

LICENSING SERVICES AGREEMENT

This LICENSING SERVICES AGREEMENT (the “Agreement”) is by and between Affinity Licensing, LLC., a California based limited liability company, having its principal place of business at 5751 Palmer Way, Suite G, Carlsbad, CA 92010 (“Affinity”), and **THE REGENTS OF THE UNIVERSITY OF NEW MEXICO (“UNM”)**, a constituent institution of the State of New Mexico having its principal place of business at 1 University of New Mexico, Albuquerque, New Mexico (the “University”).

PRELIMINARY STATEMENTS

WHEREAS, the University has adopted various distinct marks for the utilization of the University, which marks, as detailed on Exhibit A, are the subject of various registrations issued to the University by the United States Patent and Trademark Office as well as various unregistered marks (the “Trademarks”) and as a result of the long term continuous utilization of said marks by the University, considerable goodwill has inured to the benefit of the University; and

WHEREAS, Affinity is engaged in the business of marketing and arranging for the licensing of marks on behalf of various universities; and

WHEREAS, the University desires to engage Affinity pursuant to RFP-2213-20 (“Request for Proposal”), any amendments thereto, and Affinity’s response to RFP to negotiate and manage license agreements with companies desiring to utilize the Trademarks of the University; and

WHEREAS, Affinity desires to accept such engagement subject to the terms and conditions of this Agreement.

NOW, THEREFORE, in the consideration of the foregoing and the mutual covenants contained herein, the parties hereto agree as follows:

1. Retention of Affinity. The University hereby retains the services of Affinity as its exclusive licensing administrator and Affinity hereby agrees to act as licensing administrator on behalf of the University, in connection with those services which are described in Section 2 of this Agreement. Notwithstanding the foregoing, University shall be permitted to maintain and establish partnerships without violating the term of this Agreement.
2. Services and Agreements of Affinity. Affinity hereby agrees to provide the following services to the University (hereinafter collectively referred to as “Services”) during the Term of this Agreement, as defined in Section 6, below:
 - (a) On behalf of the University, Affinity shall use good faith efforts to locate potential licensees and to negotiate and manage License Agreements with licensees that comply with the University’s trademark policies and product quality requirements.

(b) Affinity shall use good faith efforts to ensure that all manufacturing, marketing and distribution of products or services that utilize the University's registered and unregistered marks are done in compliance with the License Agreement and with the University's prior approval.

(c) Affinity shall collect all royalties and receive reports from licensees on behalf of the University. Affinity shall routinely review reports for completeness, and to ensure accurate royalty reporting. Affinity shall submit to the University a complete report and royalty payment, as detailed in Section 4 of this Agreement.

(d) On behalf of the University, Affinity shall use good faith efforts to locate and notify all companies found to be infringing upon the University's marks or otherwise violating the University's rights in its marks. Should infringing companies not comply with the University's rights, Affinity shall, when in its discretion it deems it appropriate, issue a *cease and desist* notice on behalf of the University. Affinity's obligation hereunder does not include initiating and maintaining lawsuits on behalf of the University against such companies for infringement. If Affinity and the University so agree, Affinity will manage any infringement litigation involving the Trademarks for a fee to be determined and agreed upon by Affinity and the University at that time.

(e) Affinity will use good faith efforts to obtain payment from licensees in default under the royalty payment provisions of the Licensing Agreement and notify the University of such defaulting licensees. Affinity's obligation hereunder does not include initiating and maintaining lawsuits against such licensees for payment.

(f) Affinity will review royalty rate trends within the United States (and its territories) on an ongoing basis and make recommendations to University for changes in rates, licensing fees, and minimum guaranteed payments for all uses of the Marks.

3. Duties and Agreements of University. The University agrees to provide Affinity all information in its possession relating to previous and current use of its registered and unregistered marks, and any other information that will assist Affinity with the performance of the Services.

(a) University shall designate a primary licensing contact to assist Affinity in the review and final approval of product designs, license agreements and any other marketing and/or promotional concepts.

4. Fees and Billing.

(a) To Affinity. During the Term of this Agreement, as compensation for the Services, Affinity shall be entitled to a percentage of the royalties collected from those License Agreements negotiated and/or managed by Affinity. During the term of this Agreement, such percentage shall equal fifteen percent (15%) on the first four hundred fifty thousand (\$450,000) in royalties collected annually, and ten percent (10%) on all annual royalties collected above four hundred fifty thousand (\$450,000), collectively in total referred to as "Gross Royalty".

(b) To the University. Affinity shall pay eighty-five percent (85%) on the first four hundred fifty thousand (\$450,000) in royalties collected annually, and ninety percent (90%) on all

annual royalties collected above four hundred fifty thousand (\$450,000), collected by it from the License Agreements negotiated and/or procured through the efforts of Affinity to the University during the Term of this Agreement. In the event the University receives royalty payments directly from licensees negotiated and/or procured by Affinity for the University and who have executed a License Agreement, the University shall notify Affinity and Affinity will invoice the University for its portion of the royalties.

(c) Marketing Budget. Affinity shall contribute up to \$10,000 annually to create a marketing budget to promote and grow the University's brand licensing efforts. Affinity and University shall work together in good faith to determine how and when this marketing fund is used to advance University's licensing program.

(d) Additional Considerations. Affinity shall pay to University a signing bonus of \$50,000. Payment terms shall be \$25,000 upon execution of agreement with the remaining balance payable in annual installments of \$5,000 each year by June 1.

(e) Payments and Collections. Affinity shall contract with licensees to receive payments on behalf of the University from licensees at least as often as within thirty (30) days following the end of each calendar quarter. Affinity shall submit all reports and payments received from licensees, less Affinity's commission. Payment shall be made within 60 days following the end of each royalty reporting period, defined as Jan. 1, April 1, July 1, and Oct 1, with payments being issued to UNM in early March, June, September and December.

5. Exemptions. University and Affinity agree with the basic concept that any user of its marks and logos on licensed products should be an approved licensed vendor and the parties will make every good faith effort to comply with this concept. Exemptions are outlined in Exhibit B. The University also reserves the right to exempt any user from royalty payments if circumstances warrant that it would be in the best interests of the University, such as University purchases of licensed products which are not for resale.

6. Term. This Agreement shall begin effective July 1, 2020 and shall expire on June 30, 2025, unless terminated earlier pursuant to this Agreement. This Agreement may be extended for an additional five (5) year period upon mutual written agreement by the parties in accordance with NMSA 13-1-150, 1978 as amended. The initial term and any renewal period are referred to herein as the "Term."

Throughout the Term, this Agreement shall be automatically amended regarding changed required by law, the National Collegiate Athletic Association ("NCAA") rules and regulations, and the rules and regulations of the Mountain West Conference.

7. Termination. In addition to any other provisions of this Agreement, this Agreement may be terminated prior to the expiration of the Term pursuant to the following conditions:

(a) The University has the right to immediately terminate this Agreement by written notice to Affinity, with termination effective as of such written notice, upon the occurrence of any of the following events:

(i) Willful and material falsification of any records required to be maintained or reports required to be provided by Affinity to the University; or

(ii) Affinity becomes bankrupt or insolvent or has filed against it a petition in bankruptcy or for reorganization or arrangement or the appointment of a receiver or trustee of all or a portion of such party's property, or if Affinity makes an assignment for the benefit of creditors;

(b) The University has the right to terminate this Agreement upon thirty (30) days' notice to Affinity, by written notice specifying the details of the grounds for termination and advising that unless Affinity immediately proceeds to cure and does cure the default(s) within said thirty (30) days, in any of the following situations:

(i) Misuses or unauthorized uses of the Trademarks or any other conduct which in the University's reasonable judgment is detrimental to the goodwill of the University or otherwise injurious to the best interest of the University; or

(ii) Failure to comply with any other obligation imposed on Affinity by or through this Agreement.

(c) Affinity has the right to immediately terminate this Agreement by written notice to the University, with termination effective as of such written notice, upon the occurrence of any of the following events:

(i) if the University becomes bankrupt or insolvent or has filed against it a petition in bankruptcy or for University or arrangement or the appointment of a receiver or trustee of all or a portion of such party's property, or if the University makes an assignment for the benefit of creditors.

(d) Affinity has the right to terminate this Agreement upon thirty (30) days notice to the University, by written notice specifying the details of the grounds for termination and advising that unless the University immediately proceeds to cure and does cure the default(s) within said thirty (30) days, if the University fails to comply with any other obligation imposed on the University by or through this Agreement.

(e) Within thirty (30) days after termination or expiration of this Agreement, Affinity shall deliver to the University a statement indicating the number and description of all license agreements with Licensees which it has entered into on behalf of the University and a copy of each and every such agreement.

8. Obligations Upon Termination or Expiration. Upon termination or expiration of this Agreement, Affinity and the University shall each cease holding itself out as being affiliated with the other. Affinity shall return to the University any official artwork of the University, as well as all contracts and business records relating to the licensing of the University's Trademarks within 30 days of receipt of notice of termination or expiration. Provided however, Affinity may retain copies of any of such items to the extent reasonably necessary to facilitate and monitor the winding down of this relationship. In addition, Affinity will promptly notify any licensees of the termination or expiration of this Licensing Services Agreement. Affinity shall continue to receive its percentage of the Gross Royalty, as defined in section 4 above, throughout the usual Term of

this Agreement, and for a period of one year following termination or expiration of this Agreement on all license agreements in effect as of the date of termination or expiration of this Agreement, regardless of when such license agreements expire.

9. Relationship of the Parties. The University and Affinity each acknowledge and agree that in fulfilling the mutual obligations required pursuant to this Agreement, Affinity is acting and will act as an independent contractor and not as an employee of the University. Except for the authority to engage in activities described in Section 2 of this Agreement, Affinity acknowledges and agrees that it is not an agent for the University and it will not have nor will it represent or hold itself out as having authority to bind the University or to incur any obligations whatsoever on behalf of the University. Neither party hereto shall be liable to any third party in any way for any engagement, obligations, commitment, contract, or transaction for any act or omission to act of the other except as provided herein.

10. Liability. 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 the 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, Sections 41-4-1 et seq. NMSA 1978, as amended.

11. Insurance. Affinity will procure and maintain during the life of this contract, Professional Liability Insurance in an amount not less than \$1,000,000 for each occurrence. The insurance coverage will not be canceled or materially changed except after thirty (30) days written notice has been provided to University.

(a) Duty to Hold Harmless. Should the University terminate this agreement, rightly or wrongly, with or without cause, the University agrees to assume and honor any license agreement properly entered into with any licensee and agrees to hold Affinity harmless.

12. Assignment. This Agreement may not be assigned by either party without the prior written consent of the other. When assigned with the other party's prior written consent, this Agreement is binding upon and shall inure to the benefit of the successors and assigns of Affinity and the University.

13. Notices. All notices provided for hereunder shall be deemed sufficient if in writing and delivered personally, or sent by registered or certified mail or express courier, to the parties hereto at the addresses given herein or at such other addresses as the parties may from time to time designate in writing, currently UNM Athletics & Procurement/Legal office.

14. Waiver. No waiver of this Agreement shall be valid unless the waiver is in writing and signed by the parties. No waiver of any of the provisions of this Agreement shall constitute a waiver of any other provision (whether or not similar), nor shall such waiver constitute a continuing waiver unless expressly provided for in writing.

15. Severability. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of the remaining provisions.

16. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of New Mexico, without regard to its conflict of laws principles.

17. Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof. This Agreement may not be modified orally and no claimed modification shall be valid unless in writing and signed by both parties. This Agreement shall supersede all previous communications, representations, or agreements, either verbal or written, between the parties hereto with respect to the subject matter hereof.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered as of the day and year first above written.

AFFINITY LICENSING, LLC:

By: 
Wil Spires (Jul 9, 2020 16:23 EDT)

Print Name: Wil Spires

Title: Partner

Date: Jul 9, 2020

UNIVERSITY OF NEW MEXICO DEPARTMENT OF INTERCOLLEGIATE ATHLETICS:

By: 
Eddie Nunez (Jul 9, 2020 14:57 MDT)

Print Name: Eddie Nuñez

Title: Director of Athletics

Date: Jul 9, 2020

THE REGENTS OF THE UNIVERSITY OF NEW MEXICO:

By: 
Bruce Cherrin (Jul 12, 2020 07:43 MDT)

Print Name: Bruce Cherrin

Title: Chief Procurement Officer

Date: Jul 12, 2020

Exhibit A

Trademarks: Trademarks of University, among others specified by University from time to time.

Exhibit B

EXEMPTIONS

UNM concurs in the basic concept that no user of Marks should be exempt from royalty payments and shall make every good faith effort to comply with this concept. However, the University reserves the right to exempt any user from royalty payments if circumstances warrant that it would be in the best interests of the University and does not unduly impact Affinity's ability to generate royalties under this Agreement. Exceptions include, but are not limited to those set forth below:

- University purchases of team issued uniforms/apparel/gear, business supplies, and recognition awards not for resale.
- Use by OUTFRONT Media ("Outfront") or its sponsor, or UNM Sports Properties, LLC, regarding any promotion sponsorships, commercial endorsements, or other activities, covered by Outfront's multi-media rights agreement with the University dated March 2, 2020. Notwithstanding the above, any such use of University Trademarks on merchandise shall comply with licensing polices set forth in this service agreement.