

## APPENDIX TWO

### Schedule 1 of APPENDIX TWO

#### TRADEMARK LICENSE AGREEMENT

This Trademark License Agreement ("**License**") is entered into effective as of \_\_\_\_\_ ("**Effective Date**"), by and between the **BOARD OF REGENTS OF THE UNIVERSITY OF TEXAS SYSTEM**, a Texas state agency and institution of higher education ("**BOARD**"), on behalf of **THE UNIVERSITY OF TEXAS-EL PASO**, a Texas state agency and institution of higher education ("**UTEP**"), and \_\_\_\_\_, a \_\_\_\_\_ ("**Licensee**"). Board and UTEP are sometimes collectively referred to as "**University.**"

Board is using as trademarks worldwide, including in the State of Texas, the words and the designs shown on **EXHIBIT A**, attached and incorporated for all purposes (collectively, "**Designated Marks**"), and has obtained U.S. Trademark Registrations covering at least some of those marks; and

Licensee wishes to use the Designated Marks in connection with the operation of Licensee's UTEP Intercollegiate Athletics Department-specific multimedia marketing rights program ("**Program**") in accordance with that certain Agreement for Use of Designated Marks in connection with Multimedia Marketing Rights Program ("**Multimedia Program Agreement**"), dated effective \_\_\_\_\_, among Licensee, Board and UTEP, attached as **EXHIBIT B** and incorporated for all purposes.

This License and the Multimedia Program Agreement are sometimes referred to collectively as the "**Agreements.**"

In accordance with the terms of the Agreements, Board wishes to license the Designated Marks for use by Licensee in the operation of Program.

#### **TERMS AND CONDITIONS**

In consideration of the mutual promises and covenants set forth herein, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

**1. Defined Terms.**

All capitalized terms used in this License that are not otherwise defined in this License will have the respective meanings ascribed to such terms in the Multimedia Program Agreement.

**2. Ownership of University Marks.**

Licensee understands and acknowledges that Board owns all rights to the name, logos, and symbols of Board, including the Designated Marks (collectively, "**University Marks**"). All rights to University Marks will at all times remain the property of Board. Licensee acknowledges Board's exclusive right, title and interest in and to the University Marks and any registrations that have issued or may issue thereon. Licensee 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. Licensee 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 University Marks. In connection with the use of the Designated Marks, Licensee will not represent in any manner that it has any ownership in the Designated Marks or registrations thereof. Licensee acknowledges that its use of the Designated Marks will enure to the benefit of Board.

**3. License of Designated Marks.**

Subject to the terms of the Agreements, Board grants to Licensee a *non-exclusive* nontransferable, license to use, and sublicense the use of, the Designated Marks under the common law and under the auspices and privileges provided by any of the registrations covering the same during the Term (ref. **Section 11.1**), and Licensee hereby undertakes to use and sublicense the Designated Marks in the operation of Program in accordance with the Multimedia Program Agreement.

**4. Use Restrictions; Quality Controls.**

Licensee will use the Designated Marks only (a) in connection with Licensee's operation of Program pursuant to the terms of the Agreements, and (b) in accordance with any other reasonable guidance and directions by Board. Licensee will have the right to use Designated Marks in announcements to promote Program. Licensee may not use any University Mark for any purpose, except the Designated Marks in connection with operation of Program. When using the Designated Marks under this License, Licensee will comply with all Applicable Laws (including compliance with trademark marking requirements), Athletic Organization Rules, and University Rules. Licensee will sublicense use of the Designated Marks only using the template attached as **EXHIBIT C**, Trademark Sublicense Agreement, and incorporated for all purposes.

Licensee will ensure that Licensee, its agents and its sublicensees (a) use the Designated Marks only in connection with services of a level of quality equal to or greater than the quality of services in connection with which Board uses the Designated Marks, and (b) comply with all Applicable Laws, Athletic Organization Rules, University Rules and industry practice in connection with its use and distribution of the Designated Marks. UTEP will have the right to inspect Licensee's, its agents' and its sublicensees' goods and services that bear or use the Designated Marks to ensure compliance with the provisions of this License. All goodwill and improved reputation generated by Licensee, its agents and its sublicensees use and distribution of the Designated Marks inures solely to Board's benefit.

Licensee, its agents and its sublicensees 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 the Designated Marks or Board's business or reputation, or that might dilute or otherwise harm the value, reputation or distinctiveness of or Board's goodwill in the Designated Marks; (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 University Mark; or (c) contest the ownership or validity of the Designated Marks, including in any litigation or administrative proceeding.

Board may immediately terminate the Agreements if Board, in its sole discretion, determines that Licensee, its agents or its sublicensees have failed to comply with the terms and conditions in the Agreements, or have otherwise failed to comply with Board's reasonable directions in relation to the use of the Designated Marks.

**5. Use of University Marks on Items Sold or Distributed.** If Licensee desires to use any University Marks (including Designated Marks) on any items to be sold or otherwise distributed, then prior to use Licensee must enter into a license agreement issued by *Strategic Marketing Affiliates LLC* (or University's then current licensing agent) authorizing Licensee's intended use.

**6. Approval of Use of Designated Marks.**

Licensee and all sublicensees must obtain prior approval from Board's delegate, Trademark Director, for each use of the Designated Marks, including (i) in any form of literature, brochure, sign, advertising or promotional copy or graphics, audio-visual message, public address announcement, audio or video broadcast, or other materials (collectively, "**Materials**"). Trademark Director's approval under this Section will not be unreasonably withheld, conditioned or delayed; provided, however, Trademark Director will have the right, in his or her sole discretion, to decline to approve any use of University Marks in Materials that (i) violate any Applicable Laws, Athletic Organization Rules, or University Rules; or (ii) Trademark Director considers to be misleading or offensive. All requests for approval from Trademark Director under the Agreements must be submitted to Trademark Director for written approval not less than fourteen (14) days prior to the anticipated date of publication or other use. If Trademark Director does not approve the proposed use of Designated Marks within fourteen (14) days after receipt of any material submitted for approval, then the proposed use of Designated Marks will be deemed to have been disapproved. If Trademark Director disapproves any proposed use, Trademark Director will provide Licensee with the reason for such disapproval, upon written request by Licensee. Requests for approvals under this Section will be submitted to:

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

**7. Marketing on University's Premises.**

Except as specifically permitted in the Agreements, neither Licensee nor its agents or sublicensees will have a right to engage in any form of advertising or promotional activity on University's premises.

**8. Inspection.**

Except as otherwise provided in the Agreements, upon reasonable notice, Licensee will permit duly authorized representatives of University to inspect, during normal business hours, the premises of Licensee for the purpose of ascertaining or determining compliance with the Agreements.

**9. Assignment.**

Licensee's interest in the Agreements may not be subcontracted, assigned, delegated, or otherwise transferred to a third party, in whole or in part, except for sublicensees Licensee enters into in accordance with the Agreements, and any attempt to do so will (a) not be binding on University; and (b) be a breach of the Agreements for which Licensee will be subject to all remedial actions provided by Applicable Laws. The benefits and burdens of the Agreements are assignable by Board.

## 10. Indemnification; Limitations.

- 10.1 LICENSEE'S GENERAL INDEMNITY.** TO THE FULLEST EXTENT PERMITTED BY LAW, LICENSEE WILL INDEMNIFY, PROTECT, DEFEND WITH COUNSEL APPROVED BY UNIVERSITY, AND HOLD HARMLESS UNIVERSITY, AND ITS RESPECTIVE AFFILIATED ENTERPRISES, REGENTS, OFFICERS, DIRECTORS, ATTORNEYS, EMPLOYEES, REPRESENTATIVES AND AGENTS (COLLECTIVELY "**UNIVERSITY INDEMNITEES**") FROM AND AGAINST ALL DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, JUDGMENTS, EXPENSES, AND OTHER CLAIMS OF ANY NATURE, KIND, OR DESCRIPTION, INCLUDING REASONABLE ATTORNEYS' FEES INCURRED IN INVESTIGATING, DEFENDING OR SETTLING ANY OF THE FOREGOING (COLLECTIVELY "**UNIVERSITY CLAIMS**") BY ANY PERSON OR ENTITY, ARISING OUT OF, CAUSED BY, OR RESULTING FROM LICENSEE'S PERFORMANCE UNDER OR BREACH OF THE AGREEMENTS AND THAT ARE CAUSED IN WHOLE OR IN PART BY ANY NEGLIGENT ACT, NEGLIGENT OMISSION OR WILLFUL MISCONDUCT OF LICENSEE, ANYONE DIRECTLY EMPLOYED BY LICENSEE OR ANYONE FOR WHOSE ACTS LICENSEE MAY BE LIABLE. THE PROVISIONS OF THIS SECTION WILL NOT BE CONSTRUED TO ELIMINATE OR REDUCE ANY OTHER INDEMNIFICATION OR RIGHT WHICH ANY UNIVERSITY INDEMNITEE HAS BY LAW OR EQUITY. ALL PARTIES WILL BE ENTITLED TO BE REPRESENTED BY COUNSEL AT THEIR OWN EXPENSE.
- 10.2 LICENSEE'S INTELLECTUAL PROPERTY INDEMNITY.** IN ADDITION, LICENSEE WILL INDEMNIFY, PROTECT, DEFEND WITH COUNSEL APPROVED BY UNIVERSITY, AND HOLD HARMLESS UNIVERSITY INDEMNITEES FROM AND AGAINST ALL UNIVERSITY CLAIMS ARISING FROM INFRINGEMENT OR ALLEGED INFRINGEMENT OF ANY PATENT, COPYRIGHT, TRADEMARK OR OTHER PROPRIETARY INTEREST ARISING BY OR OUT OF THE OPERATION OF PROGRAM OR LICENSEE'S OBLIGATIONS UNDER THE AGREEMENTS, OR THE USE BY UNIVERSITY INDEMNITEES, AT THE DIRECTION OF LICENSEE, OF ANY ARTICLE OR MATERIAL. IN THE EVENT OF LITIGATION, UNIVERSITY WILL REASONABLY COOPERATE WITH LICENSEE. ALL PARTIES WILL BE ENTITLED TO BE REPRESENTED BY COUNSEL AT THEIR OWN EXPENSE.
- 10.3 UNIVERSITY'S INTELLECTUAL PROPERTY INDEMNITY.** TO THE EXTENT AUTHORIZED BY THE CONSTITUTION AND THE LAWS OF THE STATE OF TEXAS, BOARD WILL INDEMNIFY, PROTECT, DEFEND WITH COUNSEL APPROVED BY LICENSEE, AND HOLD HARMLESS LICENSEE INDEMNITEES FROM AND AGAINST ALL DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, JUDGMENTS, EXPENSES, AND OTHER CLAIMS OF ANY NATURE, KIND, OR DESCRIPTION, INCLUDING REASONABLE ATTORNEYS' FEES INCURRED IN INVESTIGATING, DEFENDING OR SETTLING ANY OF THE FOREGOING (COLLECTIVELY, "**LICENSEE CLAIMS**") ARISING FROM INFRINGEMENT OR ALLEGED INFRINGEMENT OF ANY PATENT, COPYRIGHT, TRADEMARK OR OTHER PROPRIETARY INTEREST ARISING BY OR OUT OF THE BOARD'S OBLIGATIONS UNDER THIS LICENSE, OR THE USE BY LICENSEE INDEMNITEES, AT THE DIRECTION OF BOARD, OF ANY ARTICLE OR MATERIAL. IN THE EVENT OF LITIGATION, LICENSEE WILL REASONABLY COOPERATE WITH BOARD. ALL PARTIES WILL BE ENTITLED TO BE REPRESENTED BY COUNSEL AT THEIR OWN EXPENSE.
- 10.4 EXCLUSION OF CONSEQUENTIAL AND OTHER INDIRECT DAMAGES.** TO THE FULLEST EXTENT PERMITTED BY LAW, UNIVERSITY WILL NOT BE LIABLE TO LICENSEE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGE WAS FORESEEABLE AND WHETHER OR NOT LICENSEE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- 10.5 LIMITATIONS.** THE PARTIES ARE AWARE THAT THERE ARE CONSTITUTIONAL AND STATUTORY LIMITATIONS ON THE AUTHORITY OF UNIVERSITY (A STATE AGENCY) TO ENTER INTO CERTAIN TERMS AND CONDITIONS THAT MAY BE A PART OF THE AGREEMENTS, INCLUDING THOSE TERMS AND CONDITIONS RELATING TO LIENS ON UNIVERSITY'S PROPERTY; DISCLAIMERS AND LIMITATIONS OF WARRANTIES; DISCLAIMERS AND LIMITATIONS OF LIABILITY FOR DAMAGES; WAIVERS, DISCLAIMERS AND LIMITATIONS OF LEGAL RIGHTS, REMEDIES, REQUIREMENTS AND PROCESSES; LIMITATIONS OF PERIODS TO BRING LEGAL ACTION; GRANTING CONTROL OF LITIGATION OR SETTLEMENT TO ANOTHER PARTY; LIABILITY FOR ACTS OR OMISSIONS OF THIRD PARTIES; PAYMENT OF ATTORNEYS' FEES; DISPUTE RESOLUTION; INDEMNITIES; AND CONFIDENTIALITY

(COLLECTIVELY, THE “LIMITATIONS”), AND TERMS AND CONDITIONS RELATED TO THE LIMITATIONS WILL NOT BE BINDING ON UNIVERSITY EXCEPT TO THE EXTENT AUTHORIZED BY THE LAWS AND CONSTITUTION OF THE STATE OF TEXAS. NOTWITHSTANDING ANY PROVISION IN THE AGREEMENTS TO THE CONTRARY, SELLER AGREES AND STIPULATES THAT UNIVERSITY WILL NOT BE REQUIRED TO PERFORM ANY ACT OR TO REFRAIN FROM ANY ACT IF THAT PERFORMANCE OR NON-PERFORMANCE WOULD CONSTITUTE A VIOLATION OF THE CONSTITUTION OR LAWS OF THE STATE OF TEXAS. NO PROVISION IN THE AGREEMENTS WILL CONSTITUTE NOR IS IT INTENDED TO CONSTITUTE A WAIVER OF THE SOVEREIGN IMMUNITY OF UNIVERSITY OR THE STATE OF TEXAS.

**10.6** **SURVIVAL.** THIS **SECTION 10** WILL SURVIVE THE EXPIRATION OR EARLIER TERMINATION OF THE AGREEMENTS.

## **11. Term and Termination.**

**11.1** **Term.** The initial term (“**Initial Term**”) of this License will begin on the Effective Date and will expire on **June 30, 2029**, unless earlier terminated in accordance with the terms of this License. Provided, however, the Term of this License will run coterminous with the term of the Multimedia Program Agreement, and will automatically terminate upon the expiration or earlier termination of the Multimedia Program Agreement.

Prior to expiration of the Initial Term, the Board may, at its option, extend the term of this License for up to one (1) additional three-year term (each an “**Extension Term**”). Initial Term and each Extension Term, if any, are sometimes collectively referred to as the “**Term.**”

“**Contract Year**” means that period of time beginning on the Effective Date and ending June 30, 2020, and each twelve (12) month period thereafter during the Term.

**11.2** **Transition Period; Cooperation.** Licensee agrees that if the Agreements are terminated for any reason other than termination by Licensee under **Section 11.3**, then at the option of University, Licensee will continue operation of Program in accordance with the terms and conditions of the Agreements until University enters into a new license related to a multimedia rights marketing program or University commences operation of a multimedia rights marketing program (“**Transition Period**”); provided, that, Licensee will not be required to continue operating Program for more than four (4) months after the effective date of termination. Licensee will cooperate and assist with University’s efforts to transition operation of Program to University or another licensee(s).

**11.3** **Termination for Default.** If either party fails to perform any of its obligations under the Agreements or any representation or warranty in the Agreements of either party is not true and correct throughout the Term of the Agreements, 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 thirty (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 the Agreements upon the expiration of the 30-day period and seek all remedies now or hereafter provided by Applicable Laws for recovery of damages caused by the other party’s default.

**11.4** **University’s Right to Terminate.** In addition to University’s right to terminate as specified in **Section 11.3**, University will have the right to terminate the Agreements immediately upon the occurrence of one or more of the following events: (a) the filing by or against Licensee 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 Licensee, such filing has not been dismissed within 120 days after filing; or (b) an assignment for the benefit of Licensee’s creditors.

- 11.5 Cease, Desist and Transfer.** Upon the expiration or earlier termination of the Agreements (including any Transition Period) for any reason, Licensee (a) will have no right to use and will cease and desist from all use of University Marks (including Designated Marks) for any purpose, (b) will discontinue all operations of Program wherever conducted, (c) will execute, at University's request, a recordable document releasing all of Licensee's rights under the Agreements, and (d) will *not* (i) engage in any business under any name or using any Materials that contain any University Mark (including Designated Marks), or (ii) imply any current relationship between any businesses operated by Licensee and University.
- 11.6 No Release of Liability.** Termination of the Agreements under this **Section 11** will not relieve either party or any of its employees, representatives, agents, or subcontractors from liability for any default or breach under the terms of the Agreements or any other act or omission.
- 11.7 Continuing Obligations.** The expiration or termination of the Agreements will not relieve either party of any obligations under the Agreements that by their nature survive expiration or termination.

**12. Approvals and Consents by University.**

Except as otherwise specified in the Agreements, in every circumstance in which an approval or consent from University is required under the Agreements, Licensee must obtain that approval or consent from the Trademark Director or successor in function.

**13. 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 University: 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  
Purchasing & General Services  
500 West University Avenue, Kelly Hall 3<sup>rd</sup> Floor  
Fax: 915-747-5932  
Attention: Michael Lau  
*Contractor Administration Director*  
*Email: mmlau@University.edu*

*and copy to:* The University of Texas at El Paso

Purchasing & General Services  
500 West University Avenue, Kelly Hall 3<sup>rd</sup> Floor  
Fax: 915-747-5932  
Email: [dndehoyos@utep.edu](mailto:dndehoyos@utep.edu)  
Attention: Dr. Diane N. De Hoyos  
Assistant Vice President Purchasing & General Services

If to Licensee

*with a copy to:*

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

**14. Royalty Payments.**

**14.1 Guaranteed Royalty.** As consideration for the Agreements, Licensee will pay UTEP each Contract Year a guaranteed royalty ("**Guaranteed Royalty**") in the amount set forth below:

**14.2 AGR Milestone Royalty.** In addition to the Guaranteed Royalty, Licensee will pay to UTEP a royalty ("**Milestone Royalty**") equal to \_\_\_\_\_ of all Adjusted Gross Revenue exceeding the AGR Milestone.

"**AGR Milestone**" means the following threshold Adjusted Gross Revenue amount for each Contract Year (to be included by proposer):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

"**Adjusted Gross Revenue**" means gross Monetary Revenue and In-Kind Property arising from the Agreements, less only taxes and returns.

"**Monetary Revenue**" means cash or cash equivalents (for example, credit and debit card payments) arising in connection with the License and/or the Multimedia Program Agreement.

"**In-Kind Property**" means the value of all personal property, other than Monetary Revenue, arising from the License and/or the Multimedia Program Agreement. The value of In-Kind Property will be determined jointly by Licensee and UTEP. If, within a reasonable period of time, the parties are unable to agree upon a revenue value for In-Kind Property, then the revenue value of the In-Kind Property will be determined, at UTEP's option, by either (i) the cost of the most recent purchase by UTEP of product(s) or services substantially the same as the In-Kind Property; (ii) the price of the In-Kind Property as established by a recent price quotation submitted to UTEP by a third-party that sells the In-Kind Property; or (iii) the price of the In-Kind Property as established by a recent price quotation submitted to Licensee

- 14.3 **Royalty Payments on Guaranteed Royalty.** First Contract Year, Licensee will pay UTEP first one-half of the annual Guaranteed Royalty within thirty (30) days after execution of this License Agreement by both parties, and the second one-half of the annual Guaranteed Royalty by August 31 of the first Contract Year. Second Contract Year and thereafter, Licensee will pay UTEP first one-half of the annual Guaranteed Royalty by February 28 of each Contract Year, and the second one-half of the annual Guaranteed Royalty by August 31 of each Contract Year.
- 14.4 **Royalty Payments on Milestone Royalty.** Licensee will pay to UTEP any Milestone Royalty arising each Contract Year within thirty (30) days following the end of that Contract Year.
- 14.5 **Quarterly Reports on AGR Milestone Status.** Licensee will prepare and provide to UTEP a quarterly report setting forth, in reasonable detail, the calculation of the current status of reaching the AGR Milestone within thirty (30) days after the last day of each Quarterly Period during the Term. "Quarterly Period" in this License Agreement means the first calendar quarter in a Contract Year and each subsequent calendar quarter in the Term. For example, if the Contract Year begins September 15, then September 15 thru November 14 would be the first fiscal quarter of that Contract Year.

"Quarterly Period" in this License Agreement means the first calendar quarter in a Contract Year and each subsequent calendar quarter in the Term. For example, if the Contract Year begins September 15, then September 15 thru November 14 would be the first fiscal quarter of that Contract Year.

- 14.6 **Royalty at Termination.** If the Agreements are terminated for any reason before the end of the then-current Contract Year, (1) a pro rata amount of Guaranteed Royalty, and (2) all Milestone Royalty, due to UTEP through the effective date of termination, will be paid by Licensee to UTEP in full within thirty (30) days after termination.

14.7 **Collection and Recording of Revenue.**

14.7.1 **Revenue Collection Procedures.** Licensee will adhere to appropriate cash handling procedures consistent with The University of Texas System policy *UTS166*, located at <http://www.utsystem.edu/bor/procedures/policy/policies/uts166.html>.

14.7.2 **Recording Receipts.** All revenue received as a result of the Agreements will be recorded in Licensee's general ledger. All revenue will be recorded in separate accounts by specific sponsor. Revenues arising under the Agreements will not be comingled with other revenues for reporting purposes. Licensee will process all transactions, maintain accurate transaction records, and make the records accessible to University in accordance with **Sections 16** and **17.4**.

15. **Performance Bonus Payments.**

Within thirty (30) days after University's intercollegiate athletics team achieves any performance goal identified below, Licensee will pay University the specified cash performance bonus amount. Licensee will pay the cash performance bonus amount to University each time a University intercollegiate athletics team achieves on of the performance goals.

**[Note: This provision will be completed prior to execution based on Proposer's proposal.]**

16. **Work Material Ownership & License**

- 16.1 Licensee Intellectual Property.** All patents, copyrights, trademarks, software, inventions, designs, codes, specifications, computations, sketches, data, photographs, tapes, renderings, models, publications, statements, accounts, reports, studies and works of authorship, including derivatives thereof (collectively, "IP") now owned by Licensee and all IP subsequently created by Licensee (*other than and excluding University Intellectual Property as defined below*) (collectively, "**Licensee Intellectual Property**") will be and remain the sole and exclusive property of Licensee. University acknowledges that Licensee is willing to use Licensee Intellectual Property for the use and benefit of University, but Licensee is not willing to forfeit or lose ownership of Licensee Intellectual Property. University represents and warrants that it will not reproduce or use Licensee Intellectual Property for any purpose, or in any manner, other than as provided in the Agreements or authorized in writing in advance by Licensee.
- 16.2 University Intellectual Property.** All IP now owned by University and subsequently created exclusively by University, or created by Licensee solely as a result of the Agreements, or acquired or created by University in a manner unrelated to the Agreements (collectively, "**University Intellectual Property**"), will be and remain the sole and exclusive property of University. Licensee represents and warrants that it will not reproduce, disclose or use University Intellectual Property for any purpose, or in any manner, other than in the performance of its rights, duties and obligations under the Agreements or as provided in the Agreements or as authorized in writing in advance by University.
- 16.3 Work Product License.** Licensee grants to University a perpetual, royalty-free, non-exclusive, worldwide license to all Licensee Intellectual Property created by Licensee in performance of the Agreements ("**Work Material**") to University for its internal use ("**Work Material License**"), Licensee grants and assigns to University all rights and claims of whatever nature, whether now or hereafter arising, in and to the Work Material License.

**17. Records, Reports and Audits.**

- 17.1 Business Records; Generally Accepted Accounting Principles.** All of Licensee's records pertaining to the Agreements (including records of all revenue, taxes and returns) will be maintained by Licensee throughout the term of the Agreements and for a period of four (4) years after the expiration or earlier termination of the Agreements. Records must be supported by appropriate documentation, including tax receipts, return receipts and other records supporting Licensee's financial transactions related to the operation of Program. Licensee will comply with generally accepted accounting principles.
- 17.2 Periodic Reports.** Within thirty (30) days after the end of each Accounting Period during the Term, Licensee will submit to UTEP one (1) copy of a statement of gross revenue, taxes and returns derived from operation of Program reported on an Accounting Period basis and year-to-date basis. At UTEP's option, UTEP may obtain this information online if Licensee makes this information available online.
- 17.3 Form of Reports.** All reports will be presented to UTEP in forms reasonably satisfactory to University in all material respects.
- 17.4 Inspection and Audit.** All of Licensee's records pertaining to the Agreements will be maintained in Licensee's offices located at \_\_\_\_\_ ("**Records Location**"). University will have the right to inspect and audit (during normal business hours at the Records Location) all records of Licensee to the extent related to the Agreements, after reasonable written notice (but in any event on not less than 5 days' prior written notice) to Licensee. In the event an audit is undertaken by University, Licensee will provide auditors with reasonable working space and access to Licensee's records as described in this Section.

## 18. Insurance

18.1 Contractor, consistent with its status as an independent contractor will carry and will cause its subcontractors to carry, at least the following insurance, with companies authorized to do insurance business in the State of Texas or eligible surplus lines insurers operating in accordance with the [Texas Insurance Code](#), having an A.M. Best Rating of A-:VIII or better, and in amounts not less than the following minimum limits of coverage:

18.1.1 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

Workers' Compensation policy must include under states where contractor performs operations for University.

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

Each Occurrence Limit	\$1,000,000
Damage to Rented Premises	\$ 300,000
Personal & Advertising Injury	\$1,000,000
General Aggregate	\$2,000,000
Products - Completed Operations Aggregate	\$2,000,000

The required Commercial General Liability policy will be issued on a form that insures Contractor's liability for bodily injury (including death), property damage, personal, and advertising injury assumed under the terms of this Agreement.

18.1.3 Business Auto Liability Insurance covering all owned, non-owned or hired automobiles, with limits of not less than \$1,000,000 single limit of liability per accident for Bodily Injury and Property Damage;

If a separate Business Auto Liability policy is not available, coverage for hired and non-owned auto liability may be endorsed on the Commercial General Liability policy.

18.1.4 Umbrella/Excess Liability Insurance with limits of not less than \$2,000,000 per occurrence and aggregate. The Umbrella/Excess Liability policy will be excess over and at least as broad as the underlying coverage as required under sections 11.1.1 Employer's Liability; 11.1.2 Commercial General Liability; and 11.1.3 Business Auto Liability. Inception and expiration dates will be the same as the underlying policies. Drop down coverage will be provided for reduction or exhaustion of underlying aggregate limits and will provide a duty to defend for any insured.

18.1.5 Professional Media Liability (Errors & Omissions) Insurance with limits of not less than \$1,000,000 each occurrence, \$3,000,000 aggregate. Such insurance will cover all Work performed by Contractor under this Agreement. Renewal policies written on a claims-made basis will maintain the same retroactive date as in effect at the inception of this Agreement. If coverage is written on a claims-made basis, Contractor agrees to purchase an Extended Reporting Period Endorsement, effective thirty-six (36) months after the expiration or cancellation of the policy. No Professional Liability policy written on an occurrence form will include a sunset or similar clause that limits coverage unless such clause provides coverage for at

least thirty-six (36) months after the expiration or termination of this Agreement for any reason.

18.1.6 Contractor's Employee Dishonesty Insurance will be endorsed with a Client's Property Endorsement (or equivalent) to protect the assets and property of University with limits of not less than \$1,000,000 per claim. If Contractor has property of University in its care, custody or control away from University's premises, Contractor will provide bailee coverage for the replacement cost of the property. Contractor's Employee Dishonesty policy will name University as Loss Payee.

18.1.7 Cyber Liability Insurance with limits of not less than \$5,000,000 for each wrongful act. This policy must cover:

- Liability for network security failures or privacy breaches, including loss or unauthorized access, use or disclosure of University data, whether by Contractor or any of subcontractor or cloud service provider used by Contractor;
- Costs associated with a privacy breach, including notification of affected individuals, customer support, forensics, crises management / public relations consulting, legal services of a privacy attorney, credit monitoring and identity fraud resolution services for affected individuals;
- Expenses related to regulatory compliance, government investigations, fines, fees assessments and penalties;
- Liability for technological products and services;
- PCI fines, fees, penalties and assessments;
- Cyber extortion payment and response costs;
- First and Third Party Business Interruption Loss resulting from a network security failure;
- Liability for technological products and services;
- Costs of restoring, updating or replacing data; and
- Liability losses connected to network security, privacy, and media liability.

If this policy is written on a claims-made basis, (a) the "retroactive date" must be prior to the commencement of Work under this Agreement; and (b) if this policy is cancelled, terminated or non-renewed at any time during the Term, Contractor will purchase an "extended reporting period" for at least a period of three (3) years beyond the termination or expiration of the Term.

Contractor's policy will provide a carve-back to the "Insured versus Insured" exclusion for claims brought by or on behalf of additional insureds.

18.2 Contractor will deliver to University:

18.2.1 After the execution and delivery of this Agreement and prior to the performance of any Work by Contractor, evidence of insurance on a Texas Department of Insurance (**TDI**) approved certificate form (the Acord form is a TDI-approved form) verifying the existence and actual limits of all required insurance policies; and, if the coverage period shown on the current certificate form ends during the Term, then prior to the end of the coverage period, a new certificate form verifying the continued existence of all required insurance policies.

- 18.2.1.1 **All insurance policies** (with the exception of workers' compensation, employer's liability and professional liability) will be endorsed and name the Board of Regents of The University of Texas System , The University of Texas System and University as Additional Insureds for liability caused in whole or in part by Contractor's acts or omissions with respect to its on-going and completed operations up to the actual liability limits of the required insurance policies maintained by Contractor. Commercial General Liability Additional Insured endorsement including ongoing and completed operations coverage will be submitted with the Certificates of Insurance. Commercial General Liability and Business Auto Liability will be endorsed to provide primary and non-contributory coverage.
- 18.2.1.2 Contractor hereby waives all rights of subrogation against the Board of Regents of The University of Texas System , The University of Texas System and University. **All insurance policies** will be endorsed to provide a waiver of subrogation in favor of the Board of Regents of The University of Texas System , The University of Texas System] and University. No policy will be canceled until after thirty (30) days' unconditional written notice to University. **All insurance policies** will be endorsed to require the insurance carrier providing coverage to send notice to University thirty (30) days prior to any cancellation, material change, or non-renewal relating to any insurance policy required in this **Section 11**.
- 18.2.1.3 Contractor will pay any deductible or self-insured retention for any loss. Any self-insured retention must be declared to and approved by University prior to the performance of any Work by Contractor under this Agreement. All deductibles and self-insured retentions will be shown on the Certificates of Insurance.
- 18.2.1.4 Certificates of Insurance and Additional Insured Endorsements as required by this Agreement will be mailed, faxed, or emailed to the following University contact:

Name: Michael Lau  
Contract Administration Director

Address: The University of Texas at El Paso  
Kelly Hall 3<sup>rd</sup> Floor  
500 W. University Avenue  
El Paso, Texas 79968-0505

Fax Number: 915-747-5932

Email Address: [mmlau@University.edu](mailto:mmlau@University.edu)

- 18.3 Contractor's or subcontractor's insurance will be primary to any insurance carried or self-insurance program established by University or The University of Texas System. Contractor's or subcontractor's insurance will be kept in force until all Work has been fully performed and accepted by University in writing.
- 18.3.1 Professional Liability Insurance coverage written on a claims-made basis requires Contractor to purchase an Extended Reporting Period Endorsement, effective for twenty-four (24) months after the expiration or cancellation of the policy.
- 18.3.2 Directors and Officers Liability Insurance coverage written on a claims-made basis requires Contractor to purchase an Extended Reporting Period Endorsement, effective for twenty-four (24) months after the expiration or cancellation of the policy.

**19. Additional Statutory & Regulatory Provisions.**

- 19.1 **Governing Law; Venue.** The Agreements and all of the rights and obligations of the parties under the Agreements and all of the terms and conditions of the Agreements will be construed, interpreted and applied in accordance with and governed by and enforced under the laws of the State of Texas. El Paso County, Texas, will be the proper place of venue for suit on or in respect to the Agreements.
- 19.2 **Loss of Funding.** Performance by University under the Agreements may be dependent upon the appropriation and allotment of funds by the Texas State Legislature (the "**Legislature**") and allocation of funds by the Board. If the Legislature fails to appropriate or allot the necessary funds, or if the Board fails to allocate the necessary funds, then University will issue written notice to Licensee and University may terminate the Agreements without further duty or obligation. Licensee acknowledges that appropriation, allotment, and allocation of funds are beyond the control of University.
- 19.3 **Ethics Matters; No Financial Interest.** Licensee and its employees, agents, representatives, and subcontractors have read and understand University's Conflicts of Interest Policy available at <https://admin.utep.edu/Default.aspx?tabid=73436> University's Standards of Conduct Guide available at <https://admin.utep.edu/Default.aspx?alias=admin.utep.edu/hoop>, and applicable state ethics laws and rules available at [www.utsystem.edu](http://www.utsystem.edu). Neither Licensee nor its employees, agents, representatives or subcontractors will assist or cause University employees to violate University's Conflicts of Interest Policy, provisions described by University's Standards of Conduct Guide, or applicable state ethics laws or rules. Licensee represents and warrants that no member of the Board has a direct or indirect financial interest in the transaction that is the subject of the Agreements.
- 19.4 **Certificate of Interested Parties.** If not exempt under [Section 2252.908\(c\), Government Code](#), Licensee must use the Texas Ethics Commission electronic filing web page (at [https://www.ethics.state.tx.us/whatsnew/FAQ\\_Form1295.html](https://www.ethics.state.tx.us/whatsnew/FAQ_Form1295.html)) to complete the most current Certificate of Interested Parties form and submit the form as instructed to the Texas Ethics Commission and University.

**The Certificate of Interested Parties will be submitted only by Licensee to University with signed License.**

- 19.5 Confidentiality and Safeguarding University Records; Press Releases and Public Information.** Under this License, Licensee may (1) create, (2) receive from or on behalf of University, or (3) have access to, records or record systems (collectively, “**University Records**”). However, it is expressly agreed that University will not provide to Licensee, and Licensee will never seek to access, any University Records that contain personally identifiable information regarding any individual that is not available to any requestor under the *Texas Public Information Act*, Chapter 552, Texas Government Code, including the email address of any student who has opted to prohibit the release of their “directory information” as that term is defined under the Family Educational Rights and Privacy Act, 20 U.S.C. §1232g (“**FERPA**”) and its implementing regulations. Licensee represents, warrants, and agrees that it will: (1) hold all University Records that it does create, receive or access pursuant to the Agreements in strict confidence and will not use or disclose University Records except as (a) permitted or required by this License, (b) required by law, or (c) otherwise authorized by University in writing; (2) safeguard University Records according to reasonable administrative, physical and technical standards that are no less rigorous than the standards by which Licensee protects its own confidential information; (3) continually monitor its operations and take any action necessary to assure that University Records are safeguarded and the confidentiality of University Records is maintained in accordance with all Applicable Laws, Athletic Organization Rules and University Rules, and (4) comply with the University’s rules, policies, and procedures regarding access to and use of University’s computer systems. At the request of University, Licensee agrees to provide University with a written summary of the procedures Licensee uses to safeguard and maintain the confidentiality of University Records.
- 19.5.1 **Notice of Impermissible Use.** If an impermissible use or disclosure of any University Records occurs, Licensee will provide written notice to University within one (1) business day after Licensee’s discovery of that use or disclosure. Licensee will promptly provide University with all information requested by University regarding the impermissible use or disclosure.
- 19.5.2 **Return of University Records.** Licensee agrees that within thirty (30) days after the expiration or termination of this License, for any reason, all University Records created or received from or on behalf of University will be (1) returned to University, with no copies retained by Licensee; or (2) if return is not feasible, destroyed. Twenty (20) days before destruction of any University Records, Licensee will provide University with written notice of Licensee’s intent to destroy University Records. Within five (5) days after destruction, Licensee will confirm to University in writing the destruction of University Records.
- 19.5.3 **Disclosure.** If Licensee discloses any University Records to a subcontractor or agent, Licensee will require the subcontractor or agent to comply with the same restrictions and obligations as are imposed on Licensee by this **Section 19.4**.
- 19.5.4 **Press Releases.** *Except in accordance with the terms of this License, neither party will make any press releases, public statements, or advertisement, or release any information for publication, advertisement or any other purpose without the prior written approval of the other party.*
- 19.5.5 **Public Information.** University strictly adheres to all statutes, court decisions and the opinions of the Texas Attorney General with respect to disclosure of public information under the *Texas Public Information Act* (“**TPIA**”), Chapter 552, *Texas Government Code*. In accordance with Section 552.002 of TPIA and Section 2252.907, Texas Government Code, and at no additional charge to University, Licensee will make any information created or exchanged with University pursuant to the Agreements (and not otherwise exempt from disclosure under TPIA)

available in a format reasonably requested by University that is accessible by the public.

19.5.6 Duration. The restrictions and obligations under this Section will survive expiration or termination of the Agreements for any reason.

**19.6 Corporate Standing; Authorized Representative**. If Licensee is a corporation or limited liability company, then Licensee is a corporation or limited liability company duly organized, validly existing and in good standing under the laws of the State of Texas or a foreign corporation or limited liability company duly authorized and in good standing to conduct business in the State of Texas, that it has all necessary power and has received all necessary approvals to execute and deliver the Agreements, and the individual executing the Agreements on behalf of Licensee has been duly authorized to act for and bind Licensee. If Licensee is a partnership, limited partnership, or limited liability partnership, then Licensee has all necessary partnership power and has secured all necessary approvals to execute and deliver the Agreements and perform all its obligations under this License; and the individual executing the Agreements on behalf of Licensee has been duly authorized to act for and bind Licensee.

Licensee warrants, represents, and agrees that neither the execution and delivery of the agreements by Licensee nor the performance of its obligations under the Agreements will (i) result in the violation of any provision of Licensee's articles of incorporation or by-laws, (ii) to the best of Licensee's actual knowledge and belief, result in the violation of any material provision or agreement by which Licensee is bound, or (iii) to the best of licensee's actual knowledge and belief, conflict with any order or decree of any court or governmental entity applicable to Licensee.

**19.7 Tax Certification**. If Licensee is a taxable entity as defined by Chapter 171, Texas Tax Code ("Chapter 171"), then Licensee certifies that it is not currently delinquent in the payment of any taxes due under Chapter 171, Texas Tax Code, or that Licensee is exempt from the payment of those taxes, or that Licensee is an out-of-state corporation that is not subject to those taxes, whichever is applicable.

## **20. Licensee's Representations, Warranties and Agreements.**

**20.1 Standards; Compliance with Laws and Policy**. Licensee will use commercially reasonable efforts, skill, judgment, and abilities to operate Program. In addition, Licensee will operate Program in compliance with (i) all applicable federal, state, and municipal, laws, regulations, codes, ordinances and orders and Payment Card Industry Data Security Standards, (including Payment Application Data Security Standards) promulgated by the Payment Card Industry Security Standards Council (collectively, the "**Applicable Laws**"); (ii) 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 the University's intercollegiate athletic conference ("**Conference**"), and any other athletic organization with jurisdiction (collectively, "**Athletic Organization Rules**"); and (iv) all University Rules. For purposes of this License, "**University Rules**" means (i) the *Rules and Regulations* of the Board ("**Rules and Regulations**") found at <http://www.utsystem.edu/board-of-regents/rules>; (ii) the policies of The University of Texas System at <http://www.utsystem.edu/bor/procedures/policy/>, including the University's Trademark Policy ("**Trademark Policy**") at <https://www.utsystem.edu/offices/general-counsel/intellectual-property>, UTS103 *Unrelated Business Income Tax* at <https://www.utsystem.edu/sites/policy-library/policies/uts-103-unrelated-business-income-tax-ubit>, *Guidelines for Web Site Solicitations* at

<https://www.utsystem.edu/sites/policy-library/policies/uts-122-guidelines-web-site-solicitations> ; (iii) the institutional rules and regulations and policies of University at <https://admin.utep.edu/Default.aspx?alias=admin.utep.edu/hoop> and (iv) University's *Conflicts of Interest Policy* at <https://admin.utep.edu/Default.aspx?tabid=73436> Without limiting the foregoing, Licensee will comply, and cause its employees, representatives, agents, and subcontractors to comply with University Rules related to personal health, security, environmental quality, safety, fire prevention, noise, smoking, parking and access restrictions.

- 20.2 Reliance.** Notwithstanding anything to the contrary contained in the Agreements, University and Licensee agree and acknowledge that University is entering into the Agreements in reliance on Licensee's special and unique knowledge and abilities with respect to operating Program. Licensee's operation of Program provides a peculiar value to University. Licensee accepts the relationship of trust and confidence established between it and University by the Agreements, and warrants that it has extensive experience in the operation of multimedia marketing rights programs. Licensee warrants, represents, covenants, and agrees that there are no obligations, commitments, or impediments of any kind that will limit or prevent performance of its obligations under the Agreements.
- 20.3 Licenses, Registrations and Permits.** Licensee warrants, represents, and agrees that it has obtained and will maintain, at its own cost, any and all approvals, licenses, filings, registrations and permits required by Applicable Laws, Athletic Organization Rules, or University Rules for Licensee's operation of Program. Licensee further warrants, represents, covenants, and agrees that all persons connected with Licensee directly in charge of the operation of Program are duly registered and licensed under Applicable Laws, Athletic Organization Rules and University Rules.
- 20.4 Debt Obligations.** Licensee will be solely responsible for securing and obtaining all payments related to Program. Licensee understands and agrees that University will not be responsible for any debts owed to Licensee by any individuals, groups, organizations, or entities, including students or student organizations. (ref. Rule 50303 of the Rules and Regulations located at <https://www.utsystem.edu/offices/board-regents/regents-rules-and-regulations>) University will not assume the role of a collection agency for Licensee. University will not adjudicate disputes between third parties and Licensee over the existence or the amount of debts.
- 20.5 Licensee Representative and Administration.** Licensee will assign a designated representative ("**Project Administrator**") who will be responsible for the administration and coordination of Licensee's obligations under the Agreements. Licensee will ensure that University is provided with current contact information for the Project Administrator (such as email address and telephone and facsimile numbers). If Licensee changes the individual serving as Project Administrator, Licensee will ensure the change does not disrupt or adversely impact Licensee's operation of Program. Licensee will promptly inform University of any proposed change of the Project Administrator.

Upon request by University, Project Administrator will periodically meet with University's representatives on University's campus. Project Administrator will be available to meet with University's representatives within two (2) business days after University's request, to discuss and resolve issues related to Licensee's obligations under the Agreements. On reasonable prior notice from University, Licensee will require its Project Administrator and other appropriate employees to attend University staff meetings and other scheduled meetings as guests, when deemed appropriate by University.

Licensee will keep University informed about Licensee's organizational line of authority for its management personnel from the Project Administrator up to Licensee's representative at the highest management level. Licensee will promptly inform University of any significant changes in Licensee's organization.

**20.6 Responsibility for Individuals Performing Licensee's Obligations; Criminal Background Checks.** Each individual who is assigned to perform any of Licensee's obligations under the Agreements will be an employee of Licensee or an employee of a permitted assignee or subcontractor engaged by Licensee. Licensee is responsible for the performance of all individuals performing any of Licensee's obligations under the Agreements. Prior to commencing operation of Program, Licensee will (1) provide University with a list ("**List**") of all individuals who may have access to University's premises or University Records or other confidential or sensitive data, and (2) have an appropriate criminal background screening performed on all such individuals. Licensee will determine on a case-by-case basis whether each individual assigned to perform Licensee's obligations under the Agreements is qualified to perform the obligations. Licensee will not knowingly assign any individual to perform obligations under the Agreements who has a history of criminal conduct unacceptable for (1) a university campus, including violent or sexual offenses, or (2) accessing confidential data, including identity or personal property theft offenses. Licensee will update the List each time there is a change in the individuals assigned to perform Licensee's obligations under the Agreements.

Prior to execution of this License, Licensee will provide UTEP a letter signed by an authorized representative of Licensee certifying compliance with this Section. Licensee will provide UTEP an updated certification letter each time there is a change in the individuals assigned to perform Licensee's obligations under the Agreements.

**20.7 Undocumented Workers.** The Immigration and Nationality Act (8 United States Code 1324a) ("**Immigration Act**") makes it unlawful for an employer to hire or continue employment of undocumented workers. The United States Immigration and Customs Enforcement Service has established the Form I-9 Employment Eligibility Verification Form ("**I-9 Form**") as the document to be used for employment eligibility verification (8 Code of Federal Regulations 274a). Among other things, Licensee is required to: (1) have all employees complete and sign the I-9 Form certifying that they are eligible for employment; (2) examine verification documents required by the I-9 Form to be presented by the employee and ensure the documents appear to be genuine and related to the individual; (3) record information about the documents on the I-9 Form, and complete the certification portion of the I-9 Form; and (4) retain the I-9 Form as required by law. It is illegal to discriminate against any individual (other than a citizen of another country who is not authorized to work in the United States) in hiring, discharging, or recruiting because of that individual's national origin or citizenship status. If Licensee employs unauthorized workers in violation of the Immigration Act then, in addition to other remedies or penalties prescribed by law, University may terminate this License in accordance with **Section 11**. Licensee represents and warrants that it is in compliance with and agrees that it will remain in compliance with the provisions of the Immigration Act.

**20.8 Authority; No Conflicts.**

20.8.1 University represents and warrants to Licensee that (a) University has all rights and authority to enter into and perform the obligations under the Agreements, and (b) University's execution and delivery of the Agreements and performance under the Agreements will not violate or conflict with any Applicable Laws, Athletic Organization Rules, University Rules or any contract to which University is a party.

20.8.2 Licensee represents and warrants to University that (a) Licensee has all rights and authority to enter into and perform the obligations under the Agreements, and (b) Licensee's execution and delivery of the Agreements and performance under the Agreements will not violate or conflict with any Applicable Laws, Athletic Organization Rules, University Rules or any contract to which Licensee is a party.

## 21. Miscellaneous.

- 21.1 **Entire Agreement; Modifications.** The Agreements supersede all prior agreements, written or oral, between Licensee and University and constitute the entire agreement and understanding between the parties with respect to the subject matter of the Agreements. The Agreements and each of their provisions will be binding upon the parties and may not be waived, modified, amended or altered except by a writing signed by authorized representatives of University and Licensee.
- 21.2 **Force Majeure.** Except for failure to pay Royalties, insurance premiums, or other sums of money due under the Agreements, neither party will be liable or responsible to the other for any loss or damage or for any delay or failure to perform due to causes beyond its reasonable control including acts of God, strikes, epidemics, war, riots, flood, fire, sabotage, or any other circumstances of like character.
- 21.3 **Captions.** The captions of the various sections and subsections of the Agreements are for convenience only and will not be considered or referred to in resolving questions of interpretation or construction.
- 21.4 **Waiver.** No delay or omission in exercising any right accruing upon a default in performance of the Agreements will impair any right or be construed to be a waiver of any right. A waiver of any default under the Agreements will not be construed to be a waiver of any subsequent default under the Agreements.
- 21.5 **Limitation of Liability.** Except as specifically provided in the Agreements, University will have no liability to Licensee or to anyone claiming through or under Licensee by reason of the execution or performance of the Agreements. Notwithstanding any duty or obligation of University to Licensee or to anyone claiming through or under Licensee, no present or future affiliated enterprise, subcontractor, agent, officer, director, employee, representative, attorney or regent of University, or anyone claiming under University, will have any personal liability to Licensee or to anyone claiming through or under Licensee by reason of the execution or performance of the Agreements.
- 21.6 **Binding Effect.** The Agreements will be binding upon and inure to the benefit of the parties hereto and their respective permitted sublicensees and successors.
- 21.7 **Severability.** In case any provision of the Agreements is, for any reason, held invalid or unenforceable in any respect, such invalidity or unenforceability will not affect any other provision of the Agreements, and the Agreements will be construed as if such invalid or unenforceable provision had not been included.

## 22. External Terms.

The Agreements completely supplant, replace, and override all other terms and conditions or agreements, written or oral, concerning Licensee's operation of Program or performance of its obligations under the Agreements ("**External Terms**"). External Terms are null and void and will have no effect under the Agreements, regardless of whether University or its employees, contractors, or agents express assent or agreement to External Terms. External Terms include any shrinkwrap, clickwrap, browserwrap, web-based terms and conditions of use, and any other terms and conditions displayed in any format that University or its employees, contractors, or agents are required to accept or agree.

## 23. Board Approval.

The Agreements are not effective for amounts exceeding One Million Dollars (\$1,000,000) in the aggregate until approved by Board.

IN WITNESS WHEREOF, University and Licensee have executed and delivered this License effective as of the Effective Date.

**THE UNIVERSITY OF TEXAS AT EL PASO**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**ATTACHED:**

**EXHIBIT A – DESIGNATED MARKS**

**EXHIBIT B – AGREEMENT FOR USE OF DESIGNATED MARKS IN CONNECTION WITH  
MULTIMEDIA MARKETING RIGHTS PROGRAM**

**EXHIBIT C – TRADEMARK SUBLICENSE AGREEMENT**

# EXHIBIT A

## DESIGNATED MARKS

### 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 breathing 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](mailto: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](mailto: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  
Brombein Building  
201 Glory Road  
95-747-6822

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.

Please see the following website for more information;

[https://www.utep.edu/university-communications/\\_Files/docs/UTEP-GRAPHIC-IDENTITY-GUIDE.pdf](https://www.utep.edu/university-communications/_Files/docs/UTEP-GRAPHIC-IDENTITY-GUIDE.pdf)