

UNIVERSITY OF NEW MEXICO – NIKE ALL-SPORT AGREEMENT

THIS IS AN AGREEMENT made and entered into by and between **THE REGENTS OF THE UNIVERSITY OF NEW MEXICO** (“UNIVERSITY”), a state university organized under the laws of the state of New Mexico, on behalf of its Department of Intercollegiate Athletics, having its principal administrative office at 1 University of New Mexico, MSC04 2680, Albuquerque, New Mexico 87131, and NIKE USA, Inc., an Oregon corporation having its principal offices at One Bowerman Drive, Beaverton, Oregon 97005-6453 (“NIKE”).

WITNESSETH

WHEREAS, UNIVERSITY fields and maintains nationally recognized intercollegiate athletic programs (and retains the coaches and staff in connection therewith) and owns all right, title and interest in and to the names, nicknames, mascots, trademarks, service marks, logographics, and other recognized references to UNIVERSITY or its intercollegiate athletic programs; and

WHEREAS, NIKE is a sports and fitness company engaged in the manufacture, distribution and sale of athletic and athleisure footwear, apparel and related equipment and accessories, and desires to support UNIVERSITY and its intercollegiate athletic programs (as described below).

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

1. DEFINITIONS.

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

- (a) “Athletic Department” shall mean UNIVERSITY’s Albuquerque Campus (“Campus”) Athletic Department.
- (b) “Athletics Web Sites” shall mean www.golobos.com or any successor web site thereto and any other now existing or hereafter created official web site owned and/or controlled by the Athletic Department but specifically excluding, without limitation, www.unm.edu any successor web site thereto.
- (c) “Coach” shall mean an individual in the employ of, and while employed during the term of this Agreement to act as a head coach of a Covered Program.
- (d) “Coach Properties” shall mean the Coach’s name, nickname, initials, autograph, facsimile signature, voice, video or film portrayals, photographs, likeness and image or facsimile image, and any other means of identification used by such Coach in connection with the promotion of the UNIVERSITY-NIKE sponsorship and in accordance with the terms of this Agreement.
- (e) “Conference” shall mean the Mountain West Conference and such other intercollegiate athletic conference of which UNIVERSITY is a member and in which a Covered Program competes.
- (f) “Contract Year” shall mean each consecutive 12-month period from July 1 through June 30 during the Term of this Agreement, except that the first “Contract Year” shall mean the consecutive 11-month period from August 1, 2020 through June 30, 2021.
- (g) “Covered Program(s)” shall mean any and all NCAA Division I varsity intercollegiate athletic teams that are fielded by UNIVERSITY during the Term from and on the Campus which, as of the date of this Agreement, include: football; basketball (men’s and women’s); cross country (men’s and women’s); golf (men’s and women’s); soccer (women’s); tennis (men’s and women’s); track & field (men’s and women’s);

volleyball (women's); softball; baseball; swimming & diving (women's) and such other varsity programs as may be added by UNIVERSITY during the Term of this Agreement. For purposes of this Agreement, teams shall also include UNIVERSITY's official cheer and dance squads. (h) "Athletic Department-controlled Content" shall mean text, graphics, photographs, film, video, audio and/or any other data, materials or information (e.g., statistics, biographical profiles, archival materials, etc.) of a public nature and relating to any and all Covered Programs to the extent owned and controlled by the Athletic Department.

- (i) "NCAA" shall mean the National Collegiate Athletic Association.
- (j) "NIKE Group" shall mean NIKE USA, Inc., NIKE Retail Services, Inc. (d/b/a NikeTown), their parent company NIKE, Inc., their licensees, distributors, subsidiaries and any successor company.
- (k) "Products" shall mean:
 - (1) all athletic and athletically inspired or derived footwear that members of any of Team, Coaches and/or Staff wear while participating in a Covered Program Activity;
 - (2) authentic competition apparel consisting of uniforms, sideline or courtside jackets, polos, sweaters, pants, shorts and shirts, game-day warm-ups, basketball shooting shirts, football player capes, wool and fitted caps, windsuits, rainsuits, "base-layer" apparel (including padded and non-padded compression products) and similar apparel, practicewear, thermal wear, and performance undergarments (collectively, "Authentic Competition Apparel") that members of any Team, Coaches and/or Staff wear while participating in a Covered Program Activity;
 - (3) all other apparel articles of an athletic nature including but not limited to polo shirts, golf shirts, tank-tops, T-shirts, sweatsuits, separates and other body coverings, and accessories of an athletic nature, including but not limited to headwear (other than protective headwear), headbands, wristbands, carrying and equipment bags, socks, on-field quarterback hand-towels (but specifically excluding all other sideline hand-towels), receiver's and linemen's gloves, sleeves (e.g., single or double arm protective sleeves), weight training gloves, elbow and knee pads (collectively, "Accessories") that members of any Team, Coaches and/or Staff wear or use while participating in a Covered Program Activity;
 - (4) footballs, men's basketballs, women's basketballs and soccer balls (but specifically excluding volleyballs);
 - (5) protective eyewear (e.g., football face mask eyeshields), eyewear with performance attributes and sunglasses;
 - (6) body-worn (or handheld) activity tracking/monitoring devices and watches; and
 - (7) other sports equipment as NIKE may add to its Product lines at any time during the Term of this Agreement as further described herein.
- (l) "NIKE Products" shall mean all Products as set forth above and in connection with which, or upon which, the NIKE name, the Swoosh Design, the NIKE AIR Design, the Basketball Player Silhouette ("Jumpman") Design or any other trademarks or brands (e.g., Brand Jordan, Converse) now or hereafter owned and/or controlled by NIKE (collectively, "NIKE Marks") appear.

- (m) "NIKE Web Sites" shall mean www.nike.com, www.nikebiz.com or any successor web site thereto and any other now existing or hereafter created web site owned and/or controlled by a NIKE Group, including, but not limited to, NIKE-controlled social media sites.
- (n) "Staff" shall mean, collectively, all assistant coaches and strength coaches, equipment managers, trainers and any on-field/courtside staff (e.g., ball persons, etc.) employed by UNIVERSITY during the Term of this Agreement to provide services to any Covered Program.
- (o) "Team" shall mean that group of athletes attending the Campus of UNIVERSITY during the Term of this Agreement and then comprising the roster of each Covered Program.
- (p) "UNIVERSITY Marks" shall mean the identifications "University of New Mexico", the nickname "Lobos" and all other names, nicknames, mascots, identifications, trademarks, service marks, logographics and/or symbols, and any other recognized symbols that are both associated with its athletic teams and controlled by the UNIVERSITY.
- (q) "Covered Program Activity" shall mean the official games, practices, trainings, exhibitions, events and public appearances of a Covered Program, in which a Team member, Coach and/or Staff member appears as an official representative of the Covered Program or Athletic Department.
- (r) "Digital Features" shall mean digital content or applications whether or not used in conjunction with a NIKE Product (e.g., an add-on Nike+ or a mobile device application), designed to improve, encourage, support or inspire performance, fitness and/or activity.

2. TERM.

The term of this Agreement shall be for a period of three Contract Years, to commence August 1, 2020 and end June 30, 2023, unless sooner terminated in accordance with the terms of this Agreement (the "Term").

3. GRANT OF SPONSORSHIP RIGHTS, PRE-EXISTING AGREEMENTS.

In consideration of the Products to be supplied, and favorable pricing and purchase credit offered to UNIVERSITY as an educational institutional benefit by NIKE under this Agreement:

- (a) UNIVERSITY hereby grants to NIKE, and NIKE hereby accepts, (i) the designation as "the exclusive athletic footwear, apparel and Accessories sponsor of the University of New Mexico", "the official athletic footwear and apparel sponsor of (each Covered Program)", the "official athletic footwear sponsor of (each Covered Program)" and/or such similar designations as the parties may agree upon in writing (collectively, the "Designations"); and (ii) the non-exclusive right to utilize (subject to the approval and other provisions of Paragraph 11 and Paragraph 12 below and to applicable NCAA rules and regulations) the UNIVERSITY Marks, the Coach Properties, and the Designations, worldwide, in any media now known or hereafter created (including, without limitation, the internet and mobile technologies) in connection with the manufacture, advertising, marketing, promotion and sale of NIKE Products and/or brands and Digital Features. Such rights shall specifically include, but shall not be limited to, the following:
 - (1) The exclusive right to supply Products for the Covered Programs and to use the Designations as described herein;

- (2) The right to manufacture, sell and market the Products and Digital Features bearing or incorporating UNIVERSITY Marks, and to conduct promotions with and through NIKE retail accounts and over the internet.
 - (3) The right to manufacture and sell NIKE Products bearing or incorporating UNIVERSITY Marks and to conduct promotions with and through NIKE retail accounts and over the internet, provided, however, NIKE must secure a license through UNIVERSITY or UNIVERSITY's licensing agent for the use of UNIVERSITY Marks in the manufacture and sale of NIKE Products bearing or incorporating UNIVERSITY Marks.
 - (4) The right to use UNIVERSITY-controlled game photographs ("Game Photos"), videotape and/or film footage ("Game Footage") relating to the Covered Programs, and Athletic Department-controlled Content, subject to applicable NCAA rules and regulations with respect to the depiction of eligible student-athletes. In connection therewith, at NIKE's request, UNIVERSITY shall permit NIKE to utilize, consistent with this Paragraph 3, Game Photos and Game Footage (owned and controlled by UNIVERSITY), without a use fee, other than reasonable search and edit charges.
- (b) NIKE acknowledges that UNIVERSITY is a party to pre-existing contracts and/or supply arrangements with respect to product supply as set forth on Schedule A and NIKE agrees that such contracts and/or arrangements may be maintained, extended and/or replaced during the Term provided, however, in the event any such agreement or arrangement is replaced by another supplier, such replacement supplier cannot be a company or brand well-known to the public as a footwear company or footwear brand.

4. RETAIL LICENSING RIGHTS.

UNIVERSITY (or its designated licensing agent (currently Affinity Licensing ("Affinity"))) and NIKE shall enter into and maintain in full force and effect during the Term, a retail product license agreement, incorporating NIKE and Affinity's agreed upon terms and conditions for UNIVERSITY, except as expressly described below to the contrary (the "Retail License").

For the Term, NIKE shall pay UNIVERSITY (or its licensing agent) a fixed royalty rate of 12% of Net Sales of any NIKE Products bearing or incorporating UNIVERSITY Marks ("Licensed Products"), except that the royalty rate payable by NIKE for any footwear Licensed Products shall be fixed at 5% of Net Sales. It is understood and agreed that Licensed Products provided to UNIVERSITY pursuant to Paragraph 5 of this Agreement (including to Teams, Coaches and Staff) shall not be subject to royalties.

UNIVERSITY and NIKE agree to take any necessary steps to ensure that the terms of the contract between UNIVERSITY and Affinity, and any subsequent contract between Affinity and NIKE, are consistent with the terms of this Agreement. In the event of any conflict, the terms and conditions of this Agreement shall control and prevail over the terms and conditions of UNIVERSITY's contract with Affinity and NIKE's contract with Affinity. The termination or expiration of UNIVERSITY's contract with Affinity will have no effect upon this Agreement.

5. NIKE'S PRODUCT AND OTHER CONSIDERATION.

- (a) In partial consideration for the rights granted under this Agreement, each Contract Year, UNIVERSITY shall have the right to pre-purchase up to a maximum of

\$3,000,000 (retail value) of NIKE Products (the "Annual Product Allotment") at preferential pricing, each annual amount to be mutually agreed no later than June 1 prior to the applicable Contract Year. UNIVERSITY agrees to pay NIKE 1/3 of the retail value of the agreed Annual Product Allotment (e.g., \$666,667 for an Annual Product Allotment of \$2,000,000 (retail value)) (the "Cash Purchase Price") each Contract Year in exchange for the Annual Product Allotment. The Cash Purchase Price shall be due in two installments: (i) the first in the amount of 60% of the total Cash Purchase Price for the applicable Contract Year on or before September 1 of such Contract Year and (ii) the second in the amount of 40% of the total Cash Purchase Price for the applicable Contract Year on or before March 1 of such Contract Year. Upon payment of the first installment of the Cash Purchase Price each Contract Year, UNIVERSITY shall be entitled to order directly from NIKE, and receive, the Annual Product Allotment for use by (or in connection with) the Covered Programs, clinics, camps (in no event shall any camp or clinic in this Agreement include any juvenile or youth camps or clinics that are run separately by the Coaches), Coaches, Staff and such other purposes as the Director of Athletics may deem appropriate to support the relationship between the parties. If the full Cash Purchase Price is not received by March 1 in any Contract Year, NIKE shall invoice UNIVERSITY for all NIKE Products ordered for the applicable Contract Year at NIKE's published wholesale prices.

- (b) UNIVERSITY shall be permitted to carry-over an Annual Product Allotment credit up to \$200,000 (retail value) in Contract Year 1 and Contract Year 2, in each case for any unorderd annual allotment of NIKE Products from such Contract Year to the subsequent Contract Year. UNIVERSITY will notify NIKE as soon as practicable if UNIVERSITY anticipates it will carry-over a credit to the subsequent Contract Year.
- (c) Each Contract Year, in addition to the Annual Product Allotment, UNIVERSITY shall be entitled to order up to \$100,000 (retail value) through "NIKE Elite" Client Services (and subject to procedures established by NIKE for such purposes), for the use of UNIVERSITY Coaches and Staff (with such allocation among Coaches and Staff to be determined at the discretion of the Director of Athletics). No carry-over of unorderd annual allotments through NIKE Elite from one Contract Year to another shall be allowed.
- (d) In the event the applicable Team achieves any of the performances listed on Schedule B during any Contract Year, UNIVERSITY shall, within 30 days of such accomplishment, invoice NIKE for payment of the corresponding bonus amount. Within 30 days of its receipt of such notice, NIKE shall pay the applicable bonus amount. UNIVERSITY acknowledges that such bonus amount(s) are subject to forfeit if not timely invoiced. Notwithstanding the foregoing, UNIVERSITY acknowledges that if it is subject to sanction(s) in which any bonused performance is vacated, UNIVERSITY shall return to NIKE the performance bonus(es) paid for such vacated accomplishment within 60 days of notice from NIKE.

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

- (a) The exact styles, sizes and delivery dates and, where appropriate, quantities of NIKE Products ordered under this Agreement shall be as reasonably specified by UNIVERSITY and consistent with NIKE's overall product marketing strategy. NIKE shall propose styles each year, sufficiently in advance, to allow UNIVERSITY adequate time for consideration. Each such Contract Year, if UNIVERSITY desires quantities of NIKE Product in excess of that provided under its Annual Product Allotment, UNIVERSITY may order and purchase such additional quantities of NIKE Products at NIKE's published wholesale prices, subject to availability and NIKE

standard account sales terms and conditions. In the event of a conflict between NIKE's sales terms and conditions and the terms and conditions set forth in this Agreement, the terms and conditions set forth in this Agreement shall prevail. Except as otherwise described in this Agreement, in no event shall UNIVERSITY purchase any Products (including footwear and core basic apparel – e.g., T-shirts, shorts, fleece and socks), for Covered Program use, from any third-party without NIKE's approval (approval by NIKE via email is acceptable). All Products to be supplied by NIKE hereunder shall be delivered F.O.B. to UNIVERSITY. Only properly submitted orders from UNIVERSITY's Athletic Department shall be filled by NIKE.

- (b) UNIVERSITY acknowledges that Annual Product Allotments shall be delivered to UNIVERSITY generally one month prior to the start of the regular season for each Covered Program and that annual allotments must typically be ordered 9-12 months in advance of each season to ensure timely delivery. As long as UNIVERSITY places all its orders by the October 1 preceding any Contract Year, the Annual Product Allotment for each Covered Program shall be delivered to UNIVERSITY by the following dates during such Contract Year:

Football	
Basics	July 1
Uniforms	August 1
Basketball	
Basics	July 1
Uniforms	October 1
All other Fall Athletic Programs	
Basics	July 1
Uniforms	August 1
All Spring Athletic Programs	
Basics	September 1
Uniforms	December 1

Notwithstanding the foregoing, however, if approved in writing by UNIVERSITY (such approval not to be unreasonably withheld), certain products within a Covered Program's product allotment may be delivered later than the date specified above, depending on their date of actual use, furthermore, UNIVERSITY acknowledges that, once apparel ordering deadlines have been met, product delivery may be staggered in accordance with a mutually agreed priority schedule. (By way of example, with respect to football product, footwear and practice wear would be delivered by July 1st, game uniforms by photo day, and cold weather wear by October 1st.)

- (c) UNIVERSITY acknowledges that the placement of the NIKE logo, as it is currently permitted by the NCAA (in terms of size, location placement, color contrast/prominence and/or number of placements), on Authentic Competition Apparel is a bargained for material benefit contemplated by NIKE under this Agreement and that such continued degree of manufacturer logo prominence on competition product is of the essence of this Agreement. Accordingly, during the Term, UNIVERSITY shall take no action that shall have the effect of relocating (except for a more favorable placement should a subsequent relaxation in rules so permit), reducing, or restricting NIKE's logo placement rights on Authentic Competition Apparel as such logo now is permitted by current relevant NCAA rules or regulations including, but not limited to, NCAA Rule 12.5.4. Notwithstanding anything contained in this subparagraph, UNIVERSITY further acknowledges that nothing herein shall be construed as a restriction of any right of NIKE to avail itself

of such more favorable presentation or placement of its logo (e.g., size, color contrast, number of placements, location of placement, etc.) as may be currently permitted under NCAA, Conference and/or other applicable rules, or hereafter permitted by any subsequent relaxation in NCAA, Conference and/or other applicable rules.

7. USE OF NIKE PRODUCTS.

- (a) Throughout the Term, UNIVERSITY shall make NIKE Products available on an exclusive basis to all Covered Programs, to be worn and/or used by Team members, Coaches and Staff during Covered Program Activities during which Team members, Coaches and Staff wear and/or use Products. UNIVERSITY shall require Coaches, Team members and Staff to wear and/or use exclusively NIKE Products during such Covered Program Activities.

Notwithstanding the foregoing, NIKE acknowledges and agrees that:

- (1) other than sports camps and/or clinics associated with the football or men's basketball programs, sports camps and clinics shall have the option to use generic t-shirts (i.e., non-NIKE) that do not bear any externally visible manufacturer/maker identification and provided they are not sourced from any manufacturer of athletic footwear;
- (2) Team members, Coaches and Staff may wear non-athletic footwear and apparel (e.g., business attire), as appropriate, in connection with Covered Program Activities and that the election to not wear NIKE Product for such activities shall not constitute a breach of this Paragraph;
- (3) If after having used NIKE footwear, a Team member, Coach or Staff shall at any time suffer any foot pain or discomfort attributable to such footwear which for a Team member materially affects their performance, and it is verified in writing by the Team's physician, UNIVERSITY shall promptly notify NIKE of such occurrence. Upon receipt of such notice, NIKE shall diligently seek to address such Team member, Coach or Staff's foot pain or discomfort and UNIVERSITY shall fully cooperate with NIKE in its efforts to satisfy such Team member, Coach or Staff's special footwear requirements, including using UNIVERSITY's best efforts to encourage such Team member, Coach or Staff to fully cooperate with NIKE's remedial efforts and by facilitating such cooperation by the Team member, Coach or Staff. To the extent permissible under applicable NCAA and UNIVERSITY rules and regulations, such facilitation by UNIVERSITY may include, but shall not be limited to, requesting that the Team member, Coach or Staff (i) make themselves available to be examined (at NIKE's cost) by a podiatrist or other qualified physician (located within the UNIVERSITY's metropolitan area and approved by the UNIVERSITY's team physician) to assist NIKE in determining and verifying the nature and extent of the Team member, Coach or Staff's foot pain or discomfort connected with the use of such NIKE footwear, (ii) make themselves available to NIKE, under Athletic Department supervision, for design consultations and/or tests conducted by NIKE's footwear research and design personnel to determine any special requirements of Team member, Coach or Staff's foot characteristics or medical condition, (iii) wear-test customized footwear developed by NIKE to meet such special requirements, and (iv) provide NIKE with product feedback, as requested by NIKE, concerning Team member, Coach or Staff's findings with respect to such wear-testing (collectively, "Remedial Efforts"). During the period NIKE is engaged in Remedial Efforts or

if the Remedial Efforts ultimately prove unsuccessful, NIKE shall directly furnish Team member, Coach or Staff with footwear of his or her choice (produced by any manufacturer whatsoever) but with all visible manufacturer's identification removed or otherwise covered so as to completely obscure such manufacturer's identification.

NIKE shall not be liable to UNIVERSITY, any Coaches, Staff or Team members for any injury or damage suffered from wearing or using NIKE Products, except such injury or damage resulting from NIKE's adjudicated negligence. *UNIVERSITY specifically waives, only as against NIKE, all express warranties, and implied warranties of merchantability or fitness for a particular purpose, and acknowledges that no NIKE warranties shall run with any Product re-sold by UNIVERSITY in violation of Paragraph (e)(1) below.*

- (b) UNIVERSITY shall ensure that no Team member, Coach or Staff member shall:
 - (1) Alter or permit the alteration of any NIKE Product worn or used by them to resemble a non-NIKE Product; or
 - (2) Wear any non-NIKE Products which have been altered to resemble NIKE Products.
- (c) UNIVERSITY shall ensure that no Coach, Staff or Team member shall wear and/or use any athletic footwear, or other Products, manufactured by companies other than NIKE except as expressly permitted herein.
- (d) UNIVERSITY acknowledges that (i) the principal inducement for NIKE's entrance into this Agreement is the television and other media exposure that the NIKE brand receives through the prominent visibility of the NIKE logos that appear on the side (and other locations) of the athletic shoes and apparel provided by NIKE to UNIVERSITY for use pursuant to this Agreement; and (ii) such continued brand exposure is of the essence of this Agreement; and (iii) the unauthorized "spatting" or otherwise taping, so as to cover any portion of the NIKE footwear worn by Team Members during practices, games, exhibitions, clinics, sports camps and other occasions during which Team members wear athletic shoes, is inconsistent with the purpose of this Agreement and the benefits to be derived from it by NIKE and is a material breach of this Agreement. Notwithstanding the foregoing, isolated spatting or taping as is deemed medically advisable, for example in instances where a player is injured during competition and the in-game determination is made that the player can continue to play if the player's ankle and shoe are taped-over, shall not be deemed a breach of this Agreement.
- (e) UNIVERSITY shall not (1) permit the trade name, trademark, name, logo or any other identification of any person, company or business entity other than NIKE, UNIVERSITY, the Conference, or the NCAA, unless approved by NIKE, to appear on NIKE Products worn or used by Coaches, Staff or Team members (excluding only activities such as golf fundraisers where tournament shirts may be co-branded with the logos or sponsors permitted under this Agreement, and, provided that such event is controlled by UNIVERSITY, such items are exclusively embellished by and sourced from NIKE), (2) any third party to screenprint upon, or otherwise embellish, any NIKE Product worn or used by Coaches, Staff or Team members, or (3) re-sell any Product provided pursuant to this Agreement except through an on-campus "tent" sale, "garage" sale or the like and in no event shall Product be sold to liquidators, jobbers, distributors or any other individual or entity in the trade.

8. PROMOTIONAL APPEARANCES.

Solely in connection with the promotion of NIKE Products and/or the NIKE brand:

- (a) Each Contract Year, upon reasonable prior notice and subject to the terms of Coach's contract with the UNIVERSITY and any coaching commitment, if so requested by NIKE, UNIVERSITY shall make the basketball coach available for up to three appearances and all other Coaches available for up to two appearances. No single appearance shall exceed 24 hours in duration, including travel time, unless otherwise agreed upon in advance. Such appearances may include, but are not limited to, photo shoots for posters, brochures or in-store displays, production sessions related to filming commercials and/or video productions and/or advertising, retail store appearances, trade shows, speaking engagements, appearances at sports clinics, celebrity events and other public appearances, but not including any live radio or television broadcasts of games in direct competition with the rights of UNIVERSITY's media holders. Neither UNIVERSITY nor Coach shall receive additional compensation for such appearances.
- (b) NIKE agrees to pay all reasonable and necessary out-of-pocket expenses incurred by any Coach in connection with any appearance hereunder. In the event Coach attends the NIKE Coach of the Year Clinics, the parties agree NIKE shall pay coach class airfare.

9. OTHER SPONSOR BENEFITS.

During the Term, in connection with the Covered Programs, UNIVERSITY shall provide NIKE with the following ticket benefits at no additional cost to NIKE . NIKE shall receive season tickets to home games (and neutral site games as indicated below) for each Covered Program in accordance with the following:

PROGRAM	TICKETS*
Football (regular season)	4 (midfield section of stadium)
Each football bowl game (that is not a Tier 1 Bowl Game or CFP game)	6 tickets
Each football Conference Championship Game, Tier 1 Bowl Game or CFP game	10 tickets
Men's Basketball (regular season)	6 tickets
Men's Basketball Conference Tournament	4 (per round)
Men's Basketball NCAA Tournament	4 (per round)
Women's Basketball Conference Tournament	4 (per round)
Women's Basketball NCAA Tournament	4 (per round,)
Other Covered Programs Ticketed Programs	4 tickets
* All tickets shall be "best available" (following sale of season tickets) lower-level seating, adjacent seats.	

In addition, each season, the UNIVERSITY shall provide NIKE with a block of 40 tickets to one mutually agreed designated home football game and 20 tickets to one mutually agreed designated home men's basketball game.

10. DESIGN & MARKETING CONSULTATION.

- (a) UNIVERSITY acknowledges NIKE's industry leadership in the design of performance product and its expertise and innovation in the area of sports marketing and that such leadership, expertise and innovation is a material inducement to UNIVERSITY's entrance into this Agreement. NIKE shall continue its efforts to produce high quality Products through consultation with coaches and staff of successful athletic programs such as UNIVERSITY and whose full cooperation is

important to NIKE, as such individuals have knowledge that can be useful in the research, development and production of NIKE Products, and such consultation is of the essence of this Agreement. Upon request by NIKE, UNIVERSITY shall require designated Coaches and Staff to provide NIKE with written or oral reports concerning the NIKE Products supplied to each through NIKE's product development and testing program. Such reports shall address the fit, wear characteristics, materials and construction techniques of such Products.

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

11. ADVERTISING APPROVALS.

- (a) If for other than wholly internal purposes NIKE (as opposed to consumers through consumer-generated content) desires to use the UNIVERSITY Marks in any consumer advertising or promotion, NIKE shall first submit a sample or the concept of the proposed advertisement or promotion to UNIVERSITY in writing or electronic format or other fixed media for approval, which approval shall not be unreasonably withheld. UNIVERSITY shall use its best efforts to advise NIKE of its approval or disapproval of the sample or concept within 20 calendar days of its receipt thereof. UNIVERSITY's approval, or disapproval, shall be given in writing (email is acceptable). (If a submission is disapproved, UNIVERSITY's written notice (email is acceptable) thereof shall set forth in reasonable detail the basis for such disapproval.) Any submitted item that has not been disapproved within 20 calendar days of receipt by UNIVERSITY shall be deemed approved. Once a submitted sample or concept is approved, NIKE shall not depart therefrom in any material respect without re-submission of the item and obtaining UNIVERSITY's further approval.
- (b) In the event UNIVERSITY desires to use the NIKE Marks in any advertising or promotion, UNIVERSITY shall first submit a sample or the concept of the proposed advertisement or promotion to NIKE for approval, which approval shall not be unreasonably withheld. Any submitted item that has not been approved within 20 calendar days of receipt by NIKE shall be deemed disapproved.

12. DEVELOPMENT OF NEW LOGO & TRADEMARK OWNERSHIP.

- (a) If UNIVERSITY desires to develop an additional trademark, service mark, symbol and/or logographic in connection with a Covered Program (a "New Logo"), UNIVERSITY shall in writing notify NIKE of such intention and agrees to meet with NIKE, upon NIKE's request, to discuss in good faith the use of NIKE's services to design such New Logo. Such discussions must occur prior to UNIVERSITY's engaging in negotiations with any third party to provide such design services. Should UNIVERSITY elect to have NIKE undertake such design assignment, NIKE shall provide such design services at no expense to UNIVERSITY except as provided below. In the event NIKE designs such New Logo and it is approved by UNIVERSITY, then UNIVERSITY shall be the sole owner of all right, title and interest in and to the New Logo and shall be free to use and market the New Logo as it deems fit. NIKE agrees to execute the documents reasonably necessary to assign all rights in the New Logo to UNIVERSITY prior to any use of the New Logo.

Following the expiration or termination of the Agreement for any reason, NIKE shall have no further rights, except as otherwise provided herein, with respect to the New Logo. UNIVERSITY acknowledges that all trademark/copyright registration and maintenance expenses in connection with the New Logo shall be at its expense and NIKE agrees that it shall not incur any such expense on behalf of UNIVERSITY without UNIVERSITY's prior approval.

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

13. RIGHTS OF FIRST DEALING AND FIRST REFUSAL.

- (a) At NIKE's request, UNIVERSITY shall negotiate with NIKE in good faith with respect to the terms of a renewal of this Agreement. The parties shall not be obligated to enter into an agreement if they cannot settle on mutually satisfactory terms. Prior to July 1, 2022 (the "Exclusive Negotiating End Date") UNIVERSITY shall not engage in discussions or negotiations with any third party with respect to the supply and/or sponsorship of any Products after the Term ("Product Supply/Sponsorship").
- (b) During the Term and for a period of 180 days thereafter, NIKE shall have the right of first refusal for Product Supply/Sponsorship, as follows: If UNIVERSITY receives any bona fide third party offer at any time on or after the Exclusive Negotiating End Date with respect to any Product Supply/Sponsorship, UNIVERSITY shall submit to NIKE in writing the specific terms of such bona fide third party offer in the form of a true and complete copy which shall be on the offeror's letterhead or other identifiable stationery or imprint readily authenticatable by NIKE as having originated with such third-party offeror. NIKE shall have 15 business days from the date of its receipt of such true copy of the third party offer to notify UNIVERSITY in writing if it will enter into a new contract with UNIVERSITY on terms no less favorable to UNIVERSITY than the material, measurable and matchable terms of such third party offer. If NIKE so notifies UNIVERSITY within such 15 day period, UNIVERSITY shall enter into a contract with NIKE on the terms of NIKE's offer. If NIKE fails or declines to match or better the material, measurable and matchable terms of such third party offer within such 15-day period, UNIVERSITY may thereafter consummate an agreement with such third party on the terms of the offer made to UNIVERSITY. Prior to the Exclusive Negotiating End Date, UNIVERSITY shall not solicit, consider or present to NIKE, and NIKE shall not be obligated to respond to, any third party offer for any Product Supply/Sponsorship.

14. RIGHTS FOR NEW PRODUCTS.

From time-to-time during the term of this Agreement, NIKE may add to its Products line one or more items of sports equipment. If at any time during the Term NIKE shall have a bona fide intention to expand its Products line in this sports equipment category by adding any such item(s), then NIKE shall give UNIVERSITY advance written notice of the particular item(s) then in development by NIKE. Once such item is commercially available and meets current industry standards, then such item(s) shall thereafter be deemed to be included in "Products" as defined in Paragraph 1(k) above and "NIKE Products" as defined in Paragraph 1(l) above and covered in all pertinent respects by the terms hereof, and

UNIVERSITY shall no longer be permitted to source such Products from a manufacturer other than NIKE. Thereafter, UNIVERSITY shall make such new Product item(s) available to Coaches, Staff and/or Team members, NIKE shall supply UNIVERSITY with sufficient quantities for such purpose to be mutually agreed upon by the parties, including quantities equal to or greater than the quantities of any comparable item(s) which UNIVERSITY, Coaches, Staff and/or Team members are then receiving from a third party, and UNIVERSITY shall thereupon distribute, as is appropriate, such new item(s) to Team members, Coaches and/or Staff for use consistent with the terms of this Agreement.

15. RIGHT OF TERMINATION BY UNIVERSITY.

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

- (a) NIKE is adjudicated insolvent or declares bankruptcy;
- (b) NIKE fails to make payment to UNIVERSITY of any sum due pursuant to this Agreement within 30 days following NIKE's receipt of written notice from UNIVERSITY that such payment is past due; or
- (c) NIKE shall be in material breach of this Agreement, which breach NIKE fails to cure within 30 days of NIKE's receipt of written notice from UNIVERSITY specifying the breach.

16. RIGHT OF TERMINATION BY NIKE.

(a) NIKE shall have the right to terminate this Agreement immediately upon written notice to UNIVERSITY if:

- (1) Either the football or men's basketball program is placed on NCAA probation or UNIVERSITY ceases for any reason to field a team for such program;
- (2) Any Coach, Staff and/or Team member fails to wear or use NIKE Products during Covered Program Activities, or wears NIKE Products altered in violation of the provisions of Paragraph 7 above; provided, however, that NIKE shall have first provided written notice to UNIVERSITY of any such violation and such violation shall then recur during the same Contract Year;
- (3) Any Coach, Staff or Team member fails to perform any material obligations provided for in this Agreement;
- (4) UNIVERSITY, NCAA, Conference or any assignee thereof (including any licensing agent or media partner of the foregoing) enacts, adopts or accedes to any regulation, restriction, prohibition or practice that materially diminishes the value of NIKE's promotional benefits and/or product/brand exposure contemplated by this Agreement including, but not limited to, (i) any diminution of NIKE's logo placement rights (in terms of size, location placement, color prominence and/or numerosity) on the Products supplied hereunder, including any total ban on the placement of camera-visible logo identification on Authentic Competition Apparel, (ii) "air brushing" NIKE identification from still photography or footage, or (iii) use of L-VIS technology or other electronic/computer imaging technology that alters, substitutes or replaces NIKE's stadium/arena signage (including NIKE logo identification that appears on uniforms) with other commercial identification that is seen by home television viewers;
- (5) UNIVERSITY, NCAA, Conference or any assignee thereof (including any licensing agent or media partner of the foregoing) enacts, adopts or accedes

to any regulation, restriction, prohibition or practice, or takes any action, or causes or induces UNIVERSITY, the Athletic Department or any Team to take any action, that materially and adversely affects any rights conveyed to NIKE under this Agreement (including, but not limited to, limiting the right of NIKE to supply brand-identified footwear for Team use, requiring to use of competitive Product or the display of competitor identification, etc.); or

- (6) Any member of the Athletic Department administration (including Coaches and Staff) publicly disparage the quality and/or performance of NIKE Products; or
- (7) UNIVERSITY breaches any warranty or other material term of this Agreement, which breach UNIVERSITY fails to cure, if curable, within 30 days of NIKE's delivery of written notice to UNIVERSITY of any such breach.

- (b) In the event of termination under this Paragraph 16 or Paragraph 17, NIKE will fulfill any Product orders that were placed prior to the effective date of termination and refund UNIVERSITY the remaining unused Cash Purchase Amount. UNIVERSITY shall be entitled to purchase NIKE Product from NIKE at NIKE's published wholesale prices through the remainder of the Contract Year.

17. SPECIAL RIGHT OF EXTENSION.

In the event that the NCAA Division I Committee on Infractions sanctions the UNIVERSITY by placing the institution on probation for a "major violation" of NCAA rules (or UNIVERSITY self-imposes sanctions) that results in either (a) a post-season competition ban, or a ban on television appearances, for the football or men's basketball program, and/or (b) a reduction of the number of football grants-in-aid (scholarships) by six or more scholarships for two or more seasons or men's basketball grants-in-aid (scholarships) by two or more scholarships for two or more seasons, in lieu of exercising its right of termination under Paragraph 16 above, NIKE shall have the right, exercisable upon written notice to UNIVERSITY, to extend the term of this Agreement for the number of Contract Years that corresponds to the number of impacted seasons. (For example, if the men's basketball program was subject to a two-year post-season competition ban, or two-year loss of three scholarships, NIKE would be entitled to extend this Agreement for a period of two additional Contract Years.) Such right shall only be exercised after the issuance of a final decision following the conclusion of any appeal process.

18. NIKE POST-TERMINATION RIGHTS.

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

- (a) Run any non-cancelable media involving the UNIVERSITY Marks and/or the Coach Properties and exhaust all advertising and promotional materials which were produced prior to the effective date of expiration or termination;
- (b) For a period of six months, complete and dispose of any Licensed Products which are on-hand or in-process, and fulfill orders received prior to the effective date of expiration or termination, and provided royalties thereon are paid and reported in accordance with the provisions of this Agreement and/or the Retail License; and
- (c) In perpetuity, without restriction, the non-exclusive use for in-house historical purposes any materials that depict the Coach Properties or UNIVERSITY Marks. UNIVERSITY understands NIKE is not obligated to delete or remove Activity Based Information from any database or storage device.

19. REMEDIES.

UNIVERSITY and NIKE agree that, in the event that either party breaches any material term or condition of this Agreement, in addition to any and all other remedies available to the other party at law or in equity, such other party shall be entitled to seek injunctive relief from such further violation of this Agreement, pending litigation as well as on final determination of such litigation, without prejudice to any other right of such other party.

20. INDEMNITY.

As between the parties, each party acknowledges that it will be responsible for claims or damages arising from personal injury or damage to persons or property to the extent they result from negligence of its employees. The liability of the University of New Mexico shall be subject in all cases to the immunities and limitations of the New Mexico Tort Claims Act, Section 41-4-1 *et seq.*, NMSA 1978, as amended.

21. NOTICES.

All notices, statements and payments provided for herein shall be in writing and deemed given if sent postage prepaid via registered or certified mail, by express courier service, or by email (if provided) to the parties at the addresses given below, or such other addresses as either party may designate to the other. Notwithstanding the foregoing, any notice of default or other breach must either be sent via registered or certified mail, or by express courier service with confirmed delivery. Any written notice shall be deemed to have been given at the time it is confirmed delivered.

NIKE USA, Inc. One Bowerman Drive Beaverton, OR 97005-6453 Attn: Legal Dept., Contracts Specialist – Sports Marketing	University of New Mexico Department of Intercollegiate Athletics 1 University of New Mexico, MSC04 2680 Albuquerque, NM 87131-0001 Attn: Director of Athletics
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22. RELATIONSHIP OF PARTIES.

The parties shall perform hereunder as independent contractors. Accordingly, nothing contained in this Agreement shall be construed as establishing an employer/employee, partnership or joint venture relationship between UNIVERSITY, or any affiliated entity, and NIKE.

23. ASSIGNMENT/DELEGATION/PASS THROUGH.

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

24. WAIVER.

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

25. SEVERABILITY.

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

26. ADDITIONAL WARRANTIES.

UNIVERSITY represents, warrants and covenants that, in connection with the Covered Programs:

- (a) To the extent UNIVERSITY has approval rights over the use by any third-party (e.g., other UNIVERSITY sponsors, broadcast partners, etc.) of any photographs or video of footage in which NIKE Products appear as actually worn/used by Team members, Coaches and Staff (e.g., game-action photos, photo day shots, television commercials featuring any Team member or Coach using or wearing Products, etc.), it shall not approve or permit such photos or video to be used with any NIKE Marks that appear therein removed, airbrushed, digitally altered or otherwise obscured.
- (b) No agreement, contract, understanding or rule of any national, international or collegiate governing body exists which would prevent or limit performance of any of the obligations of the UNIVERSITY hereunder.
- (c) Neither the UNIVERSITY, nor to the best of the UNIVERSITY's knowledge, any Coach or any Staff member is party to any oral or written agreement, contract or understanding which would prevent or limit the performance of any obligations set forth in this Agreement. Except as provided for in Paragraph 3(b), UNIVERSITY further represents, warrants and covenants that during the Term UNIVERSITY will not:
 - (1) Sponsor, endorse or allow Coach or any Staff member to sponsor, endorse, wear and/or use athletic footwear or other Products or running/fitness social networks designed, licensed, manufactured, branded, sold, hosted or presented by or on behalf of any manufacturer other than NIKE;
 - (2) Enter into, or allow Coach or any Staff member to enter into, any endorsement, promotional, consulting or similar agreement (including the sale of signage or other media) with any manufacturer of Products other than NIKE;
 - (3) Sell to any person or entity NIKE Products purchased hereunder, except for the sale of game-worn jerseys for fundraising/auction purposes or in the normal course of disposal of surplus property in accordance with Paragraph 7(e)(3);
 - (4) Permit the trade name, trademark, name, logo or any other identification of any manufacturer of Products other than NIKE to appear on signage at Covered Program Activities, except for any product suppliers noted on Schedule A (including, but not limited to, practices, games, exhibitions, clinics, sports camps, photo sessions and interviews); or
 - (5) Take any action inconsistent with the endorsement of NIKE Products, or allow Coach or any Staff member to take any such action.

- (d) It has the full legal right and authority to enter into and fully perform this Agreement in accordance with its terms and to grant to NIKE all the rights granted herein.

27. COMPLIANCE.

UNIVERSITY and its representatives have complied and will comply with all applicable anti-bribery and anti-corruption laws and regulations in connection with this Agreement, and have not engaged and will not engage, directly or indirectly, in the offer, payment, promise, solicitation, or acceptance of a bribe, kickback, or other improper benefit in connection with this Agreement. If UNIVERSITY or its representatives become aware of any violation (as opposed to unfounded claims) of the foregoing provision or any anti-bribery or anti-corruption laws or regulation in connection with this Agreement, UNIVERSITY shall give notice to NIKE. UNIVERSITY has undertaken and will undertake reasonable measures to ensure compliance with the foregoing provisions by UNIVERSITY and its representatives.

28. CONFIDENTIALITY.

UNIVERSITY shall not (nor shall it permit or cause its employees, agents, attorneys, accountants or representatives to) disclose the financial or other material terms of this Agreement, the marketing plans of NIKE, or other confidential material or information disclosed by NIKE to UNIVERSITY (or by UNIVERSITY to NIKE) (including information disclosed during audit) to any third party, except its regents or as may be required by law. This Paragraph shall survive the expiration or termination of this Agreement.

29. CAPTIONS.

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


30. ENTIRE AGREEMENT.


This Agreement shall constitute the entire understanding between UNIVERSITY and NIKE as to the matters set forth herein. This Agreement may not be altered or modified except by a written agreement, signed by both parties.

(SIGNATURES FOLLOW ON NEXT PAGE-REMAINDER OF PAGE IS BLANK)

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be effective as of the date set forth above.


UNIVERSITY OF NEW MEXICO


By: 
Eddie Nuñez
Its: Director of Athletics

By: 
Bruce Cherrin
Its: Chief Procurement Officer

Dated: Oct 23, 2020

NIKE USA, INC.

By: 
Kit Morris
Its: Sr. Director, College Sports Marketing

By: 
Nico Barthes
Its: VP, North America Sports Marketing

Dated: Oct 23, 2020

SCHEDULE A

Pre-existing Contract/Supplier

PROGRAM	SUPPLIED PRODUCT	SUPPLIER NAME	CONTRACT EXPIRATION
Men's Golf	Footwear, apparel	FootJoy	ongoing
Men's Golf	Golf bags	PING	ongoing
Baseball	Headwear	47 Brand	ongoing
Softball	Bats, equipment	Easton	ongoing
Baseball	Bats, equipment	Wilson	ongoing

SCHEDULE B

Performance Bonuses

Performance Achievement	Cash Performance Bonus
Football:	
Plays in a Tier 1 Bowl Game*	\$10,000
Plays in a CFP semifinals game**	\$25,000
Plays in the National Championship game	\$50,000
Wins the National Championship	\$100,000
Basketball (men's)	
Participates in NCAA Sweet 16	\$10,000
Participates in NCAA Elite Eight	\$15,000
Participates in NCAA Final Four	\$25,000
Wins NCAA Championship Game	\$35,000
Basketball (women's)	
Participates in NCAA Sweet 16	\$10,000
Participates in NCAA Elite Eight	\$15,000
Participates in NCAA Final Four	\$25,000
Wins NCAA Championship Game	\$35,000
Track & Field (men's & women's)	
NCAA Outdoor (Team) 1st Place	\$10,000
NCAA Outdoor (Team) 2nd Place	\$ 5,000
NCAA Outdoor (Team) 3rd Place	\$ 2,000
NCAA Outdoor (Team) 4th Place	\$ 1,000
NCAA Indoor (Team) 1st Place	\$ 7,500
NCAA Indoor (Team) 2nd Place	\$ 3,000
NCAA Indoor (Team) 3rd Place	\$ 1,000
NCAA Indoor (Team) 4th Place	\$ 500
Cross Country (men's & women's)	
NCAA 1st Place	\$ 7,500
NCAA 2nd Place	\$ 3,000
NCAA 3rd Place	\$ 1,000
NCAA 4th Place	\$ 500

All football bonuses are cumulative. All basketball bonuses are non-cumulative (i.e., bonus will be paid only for the highest level achieved).

* means any non-CFP game with a team payout of at least \$3 million.

** means the two games designated from the following six bowl games (or replacement bowl games) to serve as the College Football Playoff semifinals during the relevant Contract Year: Peach Bowl, Cotton Bowl, Orange Bowl, Sugar Bowl, Fiesta Bowl, Rose Bowl and National Championship Game