter, pursued diligently until cured to the satisfaction of the non-defaulting party within a reasonable time period; or (ii) any of the representations or warranties made by the other party to this Agreement prove to be untrue or inaccurate in any material respect.

2.4 University's Rights to Terminate. Because University is a third-party beneficiary of this Agreement, in addition to University's rights to terminate under **Section 3**, University may immediately terminate this Agreement upon written notice to Licensee and Sponsor, if University determines that continued affiliation with Sponsor is inconsistent with University's mission or philosophy and/or adversely impacts the reputation of University. If University terminates this Agreement under this **Section 2.4**, Sponsor will only be required to pay for a pro-rata portion of the Sponsorship Payment due to Licensee based on the Sponsorship Recognition actually provided to Sponsor by Licensee prior to termination. In the event that Sponsor has, as of the effective date of termination, paid to Licensee more than the pro-rata amount, Licensee will promptly refund the difference to Sponsor.

2.5 Continuing Obligations. Expiration or termination of this Agreement for any reason will not relieve either party from its obligation to (i) perform up to the effective date of such expiration or termination, or (ii) perform such obligations as may survive expiration or termination.

3. Approval of Agreement by University.

This Agreement is subject to the approval by University Licensee will submit this Agreement to University to obtain approval prior to Licensee’s execution of this Agreement. In the event University’s approval is not given, this Agreement will be void and of no effect and each party will be relieved of any and all obligations hereunder.

4. Sponsorship Payment.

As consideration for the rights granted to Sponsor under this Agreement, Sponsor will pay to Licensee _____ DOLLARS (\$ _____) **[Option: (“Sponsorship Payment”)]** **[Alternate Option: (“Cash Sponsorship Payment”)]**. The **[Option: Cash]** Sponsorship Payment will be payable in _____ (____) installments on the dates and in the amounts indicated below:

\$ _____	due	_____	(m/d/y)
\$ _____	due	_____	(m/d/y)
\$ _____	due	_____	(m/d/y)

[Option: Sponsor has agreed to transfer, and Licensee has agreed to accept, goods and/or services with a total value of _____ DOLLARS (\$ _____) **[Option: (“Sponsorship Payment”)]** **[Alternate Option: (“In Kind Sponsorship Payment”)]** as payment-in-kind for the rights granted to Sponsor under this Agreement. The goods and/or services to be provided by Sponsor are described in detail in **Attachment Z to SCHEDULE 2 to this Exhibit C**, attached and incorporated for all purposes. **[Option:** The Cash Sponsorship Payment and the In Kind Sponsorship Payment are collectively the **“Sponsorship Payment.”** **]**

5. Payment and Billing.

5.1 Manner of Payment. Unless otherwise provided by this Agreement, Sponsorship Payments under this Agreement will be made by check payable to Licensee.

5.2 Time/Late Payments. Sponsor (or Sponsor’s agent executing this Agreement in the event Sponsor fails to make payments) will pay the Sponsorship Payment at the Licensee’s office address provided in **Section 9** in accordance with **Section 4** of this Agreement. Failure to pay the Sponsorship Payment on the date(s) specified in **Section 4** of this Agreement will constitute a breach of this Agreement. In the event of a breach, Licensee may exercise all its legal rights and remedies and immediately suspend all future Sponsorship Recognition under this Agreement. Sponsor will continue to be responsible for all unpaid Sponsorship Payments under this Agreement.

6. Insurance; Indemnification.

6.1 Sponsor will carry and will cause its subcontractors to carry, at least the following insurance in the form, with companies admitted to do business in the State of Texas and having an A.M. Best Rating of A-:VII or better, and in amounts (unless otherwise specified), as Licensee and University may require:

6.1.1 Workers’ Compensation Insurance with statutory limits, and Employer’s Liability Insurance with limits of not less than \$1,000,000:

Employers Liability - Each Accident	\$1,000,000
Employers Liability - Each Employee	\$1,000,000
Employers Liability - Policy Limit	\$1,000,000

Policies must include (a) Other States Endorsement to include TEXAS if business is domiciled outside the State of Texas, and (b) a waiver of all rights of subrogation and other rights in favor of University;

6.1.2 Commercial General Liability Insurance with limits of not less than:

Each Occurrence Limit	\$1,000,000
Damage to Rented Premises	\$ 100,000
Medical Expenses (any one person)	\$ 10,000
Personal & Advertising Injury	\$1,000,000
General Aggregate	\$2,000,000
Products - Completed Operations Aggregate	\$2,000,000

Policy shall include independent contractor's liability, covering, but not limited to, the liability assumed under the indemnification provision of this Agreement, fully insuring Sponsor's liability for bodily injury (including death) and property damage.

6.1.3 Business Auto Liability Insurance covering all owned, non-owned or hired automobiles, with coverage for at least \$1,000,000 Combined Single Limit Bodily Injury and Property Damage;

6.1.4 Media Liability Insurance with limits of not less than \$1,000,000 per claim. This type of errors and omissions liability coverage is designed for media related firms. The coverage offered in the Commercial General Liability for Personal & Advertising Injury specifically excludes professionals in marketing and advertising.

6.2 Contractor will deliver to University:

6.2.1 Evidence satisfactory to Licensee in its sole discretion, evidencing the existence of all insurance after the execution and delivery of this Agreement and prior to the performance or continued performance of any rights granted to Sponsor or services to be performed by Sponsor under this Agreement.

6.2.2 Additional evidence, satisfactory to Licensee in its sole discretion, of the continued existence of all insurance not less than thirty (30) days prior to the expiration of any insurance. Insurance policies, with the exception of Workers' Compensation and Employer's Liability, shall be endorsed and name Licensee and University as Additional Insureds. All policies will be endorsed to provide a waiver of subrogation in favor of Licensee and University. All policies with the exception of Workers' Compensation and Employer's Liability will be endorsed to provide primary and non-contributory coverage. Sponsor shall endorse policies to require their insurance carrier to notify Licensee of cancellation, material change, or non-renewal of insurance prior to expiration.

6.3 The insurance policies required in this Agreement will be kept in force for the Term.

7. Indemnity.

7.1 Sponsor Indemnity. Sponsor will indemnify, defend and hold harmless Licensee, University and their officers, employees, and contractors from all claims, damages, causes of action, and judgments that directly or indirectly result: (i) from free promotional products or free samples of Sponsor's goods distributed pursuant to this Agreement; (ii) from the intentional or negligent acts or omissions of Sponsor, its officers, employees, agents, invitees or contractors while directly engaged in any activity or in preparation for engaging in any activity authorized by this Agreement; (iii) from a breach or default by Sponsor of the representations, warranties or other obligations under this Agreement; (iv) from any contest and/or promotion conducted by Sponsor in connection with this Agreement; and/or (v) from any Sponsorship Recognition Materials prepared

by Sponsor, including any claims or liabilities for libel, slander, illegal or unfair competition or trade practices; infringement of trademarks, trade names or logos of third parties or University (other than University Marks); violations of rights of privacy, publicity, infringements of copyrights or music performance rights and/or other proprietary rights; or advertisements which are otherwise contrary to law.

7.2 Licensee Indemnity. Licensee will indemnify, defend and hold harmless Sponsor and its officers, employees, and contractors from all claims, damages, causes of action, and judgments for the injury or death of any person or damage to property that directly or indirectly result: (i) from the intentional or negligent acts or omissions of Licensee, its officers, employees, agents, or contractors while directly engaged in any activity or in preparation for engaging in any activity authorized by or required under this Agreement; (ii) from a breach or default by Licensee of the representations, warranties or other obligations under this Agreement; and/or (iii) from any approved use of University Marks as well as any advertisement prepared by Licensee for Sponsor, including any claims or liabilities for libel, slander, illegal or unfair competition or trade practices; infringement of trademarks, trade names or logos; violations of rights of privacy, publicity, infringements of copyrights or music performance rights and/or other proprietary rights; or advertisements which are otherwise contrary to law.

7.3 Survival. The provisions of Sections 7.1 and 7.2 will survive any termination or expiration of this Agreement.

8. Sponsor's Agent.

Any person signing this Agreement as an agent of Sponsor represents and warrants that he or she has full power and authority as an agent of Sponsor to sign this Agreement on behalf of Sponsor and bind Sponsor to all of the terms and conditions of this Agreement. Any person signing this Agreement as an agent must provide to Licensee for Licensee's approval documentation evidencing the authority of agent to represent and bind Sponsor (the "**Evidence of Authority**"). Agent must provide, and Licensee must approve, the Evidence of Authority prior to Sponsor receiving any Sponsorship Recognition or any other rights provided under this Agreement.

9. Notices.

Except as otherwise provided by this Section, all notices, consents, approvals, demands, requests or other communications provided for or permitted to be given under any of the provisions of the Agreements will be in writing and will be sent via certified mail, hand delivery, overnight courier, facsimile transmission (to the extent a facsimile number is set forth below), or email (to the extent an email address is set forth below) as provided below, and notice will be deemed given (i) if delivered by certified mailed, when deposited, postage prepaid, in the United States mail, or (ii) if delivered by hand, overnight courier, facsimile (to the extent a facsimile number is set forth below) or email (to the extent an email address is set forth below), when received:

If to Licensee: _____

with copies to: _____

and copies to University: The University of Texas at El Paso
Assistant VP for Business Affairs
500 West University Ave., Administration Bldg. Room 301
El Paso, TX 79902
ATTENTION: Victor Pacheco, Assistant VP Business Affairs, VP
for Business Affairs

with copy to: The University of Texas at El Paso
Assistant Vice President Purchasing and General Services
500 West University Ave.
El Paso, TX 79938
Attention: Dr. Diane N. De Hoyos

If to Sponsor: _____

or such other person or address as may be given in writing by either party to the other in accordance with this Section.

10. General.

10.1 Entire Agreement; Amendments. This Agreement constitutes the entire agreement between Sponsor and Licensee and will supersede any and all other agreements between the parties whether verbal or otherwise. Any amendment or modification of this Agreement must be in writing and signed by an authorized representative of both parties.

10.2 Severability. If any provision of this Agreement or the application of such provision to any person or circumstance is held to be invalid, the remainder of this Agreement and the application of such provision to other persons or circumstances will not be affected.

10.3 Confidentiality; Texas Public Information Act. Licensee and Sponsor agree that the amount of the Sponsorship Payment paid by Sponsor under this Agreement is highly confidential. Licensee and Sponsor will use their best efforts not to disclose such amounts to their personnel unless there

is a "need to know" in order to carry out the purposes of this Agreement. Each party agrees that it will not disclose to any outside party (except University) the amount of the Sponsorship Payment under this Agreement, unless (i) the disclosure is approved in writing and in advance by the other party; or (ii) compelled to do so by subpoena or process or as ordered by a court (collectively, "**Process**"). In the event that such a disclosure is sought by Process, then to the extent allowed by law, the party upon whom Process is served will provide prompt written notice thereof to the other party. Licensee and Sponsor further agree that they will require their attorneys, accountants, financial advisors, insurance carriers, auditors, and all other agents, employees and independent contractors to abide by the terms of this Section. Notwithstanding any terms and conditions herein to the contrary, Sponsor understands and acknowledges that (i) University is an agency of the State of Texas and is subject to the provisions of the Texas Public Information Act, Chapter 552, *Texas Government Code* ("**Act**"), (ii) this **Section 10.3** is not applicable to University; and (ii) nothing in this Agreement will be construed to prevent or restrict University from full compliance with the Act.

10.4 **Counterparts.** This Agreement may be executed in any number of counterparts, each of which when executed and delivered will constitute an original of this Agreement, but all the counterparts will together constitute the same agreement. No counterpart will be effective until each party has executed at least one counterpart.

10.5 **Subject to Laws, Regulations and Rules.** This Agreement and all rights granted under this Agreement are subject to (i) all applicable federal, state, and municipal, laws, regulations, codes, ordinances and orders (collectively, the "**Applicable Laws**"), (ii) all existing contractual arrangements and obligations of University; (iii) the constitution, bylaws, rules, legislation, interpretations, policies and procedures of the National Collegiate Athletic Association ("**NCAA**") (including those related to the use of a student-athlete's name or likeness), and University's intercollegiate athletic conference, and any other athletic organization with jurisdiction (collectively, "**Athletic Organization Rules**"); and (iii) all University Rules. For purposes of this Agreement, "**University Rules**" means (i) the *Rules and Regulations* of the Board of Regents of The University of Texas System found at <http://www.utsystem.edu/bor/rules.htm>; (ii) the policies of The University of Texas System found at http://www.utsystem.edu/policy/lib_main.html; (iii) the institutional rules and regulations and policies of University (which may be found at <https://admin.utep.edu/Default.aspx?alias=admin.utep.edu/hoop>); and University's *Standards of Conduct Guide*, which is located at <https://my.utep.edu/Search?q=standards+of+conduct>

10.6 **Controlling Law; Interpretation.** Hidalgo County, Texas, will be the proper place of venue for suit on or in respect of this Agreement. This Agreement and all of the rights and obligations of the parties to this Agreement and all of the terms and conditions of this Agreement will be construed, interpreted and applied in accordance with and governed by and enforced under the laws of the State of Texas. No provision of this Agreement will be construed against or interpreted to the disadvantage of any party by any court or other governmental or judicial authority by reason of that party having or being deemed to have drafted, structured or dictated such provision.

10.7 **Assignment; Waiver.** This Agreement, including the rights under it, may not be assigned or transferred by Sponsor, nor may Licensee be required to broadcast or publish Sponsorship Recognition Materials that recognize or benefit any entity other than Sponsor. Failure of Licensee or Sponsor to enforce any provision of this Agreement will not be construed as a general relinquishment or waiver as to that provision or any other provision of this Agreement.

10.8 **Captions.** The captions of sections and subsections in this Agreement are for convenience only and will not be considered or referred to in resolving questions of interpretation or construction.

10.9 **Binding Effect.** This Agreement will be binding upon and inure to the benefit of the parties hereto and their respective permitted assigns and successors.

10.10 Severability. In case any provision of this Agreement will, for any reason, be held invalid or unenforceable in any respect, the invalidity or unenforceability will not affect any other provision of this Agreement, and this Agreement will be construed as if the invalid or unenforceable provision had not been included.

10.11 Survival of Provisions. No expiration or termination of this Agreement will relieve either party of any obligations under this Agreement that by their nature survive expiration or termination

10.12 University Third Party Beneficiary. The parties agree that University is a third party beneficiary of this Agreement.

The parties have executed this Agreement as of the dates indicated below.

"Licensee"

By: _____

Name: _____

Title: _____

Date: _____

"Sponsor"

By: _____

Name: _____

Title: _____

Date: _____

Attachment X to SCHEDULE 2 of EXHIBIT C – Sponsorship Recognition & Guidelines
Attachment Y to SCHEDULE 2 of EXHIBIT C – Website Sponsorship Agreement
Attachment Z to SCHEDULE 2 of EXHIBIT C – In Kind Sponsorship Payment

Attachment X to Schedule 2 of EXHIBIT C

SPONSORSHIP RECOGNITION & GUIDELINES

1. Specific Recognition

1.1 Official Sponsor Designation

Sponsor may incorporate the designation “_____”, an Official Sponsor of The University of Texas at El Paso Intercollegiate Athletics” in banners, announcements, logos, products and other material used in connection with this Agreement.

1.2 Public Address Announcements

Sponsor will be recognized as “_____”, an Official Sponsor of The University of Texas at El Paso Intercollegiate Athletics” through the following public address announcements:

- _____; and
- _____.

1.3 Radio and Internet Broadcast Announcements

Sponsor will be recognized as “_____”, an Official Sponsor of The University of Texas at El Paso Intercollegiate Athletics” through _____ **[Option: two (2)]** radio and Internet broadcast announcements at the following times:

- _____; and
- _____.

1.4 Link to Sponsor’s Website

Sponsor Logo’s will be posted on University’s _____ **[Option: official athletics website]** as more particularly provided in **Attachment Y to SCHEDULE 2 to EXHIBIT C**, attached and incorporated for all purposes.

“Sponsor Logo” means **[Note: Insert Sponsor Logo here.]**.

1.5 Sponsor Logo in Print Materials

Sponsor Logo will be printed in _____ **[Option: schedule cards.] [Option: game day programs.]**

1.6 Promotional Product and Printed Material Distribution

1.6.1 Products and Materials. Subject to the terms and conditions of this Agreement, including **Section 2** of this Exhibit, Sponsor will have the following Sponsorship Recognition Material distribution rights:

[Note: In accordance with Section 1 of the Sponsorship Agreement, Sponsorship Recognition Material must meet the qualified sponsorship requirements under the then current Treasury Regulations and comply with other requirements of Section 1 of the Sponsorship Agreement.]



Sponsor understands, acknowledges, and agrees that the method of distribution and the amount, scope, and type of promotional products that may be distributed in accordance with this Section will be determined by University.

1.6.2 Policy Limitations. University Rules, including Rule 80301, place restrictions on the display and distribution of promotional products and the distribution of printed material related to goods or services provided by Sponsor. Among other restrictions, such activities: (i) may not interfere with the use of facility entrances and exits or the flow of pedestrian or vehicular traffic; (ii) may not harass, embarrass, or intimidate the people being solicited; (iii) may not violate any applicable law or regulation; (iv) may only be authorized the day before and the day of an intercollegiate athletic event or an athletic related event taking place in a facility used for athletic events; (v) may only be conducted from booths, tables, and kiosks (or in a University of Texas at El Paso designated area for display of motorized vehicles) immediately adjacent to an athletic facility, the location and number of which have been authorized by University; (vi) must be conducted in accordance with University Rules, including those regarding safety; and (vii) must not include making sales or taking orders.

1.6.3 License Required. Any promotional products distributed under this Agreement that are imprinted with University Marks may only be imprinted pursuant to a license issued by *Strategic Marketing Affiliates LLC* or any successor identified by University.

2. Guidelines

2.1 Approval of Sponsorship Recognition Material; Use of University Marks; Use of University Name; License; Required Approval

2.1.1 Approval of All Sponsorship Recognition Material. All Sponsorship Recognition Material is subject to approval by University, which will not be unreasonably withheld. All Sponsorship Recognition Material must comply with Applicable Laws, Athletic Organization Rules and University Rules. All Sponsorship Recognition Material must be submitted to:

The University of Texas at El Paso

Attention: _____
Email : _____
Fax: _____

for written approval *prior to production and use*. The parties will cooperate with each other in order to assure compliance with this Section. Requests for written approval of Sponsorship Recognition Material will be in writing, accompanied by the material to be approved, and transmitted by facsimile, express mail, overnight carrier, or regular mail depending upon the expected response time. University will use reasonable efforts to respond to requests within ten (10) days after the date the request is received by University in accordance with this Section. Failure to obtain prior written approval required by this Section will be a material breach of this Agreement and will entitle University to terminate this Agreement.

2.2 Inability to Broadcast or Publish

If University, due to public emergency or necessity, legal restrictions, labor disputes, strikes, boycotts, secondary boycotts, acts of God, (whether or not such acts of God have occurred frequently or habitually or are of a common or seasonal occurrence in the general locality of such broadcasting or publishing), or for any reason, including mechanical breakdowns beyond the control and without the fault of University, is unable to broadcast or publish Sponsorship Recognition Materials at the time specified, University will not be liable to Sponsor except to the extent of allowing a pro rata reduction in the Sponsorship Payment or reasonably suitable alternate broadcast or publication arrangements.

2.3 Sponsorship Recognition Material Preparation

2.3.1 Licensee Obligations. Licensee will provide broadcast time or publication space for Sponsorship Recognition Material prepared by Sponsor or Sponsor's agent. Production of Sponsorship Recognition Material, supplying talent, and other services will be arranged, coordinated and paid for by Sponsor and are not covered by this Agreement. Company's obligation under this Section to provide broadcast time or publication space for Sponsorship Recognition Material is conditioned upon Sponsor providing Licensee the necessary Sponsorship Recognition Material and any related services, all of which must have been approved pursuant to **Section 2.1** and submitted to Licensee no later than fourteen (14) days prior to broadcast or publication (the "**Material Due Date**").

2.3.2 Right to Substitute Sponsorship Recognition Material for Broadcast. If Licensee does not receive the Sponsorship Recognition Material for broadcast, previously approved as required by **Section 2.1** of this Exhibit, by the Material Due Date, Licensee will notify the following Sponsor representative verbally: _____, (____) _____, with written confirmation delivered in accordance with **Section 7** of this Agreement. If Sponsor fails to provide Licensee with the approved Sponsorship Recognition Material at least twenty-four (24) hours after the Material Due Date, Licensee will not be obligated to broadcast the Sponsorship Recognition Material. Licensee's failure to broadcast the Sponsorship Recognition Material as a result of Sponsor's failure to meet the Material Due Date will in no way relieve Sponsor of any of its obligations and duties under this Agreement, including the obligation to pay the Sponsorship Payment in full.

- 2.3.3 Failure to Deliver Sponsorship Recognition Material for Print Publications. If Licensee does not receive the Sponsorship Recognition Material for print publications, previously approved as required by **Section 2.1** of this Exhibit, by the Material Due Date or if copy corrections are submitted after that date, Licensee will not be obligated to publish the Sponsorship Recognition Material. Licensee's failure to publish the Sponsorship Recognition Material as a result of Sponsor's failure to meet the Material Due Date will in no way relieve Sponsor of any of its obligations and duties under this Agreement, including the obligation to pay the Sponsorship Payment in full.
- 2.3.4 Revisions to Sponsorship Recognition Material. Any revision to or rewrites of Sponsorship Recognition Material will be at the sole cost of Sponsor.
- 2.3.5 Positions/Timing of Sponsorship Recognition Material. The specific placement or timing of Sponsorship Recognition Material in broadcasts or print publications is not guaranteed unless expressly specified in this Exhibit.
- 2.3.6 Handling of Sponsorship Recognition Material. Licensee will exercise normal precautions, but will assume no liability for losses or damages to Sponsorship Recognition Material or other property furnished by Sponsor in connection with this Agreement.
- 2.3.7 Releases and Clearances. Sponsor represents and warrants that for all Sponsorship Recognition Material, Sponsor has procured any and all necessary exclusive rights, clearances and permissions for Sponsor's production and Licensee's broadcast and publication of the Sponsorship Recognition Material as contemplated in this Agreement, including any and all rights, clearances and/or permissions necessary to use all locations, names, likenesses, identities, trademarks and service marks.

[Option: Attachment Y to Schedule 2 of EXHIBIT C]

[Note: Licensee must collect all documentation related to proposed Website Sponsorship and submit it to University of Texas at El Paso. University of Texas at El Paso must in turn submit the required documentation to UT System in accordance with UTS122.]

WEBSITE SPONSORSHIP AGREEMENT

This Website Sponsorship Agreement (“**Agreement**”) is entered into effective _____, 20____ (“**Effective Date**”), by and between _____, a _____ **[Note: Insert type of entity (corporation, partnership, limited liability company) and state of organization. For example, “a Texas corporation.”]** (“**Sponsor**”), and _____, a _____ (“**Licensee**”).

RECITALS

Sponsor and Licensee have entered into that certain Sponsorship Agreement (“**Sponsorship Agreement**”) date of even effective date with this Agreement.

In connection with the Sponsorship Agreement, Licensee desires to accept a payment related to website sponsorship recognition, subject to the terms and conditions set forth in this Sponsorship Payment Agreement.

AGREEMENT

The parties agree as follows:

1. **Sponsorship Payment.** Sponsor will pay to Licensee **[Option: _____ (\$_____)]** **[Option: the following payments:]** **[Note: Insert description of Sponsorship Payment]** **[Option: collectively,]** “**Website Sponsorship Payment**”).
2. **Payment.** The Website Sponsorship Payment will be paid to Licensee by check payable to Licensee on **[Option: the Effective Date]** **[Option: _____, 20____]** **[Note: Insert date of payment or, if the Website Sponsorship Payment is to be made in installments or a series of payments, insert dates or schedule such series of payments will be made and the amount of each payment].**
3. **Acknowledgment.** Licensee will recognize Sponsor by granting Sponsor the ability to post Sponsor’s company logo on University’s website at _____ **[Note: Insert URL]** (“**University URL**”).
 - 3.1 A copy of the Sponsor’s company logo (“**Sponsor Logo**”), the University URL and a copy of the screen of University’s website displaying Sponsor Logo are attached as **Supplement One to Attachment Y to SCHEDULE 2 to EXHIBIT C.**
 - 3.2 The recognition must comply with the terms and conditions of University’s existing policy on website solicitations and The University of Texas System (“**UT System**”) Policy UTS122 “Guidelines for Web Site Solicitations.”
 - 3.3 The Sponsor’s company logo **[Option: will]****[Option: will not]** be hyperlinked from University’s website to a website maintained by or for Sponsor (“**Sponsor URL**”). **[Option (use if the Sponsor’s Logo will be hyperlinked and include a screen print of the destination page on Supplement Two):** The Sponsor URL and a copy of the screen of the linked website page are attached as **Supplement Two to Attachment Y to SCHEDULE 2 to EXHIBIT C.]**

3.4 Sponsor's website must not state or imply that University or UT System endorses the goods, services or products offered by the Sponsor.

3.5 The Sponsor's company logo acknowledgment and hyperlink will be provided for a term ("Term") beginning on the Effective Date and expiring _____ **[Note: Insert expiration date of Sponsorship Agreement]**.

4. **Tax Liability.** The Website Sponsorship Payment is intended to be a qualified sponsorship payment as defined in the Internal Revenue Code. Sponsor acknowledges that the issue of tax liability as a result of entering into this Agreement is an important concern to University. If the Sponsor alters the Sponsor URL provided in **Section 4.3** and in the reasonable and good faith opinion of University, the alterations may create unrelated business taxable income for University, then University will display Sponsor's company logo on its website for the remainder of the Term but will sever the hyperlink to the Sponsor URL.
5. **Removal of Sponsor Logo Posting.** In the unlikely event University determines in its reasonable and good faith opinion that circumstances have changed or if new matters are discovered involving the Sponsor or its officers or directors, University, in its sole discretion, may remove the Sponsor's company logo and sever the hyperlink to the Sponsor URL, if the continuation of displaying the company logo would adversely impact the reputation, image, mission or integrity of University or UT System. Neither University nor UT System will have any further obligation or liability to Sponsor.
6. **Representations and Warranties.** Sponsor represents and warrants that the following statement is true and correct as of the initial date of this Agreement: Sponsor is a corporation or other legal entity duly organized, validly existing, and in good standing under the laws of its state of incorporation or organization and has the full right, power, and authority to enter into this Agreement.
7. **Entire Agreement; Amendments.** This Agreement constitutes the entire agreement between Sponsor and Licensee and will supersede any and all other agreements between the parties whether verbal or otherwise. Any amendment or modification of this Agreement must be in writing and signed by an authorized representative of both parties.
8. **Venue; Controlling Law; Interpretation.** Hidalgo County, Texas, will be the proper place of venue for suit on or in respect of this Agreement. This Agreement and all of the rights and obligations of the parties to this Agreement and all of the terms and conditions of this Agreement will be construed, interpreted and applied in accordance with and governed by and enforced under the laws of the State of Texas. No provision of this Agreement will be construed against or interpreted to the disadvantage of any party by any court or other governmental or judicial authority by reason of that party having or being deemed to have drafted, structured or dictated such provision.
9. **Sponsorship Agreement; Priority of Provisions.** The terms of the Sponsorship Agreement are incorporated by reference into this Agreement. If the terms of the Sponsorship Agreement conflict with the terms of this Agreement, the terms of this Agreement will control.
10. **Contingent Upon Approval.** This Agreement is contingent upon the approval of the contents of **Supplements One and Two to Attachment Y to SCHEDULE 2 to EXHIBIT C** by the UT System Executive Vice Chancellor for Business Affairs.

The parties have executed this Agreement effective as of the Effective Date.

Licensee:

Sponsor:

[NOTE: INSERT NAME OF SPONSOR]

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Attach:

Supplement One to Attachment Y to SCHEDULE 2 of EXHIBIT C –

Sponsor Logo and URL and Screen Copy of University Website Displaying Sponsor Logo

Supplement Two to Attachment Y to SCHEDULE 2 of EXHIBIT C –

URL and Screen Copy of Linked Website Page

**Supplement One
to Attachment Y to SCHEDULE 2 of EXHIBIT C**

**Sponsor Logo
and
University URL and Screen Copy of University Website Displaying Sponsor Logo**

**Supplement Two
to Attachment Y to SCHEDULE 2 of EXHIBIT C**

Sponsor URL and Screen Copy of Linked Website Page

[Option: Attachment Z to SCHEDULE 2 of EXHIBIT C

[Option: In Kind] Sponsorship Payment]

[Option: 1. _____ Services

Sponsor will provide University up to \$_____ per year in _____ services that will be valued at rates specified below and reported quarterly by Sponsor to Licensee:

<u>Services</u>	<u>Rates]</u>
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[Option: 2. _____ [Note: Insert additional in-kind item]]

Failure to deliver the In Kind Sponsorship Payment on the date(s) specified in this **Attachment Z to SCHEDULE 2 of EXHIBIT C** will constitute a breach of this Agreement. In the event of a breach, Licensee may exercise all its legal rights and remedies and immediately suspend all future Sponsorship Recognition under this Agreement. Sponsor will continue to be responsible for all undelivered **[Option: In Kind]** Sponsorship Payments under this Agreement.