

APPENDIX TWO

Schedule 2 of APPENDIX TWO

EXHIBIT B

AGREEMENT FOR USE OF DESIGNATED MARKS IN CONNECTION WITH MULTIMEDIA ATHLETICS MARKETING RIGHTS PROGRAM

This Agreement for Use of Designated Marks in connection with Multimedia Athletics Marketing Rights Program (this "**Multimedia Program Agreement**") is effective as of _____ ("**Effective Date**"), and is entered into by and among the **BOARD OF REGENTS OF THE UNIVERSITY OF TEXAS SYSTEM**, a Texas agency and institution of higher education ("**Board**"), **THE UNIVERSITY OF TEXAS AT 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**."

RECITALS

Board and Licensee entered into that certain Trademark License Agreement ("**License**"), dated effective as of _____, under which Board licensed certain trademarks to Licensee for specific purposes, including use in connection with Licensee's UTEP Department of Intercollegiate Athletics-specific multimedia marketing rights program ("**Program**");

Licensee desires to use Board's Designated Marks in connection with Licensee's Program, for which Licensee will provide management, labor, equipment, goods, services, and supplies necessary to develop, operate and maintain Program; and

This Agreement and the License are sometimes collectively referred to as the "**Agreements**";

For and in consideration of the mutual promises and covenants set forth in this Multimedia Program Agreement, the parties agree as follows:

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. License Terms Incorporated and Controlling

The terms of the License are incorporated into this Multimedia Program Agreement by reference. The terms of this Multimedia Program Agreement are subject to the terms of the License. If there is a conflict between the terms of this Multimedia Program Agreement and the terms of the License, the License will control.

2. Defined Terms

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

3. Duration of Agreement

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

"**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.

4. **Limited Exclusive Rights to Establish and Operate Program**

- 4.1 **Exclusive Rights to Program.** Subject to the terms and conditions of the Agreements, Applicable Laws, Athletic Organization Rules and University Rules, UTEP grants Licensee the limited exclusive worldwide rights to establish, organize, develop, market and operate Program in accordance with all terms and conditions of the Agreements. Licensee will establish, organize, develop, market and operate Program and discharge all of Licensee's obligations pursuant to the terms of the Agreements. Except as provided in **Section 7**, Licensee will furnish all locations, management, labor, equipment, goods, services, software and supplies necessary to establish and operate Program. Program will be dedicated exclusively to promotion of UTEP Intercollegiate Athletics Department ("**Athletics Department**") multimedia marketing rights. Design of Program will be subject to Board's written approval so that Board may protect its goodwill associated with and prevent tarnishing of the Designated Marks. Board's approval will not be unreasonably withheld, conditioned or delayed.
- 4.2 **Performance Measures.** Licensee will establish, organize, develop, market and operate Program in a professional manner so that Program performs in accordance with prevailing industry standards for other leading multimedia athletics marketing rights programs.
- 4.3 **Independent Contractor.** Licensee is an independent contractor and as such Licensee covenants and agrees that it will neither hold itself out as nor claim to be an officer, partner, employee or agent of University. All persons performing services related to the operation of Program will be employees or agents of Licensee and will not be deemed, for any purpose whatsoever, contractors, officers, partners, employees or agents acting for, or on behalf of, University. No acts or representations, whether oral or written, made by Licensee or its officers, agents, or employees, to third parties will be binding on University, unless expressly approved in advance by University in writing.

5. **Rights Retained by University**

University retains all rights not specifically granted to Licensee in the Agreements. Without limiting the foregoing, the following rights are specifically excluded from the rights granted to Licensee under this Multimedia Program Agreement:

- 5.1 All rights related to athletic equipment, apparel and footwear (collectively, "**equipment and apparel**") providers (each an "**Equipment and Apparel Provider**"), including Equipment and Apparel Providers under contract with UTEP. All Athletic Sponsorships rights and ability use assets from the Program will be at the sole responsibility of UTEP. Licensee will be required to activate the elements of the Program but all revenue from this category will be excluded from Adjusted Gross Revenue calculations. Licensee must comply with all terms and conditions of each contract between UTEP and an Equipment and Apparel Provider.
- 5.2 All rights related to beverage (for example, carbonated drinks, soft drinks, soda water, isotonic drinks and water) providers ("**Beverage Providers**"), including beverage providers under contract with UTEP. All Athletic Sponsorships rights and ability use assets from the Program will be at the sole responsibility of UTEP. Licensee will be required to activate the elements of the Program but all revenue from this category will be excluded from Adjusted Gross Revenue calculations. Licensee must comply with all terms and conditions of each contract between UTEP and a Beverage Provider.
- 5.3 All rights related to food service and concession service providers, including food service or concession service providers under contract with UTEP (each a "**University Food/Concession Provider**").

- 5.4 All rights related to bookstore operations and other book and sundry providers, including bookstore and other book and sundry providers under contract with UTEP (each a "**University Bookstore Provider**").
- 5.5 All rights related to development, maintenance and operation of an official Athletic Department website, including website development, maintenance and operations providers under contract with UTEP (each a "**University Web Site Provider**"). All Athletic Sponsorships secured by Licensee must comply with all terms and conditions of each contract between UTEP and a University Web Site Provider.
- 5.6 All rights related to development, marketing, merchandising, sponsorship, signage, media, and commercial rights for special events on or within UTEP athletic facilities which may be sponsored, hosted or conducted by an organization other than Athletics Department, even though UTEP athletic teams or Athletics Department may be participating in the event. Examples of such events include, but are not limited to: High Graduation, professional soccer, ticketed boxing events, concerts, Monster Trucks events, Gear UP speaker sessions, major speakers, performers and cheerleading camps.
- 5.7 All rights related to online athletic merchandise providers, including online athletic merchandise providers under contract with UTEP. All Athletic Sponsorships secured by Licensee must comply with all terms and conditions of each contract between UTEP and all online merchandise providers.
- 5.8 All rights related to credit card affinity programs.
- 5.9 All rights related to The University of Texas at El Paso premises under the control of any University department other than the Athletics Department.
- 5.10 All rights related to existing The University of Texas at El Paso contractual rights and obligations with licensees, sponsors and other third parties.
- 5.11 All rights to modify, change, reschedule, or cancel The University of Texas at El Paso athletic contests, games and events as well as other The University of Texas at El Paso events.

6. **Production of Radio and Television Broadcast Events and Athletic Programs**

6.1 Radio Broadcasts. Subject to the terms and conditions of the Agreements (including **Section 7** of the License and the obligations described below in this **Section 6.1**), Applicable Laws, Athletic Organization Rules, University Rules, other UTEP contracts and agreements and the rights of the visiting team, UTEP grants Licensee the exclusive right to produce and provide public radio broadcasts ("**Radio Broadcasts**") of the following events:

- 6.1.1 **Football, Basketball, Head Football Coach's Show.** Licensee will produce and provide Radio Broadcasts of (i) all UTEP football games and men's basketball games; and (ii) a weekly coach's show for the head football coach aired for thirty-minute time slot for a thirteen (13) week period coinciding with UTEP's football season.
- 6.1.2 **UTEP Alternative Sports.** Upon written request by UTEP, Licensee will produce and provide Radio Broadcasts for games related to UTEP Alternative Sports and coach's shows for UTEP Alternative Sports when, in Licensee's reasonable opinion, Radio Broadcasts of a UTEP Alternative Sport are financially and commercially practical. "UTEP Alternative Sport(s)" means those sports managed by the Athletics Department other than football and men's basketball.
- 6.1.3 **Other Radio Broadcasts Upon Request.** Upon written request by UTEP, Licensee will produce and provide Radio Broadcasts of coach's shows for the head basketball coach and other specialty Athletics Department programming such as UTEP's Director

of Athletics daily reports when, in Licensee's reasonable opinion, Radio Broadcasts of specialty Athletic Department programming are financially and commercially practical.

- 6.2** Television Broadcasts. Subject to the terms and conditions of the Agreements (including **Section 7** of the License and the obligations described below in this **Section 6.2**), Applicable Laws, Athletic Organization Rules, University Rules, other UTEP contracts and agreements and the rights of the visiting team, UTEP grants Licensee the exclusive right to produce and provide public television broadcasts ("**Television Broadcasts**") of the following events:
- 6.2.1** **Game Broadcasts for Football.** Licensee will produce and provide Television Broadcasts of UTEP's home football games when, in Licensee's reasonable opinion, such game broadcasts are financially and commercially practical.
- 6.2.2** **Game Broadcasts for Basketball and Alternative Sports.** Licensee will produce and provide Television Broadcasts of UTEP's home basketball games and home games for Alternative Sports when, in Licensee's reasonable opinion, such game broadcasts are financially and commercially practical.
- 6.2.3** **TV Broadcasts Dedicated to Football.** Upon UTEP's written request, Licensee will produce and provide Television Broadcasts of coach's shows for the head football coach and other specialty Television Broadcasts dedicated to UTEP football when, in Licensee's reasonable opinion, such broadcasts are financially and commercially practical.
- 6.2.4** **TV Broadcast NOT Dedicated.** Upon UTEP's written request, Licensee will produce and provide Television Broadcasts of coach's shows for the UTEP head basketball coach, and head coaches of UTEP Alternative Sports, as well as specialty Athletics Department programming such as UTEP's Director of Athletics daily reports when, in Licensee's reasonable opinion, such specialty non-football Television Broadcasts are financially and commercially
- 6.3** Broadcasts and Broadcast Quality. Radio Broadcast and Television Broadcast (collectively, "Broadcasts") will be of a quality consistent with the standard quality that prevails for Broadcasts produced by Licensee for university athletic departments that are members of the NCAA football Bowl Championship Series or its successor.
- 6.4** Ownership Rights in Broadcasts. University will own all rights in each Broadcast. In furtherance of University's ownership rights, Licensee will make appropriate copyright notice announcements during each Broadcast and will affix appropriate copyright notices to all audio and video tapes and other forms of recordings or reproductions of each Broadcast
- 6.5** Broadcast Operations. Licensee will provide a broadcast-quality digitized copy of each Broadcast to Athletics Department, without charge, within fifteen (15) days after each broadcast. At no cost to University, beginning on the day after a Broadcast commences, University will have the unlimited right to rebroadcast each Broadcast in its entirety with or without acknowledgements or advertising.

Licensee will provide all necessary personnel and arrange all contracts with vendors, suppliers, sponsors, and all other production elements required to perform Licensee's duties and obligations related to production of Broadcasts. Licensee will secure all equipment, technology, production services, management, personnel, and other related services required to produce the Broadcasts. Licensee will pay all costs associated with producing the Broadcasts including travel expenses, costs associated with broadcast talent, telephone charges, clearance and upload fees, equipment expenses, satellite expenses, multimedia expenses and all other costs.

- 6.6** Athletic Programs. Subject to the terms and conditions of the Agreements (including **Section 7** of the License), Applicable Laws, Athletic Organization Rules, University Rules, and other UTEP contracts and agreements, upon UTEP's request Licensee will:
- 6.6.1 produce all official Athletic Department programs (including game information, rosters, information regarding opponent(s), and sponsor recognition) for all football, men's basketball and women's basketball home games (collectively, "**Athletic Programs**"); and
 - 6.6.2 market, distribute, and sell Athletic Programs at the applicable Athletics Department home games
- 6.7** Posters, Cards, Videos, and Specialty Publications. Subject to the terms and conditions of the Agreements (including **Section 7** of the License), Applicable Laws, Athletic Organization Rules, University Rules, and other UTEP contracts and agreements, upon mutual agreement of Licensee and the UTEP Representative (ref. Section 7.1), Licensee will:
- 6.7.1 produce official Athletic Department posters (collectively, "Team Posters")
 - 6.7.2 produce all official Athletic Department schedule cards ("Schedule Cards");
 - 6.7.3 produce official Athletic Department highlight videos on DVD and similar media ("Videos") as mutually agreed to by Licensee and the UTEP Representative in writing;
 - 6.7.4 produce other Athletic Department publications ("Other Athletic Printing") as mutually agreed to by Licensee and the UTEP Representative in writing;
 - 6.7.5 market, distribute, and sell (as applicable) Team Posters, Schedule Cards, Videos, and Other Athletic Printing as reasonably directed by the UTEP Representative (ref. Section 7.1).
- 6.8** Athletic Publications Rights and Operations. All revenue from sales of Athletic Programs, Team Posters, Schedule Cards, Videos, and Other Athletic Printing produced by Licensee will be incorporated into the calculation of Adjusted Gross Revenue. If Licensee declines to produce Team Posters, Schedule Cards, Videos or Other Athletic Printing (collectively, "Specialty Athletic Publications"), and UTEP produces Specialty Athletic Publications, all revenue generated from the UTEP-produced Specialty Athletic Publications will be retained by UTEP. Any revenue received from Athletic Sponsorships (ref. Section 7.1) established by Licensee that are included in UTEP-produced Specialty Athletic Publications will be incorporated into the calculation of Adjusted Gross Revenue.

UTEP will own all rights in all Athletic Programs and Specialty Athletic Publications produced by Licensee. In furtherance of UTEP's ownership rights, Licensee will affix appropriate copyright notices to each Athletic Program and Specialty Athletic Publication produced by Licensee.

All content of all Athletic Programs and Specialty Athletic Publications produced by Licensee must be approved by UTEP in writing prior to duplication.

Licensee will provide all necessary personnel and arrange all contracts with vendors, suppliers, sponsors, and all other production elements required to complete Licensee's obligations related to Athletic Programs and Specialty Athletic Publications produced by Licensee. Licensee will obtain the following items in connection with Broadcasts, Athletic Programs and Specialty Athletic Publications produced by Licensee: (i) permits, licenses, releases, waivers and consents from all entities (including governmental entities) having authority over recording and filming; (ii) location licenses, releases, waivers and consents, (iii) releases, waivers and consents from narrators, performers, guests, student athletes,

coaches, production staff and all other persons appearing in or participating in the production of Broadcasts, Athletic Programs or Specialty Athletic Publications produced by Licensee (including from guardians of minors); and (iv) any other permits, licenses, releases, waivers or consents related to Broadcasts, Athletic Programs or Specialty Athletic Publications produced by Licensee. Licensee will ensure that the permits, licenses, releases, waivers and consents for Broadcasts, Athletic Programs and Specialty Athletic Publications produced by Licensee include all distribution or exploitation of the Broadcasts, Athletic Programs and Specialty Athletic Publications produced by Licensee, in perpetuity and worldwide, including any permits, licenses, releases, waivers or consents required for: (i) re-broadcast via Internet, radio, television or cable television "video-on-demand" services whereby a customer pays a fee associated with such service; (ii) any re-broadcast via a closed-circuit television network; or (iii) any grant of synchronization and distribution rights to any third parties desiring to distribute either the Broadcast Events via reproduction in DVD or VHS video format or via the Internet or on mobile devices (or any such other similar form of audio or video distribution technology now known or hereafter created). In addition, Licensee will ensure all permits, licenses, releases, waivers and consents are secured, as applicable, for the musical works, compositions, film, television or video clips, photographs, artwork and other work used in the Broadcasts, Athletic Programs and Specialty Athletic Publications produced by Licensee.

Licensee will supply UTEP with a complete and accurate list of every musical work or composition photographs and other artwork used in each particular Broadcast, Athletic Program and Specialty Athletic Publications produced by Licensee and also any audio, film or video clip, artwork or other work attributable to an artist, including any individual working for one of the parties or retained by either party to produce works-for-hire for Broadcasts, Athletic Programs and Specialty Athletic Publications produced by Licensee. Any and all permits, licenses, releases, waivers, and consents to be used or obtained by Licensee will be pre-approved by UTEP. All of the permits, licenses, releases, waivers and consents obtained by Licensee in connection with Broadcasts, Athletic Programs and Specialty Athletic Publications will be provided to UTEP as and when received by Licensee on a continuous basis.

7. Elements of Program

- 7.1 Athletic Sponsorship Rights Generally.** Subject to the terms and conditions of the Agreements (including **Section 4**), Applicable Laws, Athletic Organization Rules and University Rules, UTEP grants Licensee the right to enter into Athletic Sponsorships on behalf of UTEP's Department of Intercollegiate Athletics ("**Athletics Department**") as more particularly described below. Licensee will use its best efforts to (I) identify businesses and other entities with which Licensee may enter into agreements for acknowledgment of those businesses and entities ("Athletic Sponsorships"), and (ii) solicit, negotiate and execute Athletic Sponsorships with those businesses and entities (collectively, "Sponsors") to acknowledge Sponsors, through the display of logos, trademarks, service marks and business names, so long as such acknowledgment (a) satisfies the qualified sponsorship requirements under the then current Treasury Regulations; and (b) does not (1) state or imply that University endorses good or services of a particular company, organization or entity, or (2) contain a comparative or qualitative description of goods or services, price information about goods or services, or any other message that is a call to action related to goods or services, in exchange for monetary consideration or In-Kind Property (collectively, "**Athletic Sponsorship Rights**"). *Provided, however, neither Sponsors nor Athletic Sponsorships may include Sponsors or goods and services (i) prohibited by Applicable Laws, Athletic Organization Rules, University Rules (including Board's Trademark Policy), or (ii) identified in Section 4.* All revenue generated in connection with the Agreements or Athletic Sponsorship Rights will be included in calculating Adjusted Gross Revenue.

Athletic Sponsorships must:

- (i) *be documented using the Sponsorship Agreement template attached as **Schedule 2 to EXHIBIT C** to the License and incorporated for all purposes, which may be revised from time to time upon mutual written agreement of the parties signed by a duly authorized representative of UTEP and Licensee;*
- (ii) *receive University's written approval prior to execution of the Sponsorship Agreement by Licensee so University may protect its goodwill associated with and prevent tarnishing of the Designated Marks; (iii) not commit University in any manner prior to such written consent; (iv) not extend beyond the Term of the Agreements without the express written consent of University; and (v) be in compliance with all terms and conditions of the Agreements. If University approves one or more Athletic Sponsorships that extend beyond the Term of this Multimedia Program Agreement (each an "**Extended Sponsorship**"), Licensee will not collect consideration or retain any portion of consideration from Extended Sponsorships after the date ("**Revenue Transition Date**") that is the *earlier* of the date (i) this Multimedia Program Agreement expires; or (ii) either party gives the other party written notice of termination of this Multimedia Program Agreement. At least thirty (30) days prior to the Revenue Transition Date, Licensee will send written notice to each Sponsor under an Extended Sponsorship requiring all payments due under the Extended Sponsorship after the Revenue Transition Date be paid directly to University; and*
- (iii) *be readily available and easily accessible to the University during regular business hours, including copies as needed free of charge.*

7.2 Signage Inventory Rights. Subject to the terms and conditions of the Agreements (including Section 5 of this Multimedia Program Agreement), Applicable Laws, Athletic Organization Rules and University Rules (including Rule 80103), UTEP grants Licensee the right to use certain acknowledgement space on specific Athletic Department signage identified by the Athletics Department for fulfillment of Athletic Sponsorships so long as such use (1) satisfies the qualified sponsorship requirements under the then current Treasury Regulations; and (2) does not (i) state or imply that University endorses good or services of a particular company, organization or entity, or (ii) contain a comparative or qualitative description of goods or services, price information about goods or services, or any other message that is a call to action related to goods or services (collectively, "Signage Inventory Rights"). All revenue generated in connection with Signage Inventory Rights is deemed Athletic Sponsorship revenue.

7.3 Broadcast Rights. Subject to the terms and conditions of the Agreements, Applicable Laws, Athletic Organization Rules, the rights of the visiting team's broadcast rights holder and University Rules, UTEP contracts and agreements, UTEP grants Licensee the right to sell Athletic Sponsorships in connection with Broadcasts (collectively, "Broadcast Rights"). Licensee will use commercially reasonable efforts to sell Athletic Sponsorships in connection with the Broadcasts. All revenue generated in connection with Broadcast Rights will be included in calculating Adjusted Gross Revenue.

7.4 Athletic Sponsorship Reporting. Within five (5) business days after the conclusion of each Quarterly Period, Licensee will provide to UTEP accurate quarterly operational reports detailing the Licensee's Athletic Sponsorship operations as those operations relate to the calculation of Adjusted Gross Revenue.

At the time of each Guaranteed Royalty payment, Licensee will provide UTEP operational reports that include (a) Athletic Sponsorships pending and proposed by Licensee, including the total consideration and any related financial terms, business contacts, and copies of contractual arrangements related to pending and proposed Athletic Sponsorships; (b) Athletic Sponsorships presented to potential Sponsors by Licensee that did not result in an Athletic Sponsorship ("**Unsuccessful Sponsorships**"), including the proposed consideration and any related financial terms, and contact information of the proposed

Sponsors that were the target of an Unsuccessful Sponsorship; and (c) projected goals for Athletic Sponsorships for the subsequent quarter. Within five (5) business days after receiving a written request, the University may request additional Athletic Sponsorship information and reports reasonably from Licensee.

All reports will be in a format reasonably satisfactory to UTEP in all respects.

- 7.5 Licensee may purchase a mutually agreed number of season tickets and parking passes to all ticketed sports (football, women's soccer, women's basketball, men's basketball) for Licensee's execution of the program. Per request and availability, UTEP will make tickets available without donation requirement over and above the ticket price.

8. **Limited Access and Space License [BI: Any changes must be reviewed by the UT System Real Estate Office.]**

Licensee, its employees, representatives, agents, and subcontractors, will have the right to use and access only the office space more particularly identified on **SCHEDULE 1 to this EXHIBIT B**, attached and incorporated for all purposes, and those other portions of the UTEP premises that are specifically necessary only to operate the Program under this Multimedia Program Agreement (collectively, "**Space**"). Licensee will have no right to access any UTEP premises other than the Space. UTEP will permit Licensee to use the Space only in accordance with the license contained in this Section. *Licensee will not use the Space to benefit any party other than UTEP.* UTEP licenses the Space in its current, "as is" condition to Licensee for use by Licensee and its employees, representatives, agents, and subcontractors in Licensee's operation of Program and for no other purpose. This is an exclusive license to use the Space; provided, UTEP may enter the Space at any time to perform maintenance or to address health or safety concerns. Notwithstanding anything herein to the contrary, UTEP will only make available and provide use and access to the Space as is reasonably necessary for Licensee to operate Program and fulfill Licensee's obligations under this Multimedia Program Agreement.

No unlawful activities will be permitted in the use of the Space. Licensee will comply with all Applicable Laws and University Rules in connection with the use of the Space. Licensee will cause all of its employees, representatives, agents, and subcontractors to observe and comply with all Applicable Laws and University Rules.

Licensee will maintain neat and orderly conditions (reasonably satisfactory to UTEP) in the Space. Licensee will maintain the Space and adjacent areas in a clean and safe condition at all times and will not do or permit anything to be done to the Space unless approved in writing in advance by UTEP. Licensee will not modify, alter or repair the Space or any other UTEP premises without the prior written approval of UTEP and with project management of renovations by UTEP. Licensee will not harm the Space or make any use of the Space that is offensive as determined by UTEP. Licensee will not suffer any mechanic's lien to be filed against the Space or any adjoining facilities by reason of any work, labor, services, or materials performed at or furnished to the Space for Licensee. Nothing in the Agreements will be construed as the consent of UTEP to subject UTEP's estate in the Space or any adjoining facilities to any lien.

Upon expiration or termination of this Multimedia Program Agreement for any reason, Licensee will (i) remove all Licensee's equipment, fixtures, furniture, products, supplies, signs, inventory, and other effects (collectively, "**Licensee-Owned Property**") from the Space, unless otherwise specified by UTEP in writing, and (ii) peaceably deliver up all Space in clean condition and in good order, repair and condition, ordinary wear and tear excepted. Any Licensee-Owned Property not promptly removed from the Space as required by this Section, will be deemed abandoned by Licensee. UTEP may dispose of abandoned Licensee-Owned Property in any manner it chooses, with no liability or reimbursement obligation to Licensee.

Licensee has inspected the Space and has determined that the Space, in its current condition, is sufficiently equipped for Licensee to operate Program in accordance with the terms and conditions of the Agreements.

UNIVERSITY WILL NOT BE RESPONSIBLE FOR INTERRUPTIONS IN UTILITY SERVICE TO THE SPACE. UTEP WILL EXERCISE REASONABLE DILIGENCE IN PURSUING THE RESTORATION OF INTERRUPTED UTILITY SERVICE TO THE SPACE.

UNIVERSITY WILL NOT BE LIABLE TO LICENSEE, OR LICENSEE'S EMPLOYEES, REPRESENTATIVES, AGENTS, SUBCONTRACTORS, GUESTS OR INVITEES (COLLECTIVELY, "**LICENSEE PARTIES**"), FOR ANY LOSS, EXPENSE OR DAMAGE EITHER TO PERSON OR PROPERTY SUSTAINED BY REASON OF ANY CONDITION OF THE SPACE, THE ADJOINING GROUNDS OR FACILITIES, OR DUE TO ANY ACT OF ANY EMPLOYEE OR AGENT OF UNIVERSITY, OR THE ACT OF ANY OTHER PERSON WHATSOEVER. UNIVERSITY, ITS EMPLOYEES, REPRESENTATIVES AND AGENTS WILL NOT BE LIABLE FOR AND LICENSEE WAIVES ALL CLAIMS FOR DAMAGE TO PERSON OR PROPERTY SUSTAINED BY ANY LICENSEE PARTIES, RESULTING FROM ANY ACCIDENT OR OCCURRENCE IN OR UPON THE SPACE OR THE ADJOINING GROUNDS OR FACILITIES. LICENSEE WILL PAY ON DEMAND UNIVERSITY'S EXPENSES INCURRED IN ENFORCING ANY OBLIGATION OF LICENSEE UNDER THIS SECTION.

9. Responsibilities of the Parties

- 9.1 Garbage Collection.** UTEP, at its sole cost, will collect trash and garbage from locations designated by UTEP in or adjacent to the Space.
- 9.2 UTEP's Maintenance of Space.** UTEP, at its sole cost, will maintain and repair the structural aspects of perimeter and interior walls, concrete slab floor, foundation, roof, exterior wall, downspouts and any and all other building systems such as plumbing, water, elevator, electrical service, heating, ventilating, and air conditioning of the Space.
- 9.3 Licensee's Maintenance and Cleanup of Space.** Licensee, at its sole expense, will maintain in good order, condition and repair (subject to normal wear and tear) and keep clean the Space. Damage to UTEP property caused by Licensee will be repaired or replaced at the sole expense of Licensee. Licensee will provide all necessary extermination and pest control within the Space, using a subcontractor approved by UTEP. Licensee will have trash removed from the Space at the end of every business day and placed as directed by UTEP for pickup.
- 9.4 Permanent and Non-Moveable Improvements.** All permanent and non-moveable improvements made by Licensee to the Space will be the property of UTEP.
- 9.5 Cleaning, Maintenance, Repair, and Replacement of Moveable Property.** Licensee will be responsible, at its sole expense, for cleaning, maintenance, repair, and replacement of all moveable equipment, fixtures, furniture, and other movable property utilized by Licensee in its operation of Program. All moveable equipment, fixtures, furniture and other moveable property purchased by Licensee and utilized by Licensee in its operation of Program will remain the property of Licensee during the Term of this Multimedia Program Agreement; however, at the expiration or earlier termination of this Multimedia Program Agreement, UTEP will have a right, at its option, to purchase all moveable equipment, fixtures, furniture and other movable property utilized by Licensee in its operation of Program at a cost equal to the *greater of* (i) the then-current market value, or (ii) Licensee's original cost less depreciation, calculated by a straight-line method assuming a useful life of seven (7) years.
- 9.6 Utilities and Key Control for Space.** Subject to **Section 7**, the responsibilities for providing utilities to the Space will be apportioned between UTEP and Licensee as described below:
- 9.6.1 Water, Electricity, and HVAC.** UTEP will provide to the Space the following services, at the levels required for Licensee's operation of Program: water, electricity, air conditioning, and heating. Licensee will be entitled to use, without additional charge, the amounts of electricity and water reasonably required for Licensee's operation of Program. Provided, however, Licensee will use commercially reasonable efforts to develop an effective and continuous energy management and conservation program for its operations in the Space.

9.6.2 **Telephones.** The Space includes existing telephone lines. However, Licensee will be responsible for obtaining at Licensee's sole cost the telephone services required for operation of Program (the "**Telephone Service**"). UTEP will cooperate with Licensee in Licensee's efforts to secure Telephone Service and will promptly provide any consents or licenses that are required from UTEP for Licensee to obtain Telephone Service. Licensee will pay the provider of its Telephone Service directly and in a timely manner.

9.6.4 **Key and Access Card Control; Reporting of Losses.** Licensee is responsible for control of keys and access cards related to the security of the Space. Licensee will be responsible for the cost of any re-keying and re-carding for key or access card locks or systems. Licensee will not modify key or access card locks or systems in any manner. Upon expiration or termination of this Multimedia Program Agreement for any reason, Licensee will immediately return to UTEP all keys or access cards. Upon becoming aware of any losses incurred as a result of break-ins on the UTEP's premises, Licensee will promptly report to UTEP all the facts relating to those losses.

9.7 No Liability for Damage or Loss of Personal Property. University will not be responsible for, and Licensee hereby expressly releases University from, any liability for, any damage to or loss of equipment, fixtures, furniture, checks, cash, or other personal property caused by vandalism, theft, robbery, fire, water, wind, or any other action or cause of any nature.

9.8 Auxiliary Enterprise Requirements. Licensee, at its sole cost and expense, will comply with all requirements of Subchapter C, Chapter 2252, *Texas Government Code*, including the provision of financial statements, payment statements derived from sales tax reports, and bonds.

9.8.1 In accordance with Section 2252.062, *Texas Government Code*, prior to the Effective Date, Licensee will submit to UTEP two (2) copies of Licensee's most recent financial statement prepared by a certified public accountant.

9.8.2 In accordance with Section 2252.063, *Texas Government Code*, Licensee will submit to UTEP, no later than the 15th day after the end of each Contract Year, an annual payment statement derived from all of Licensee's sales tax reports for its operations during the preceding Contract Year. The annual payment statement must be certified by a certified public accountant licensed in the State of Texas.

9.8.3 In accordance with Section 2252.064, *Texas Government Code*, Licensee will provide UTEP with a performance bond for each Contract Year during the Term of this Multimedia Program Agreement. The amount of the performance bond for the first Contract Year will be equal to Two Hundred Thousand Dollars (**\$200,000**). Thereafter, the amount of the performance bond will be adjusted at the beginning of each Contract Year to reflect the amount of Royalty paid by Licensee to UTEP for the previous Contract Year. The performance bond will be issued by a surety company authorized to do business in the State of Texas and acceptable to University in all respects. The performance bond will be made payable to University and conditioned upon the prompt and faithful performance of Licensee's duties and obligations under the Agreements.

10. Personnel and Parking

10.1 Staffing. Licensee will be solely responsible for recruiting, hiring, training, supervising, disciplining, and discharging all employees required for Licensee's operation of its Program and performance of Licensee's obligations under the Agreements. Licensee will be responsible for the payment of salaries and fringe benefits for its employees. For the sake of clarity, all employees used by Licensee in connection with Licensee's operation of its Program will be employees of Licensee and not of University.

- 10.2** Employee Deportment. Licensee will exert commercially reasonable efforts to ensure that its employees are polite and courteous at all times and perform their duties in a manner that is not offensive to patrons or disruptive to any event occurring on UTEP's premises. All Licensee employees will be dressed at all times in clean and appropriate attire.
- 10.3** Entry to UTEP Premises. All Licensee employees will be required to enter and leave all UTEP premises by means of the entryways designated by UTEP. Licensee employees will have access only to areas in UTEP premises that are related to the performance of their assigned duties and will not enter any other areas without prior written approval of UTEP.
- 10.4** Parking. During the Term of this Multimedia Program Agreement, UTEP will allow Licensee to apply for and obtain parking permits from UTEP for use of parking spaces in exchange for payment of associated parking fees. The exact number will be mutually agreed upon depending on staff size that is considered full-time. Licensee's use of the parking spaces will be non-exclusive and operation of vehicles on UTEP's premises will be subject to all Applicable Laws and University Rules related to traffic and parking. Licensee's employees who are UTEP students are only eligible for student parking permits and are not eligible for UTEP employee parking permits. Invitees of Licensee may park in the same short-term paid parking locations used by UTEP invitees. Licensee and its employees must comply with UTEP's parking and traffic regulations, <https://www.utep.edu/vpba/parking-and-transportation/>, and are responsible for any parking or traffic citations issued by UTEP's Police Department for the violation of such regulations.

11. Customer Service and Personnel

- 11.1** Emergency Contact. Licensee will maintain 24-hour availability of a responsible Licensee employee with decision making authority to be contacted in case of an emergency. If Licensee's emergency contact is not Licensee's Project Administrator, Licensee will make available to UTEP's designated representatives at all times an up-to-date schedule with the name and telephone number of Licensee's emergency contact, and his or her substitute.
- 11.2** Employee Conduct. Licensee will require all of its employees and personnel to adhere to Applicable Laws, Athletic Organization Rules, and University Rules. Licensee will operate Program without interfering in any way with the activities of UTEP's faculty, students, staff, visitors or invitees.

12. Taxes

Licensee will be responsible for the payment of all taxes, excises, payroll deductions, fees, fines, penalties, or other payments required by Applicable Laws in relation to Licensee's operation of Program and its other obligations under the Agreements. Licensee will pay promptly and before delinquency all taxes imposed under Applicable Laws upon (i) sales of taxable goods or services; (ii) Licensee's interest in the Space, any improvements to the Space, and its personal property located at the Space; and (ii) UTEP's interest in the Space, but only if the taxable status of UTEP's interest is attributable to Licensee's operations, and provided that, in the event that UTEP's interest in UTEP's premises becomes taxable, Licensee will only be responsible for paying the portion of taxes attributable to the value of the Space as opposed to the assessed value of the UTEP premises as a whole. If UTEP receives any statement from a taxing authority concerning payment of any tax for which Licensee is responsible, UTEP will promptly deliver the statement to Licensee for handling. Licensee understands and acknowledges that it cannot claim exemption from taxes by virtue of any exemption that may be available to UTEP.

- 12.1** Right to Contest. Licensee will not be required under this Multimedia Program Agreement to pay, discharge, or remove any taxes imposed under current or subsequent law upon the Space, Licensee's improvements to the Space, Licensee's personal property located in the Space, or UTEP's interest in the Space so long as Licensee is contesting the amount or validity thereof by appropriate proceeding which will operate to prevent or stay the collection of the amount so contested. Licensee hereby agrees to indemnify and save University harmless from all liability

for damages occasioned by Licensee's contesting of such taxes and will, in the event of a judgment of foreclosure on any lien arising in respect to such contested amounts, cause the same to be discharged and removed prior to the execution of such judgment, provided, however, Licensee will not be required to cause such lien to be discharged and removed to the extent that such lien applies to property other than the Space, Licensee's improvements to the Space, Licensee's personal property located in the Space, and UTEP's interest in the Space. UTEP will cooperate with Licensee in completing such a tax contest and will have no right to pay the amount contested during the contest; provided, however, that UTEP will have the right, at any time, to pay all or any portion of the taxes imposed upon UTEP's interest in the Space. If Licensee is contesting taxes imposed upon UTEP's interest in the Space, and UTEP pays any portion of those taxes during the pendency of that contest, then Licensee will have no obligation under this Multimedia Program Agreement to reimburse UTEP for the amount of the contested taxes so paid by UTEP. Upon termination of such a tax contest proceeding, Licensee will deliver to UTEP proof of the amount due as finally determined and proof of payment thereof. UTEP, at Licensee's expense, will join in any such tax contest proceeding if any law will so require. All costs and expenses of any contest of any tax undertaken by Licensee pursuant to this Section will be paid by Licensee.

- 12.2** Taxation of UTEP Premises. Notwithstanding any other provisions in this Multimedia Program Agreement to the contrary, if ad valorem property taxes or any other form of real property taxes are imposed upon any of the UTEP premises in their entirety (individually or as a group), and the taxable status of the impacted UTEP premises is attributable to Licensee's operations, then Licensee will have the option of (i) paying such taxes, (ii) contesting the amount or validity of such taxes in accordance with all Applicable Laws in a manner that will operate to prevent or stay the collection of the amount so contested, or (iii) paying such taxes and terminating this Multimedia Program Agreement effective upon the expiration of sixty (60) days after written notice to UTEP.

If Licensee elects to contest the amount or validity of such taxes, Licensee agrees to indemnify and save University harmless from all liabilities or damages occasioned by Licensee's contest of such taxes and will, in the event of a judgment of foreclosure on any lien arising in respect to such contested amounts, cause the same to be discharged and removed prior to the execution of such judgment. If Licensee does not pay or contest such taxes as set forth herein, University will have the right to terminate this Multimedia Program Agreement effective upon the expiration of one hundred twenty (120) days after written notice to Licensee. If this Multimedia Program Agreement is terminated by University under this Section, then (i) subject to University's option to purchase under **Section 9.5**, the Licensee may remove all moveable equipment, fixtures, furniture and other moveable property purchased by Licensee and used in operation of Program.

13. Breach of Contract Claims

To the extent that Chapter 2260, *Texas Government Code*, is applicable to this Multimedia Program Agreement and is not preempted by other applicable law, the dispute resolution process provided for in Chapter 2260 and the related rules adopted by the Texas Attorney General pursuant to Chapter 2260, will be used by University and Licensee to attempt to resolve any claim for breach of contract made by Licensee that cannot be resolved in the ordinary course of business. The chief business officer of UTEP will examine Licensee's claim and any counterclaim and negotiate with Licensee in an effort to resolve those claims. The parties specifically agree that (i) neither the execution of this Multimedia Program Agreement by University nor any other conduct, action or inaction of any representative of University relating to this Multimedia Program Agreement constitutes or is intended to constitute a waiver of University's or the state's sovereign immunity to suit; and (ii) University has not waived its right to seek redress in the courts.

14. Contractor Certification regarding Boycotting Israel

To the extent [Chapter 2270, Texas Government Code](#) is applicable to the Agreements, Licensee certifies it (1) does not currently boycott Israel; and (2) will not boycott Israel during the Term of the Agreements. Licensee acknowledges the Agreements may be terminated if this certification is inaccurate.

15. Contractor Certification regarding Business with Certain Countries and Organizations

To the extent [Subchapter F, Chapter 2252, Texas Government Code](#) applies to the Agreements, Licensee certifies it is not engaged in business with Iran, Sudan, or a foreign terrorist organization. Licensee acknowledges the Agreements may be terminated if this certification is inaccurate.

University and Licensee have executed and delivered this Multimedia Program Agreement effective as of the Effective Date.

THE UNIVERSITY OF TEXAS AT EL PASO

By: _____

Name: _____

Title: _____

Date: _____

By: _____

Name: _____

Title: _____

Date: _____

Attach:

SCHEDULE 1 to EXHIBIT B – SPACE

To be determined at a later time