



PROPOSAL for ("CLIENT")  
University of New Mexico  
Athletic Website



SIDEARM Sports  
Josh Waldman  
Sales Executive  
335 Hinds Hall  
Syracuse, NY 13244  
Office: 315.443.1872  
Fax: 866.436.4666  
[www.sidearmsports.com](http://www.sidearmsports.com)  
[joshw@sidearmsports.com](mailto:joshw@sidearmsports.com)



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#### OVERALL WEBSITE FEATURES

All features listed under SIDEARM components are based on modules already developed by SIDEARM Sports ("SS").

#### 2014 NEW WEB DESIGNS (examples below)

[www.texassports.com](http://www.texassports.com)

[www.cuse.com](http://www.cuse.com)

[www.kuathletics.com](http://www.kuathletics.com)

[www.heisman.com](http://www.heisman.com)

#### Current Client List

<http://www.sidearmsports.com/our-clients/>

#### Company Services

<http://www.sidearmsports.com/athletic-websites/>

#### Company Profile

<http://www.sidearmsports.com/the-company/company-profile/>

#### Customized Design

SS will work directly with CLIENT on the design of the athletic Website. Initially SS will create a prototype design for CLIENT based on an initial design consultation. There are no additional charges for revisions to the prototype during the development of the website.

#### Adaptive Mobile Web Design

Adaptive websites detect a user's device before loading a webpage and then deliver the best version of that site for the target device — desktop, tablet, smartphone, web-enabled TV, any other select devices.

#### Data Imports

SS will import CLIENT's current site data into their new SIDEARM site upon CLIENT's current provider supplying an export in an approved format. The import typically includes rosters, stories, schedules, photos, videos. CLIENT will work with SIDEARM regarding the manual input of any additional elements that may be necessary to launch the new CLIENT site. Depending upon format available this typically includes PDFs, forms, sport files, or any additional pieces that SIDEARM is not able to import from the CLIENT's export.

Prior to launch, SIDEARM provides training for CLIENT and will address any manual input that CLIENT may need completed in collaboration with SIDEARM Sports.

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### SIDEARM SPORTS Website Platform Features:

Features and services listed below are included in the standard platform license. Additional, and optional features are outlined on page 8.

### Social, Video, & Stat Components

#### Social Media Integration

Ability to push stories/results to Facebook, Twitter, G+, Instagram and other social platforms.

#### Social Promotion

Scheduled events can automatically update on Facebook/Twitter with event details.

#### Social Fan Engagement

Fans can interact and share content (i.e., photos, stories) across a variety of social networks.

#### Media Burst

In one interface send a short message via Facebook, Twitter, G+, SMS, Email.

#### YouTube Integration

Integrate unlimited YouTube videos & playlists within stories or other areas of the site.

#### Video Integration

Ability to upload video content directly into the SIDEARM platform via YouTube or a dedicated All-Access player.

#### Game Stats

CLIENT can upload a XML files from StatCrew, DakStats, Presto, or CyberSports.

#### Stat Integration

After uploading a game XML file the following automated updates take place

1. Score posts to schedule component
2. Game Stats are updated
3. Cumulative Stats are updated
4. Player Stats (game, season, career) on rosters are updated
5. Stats can be shared with the NCAA for post-game reporting
6. Stats can be shared with opposing team or conference (if SS Client)

#### Live Stats

- SS fully responsive live stats are included in two formats, fan and media versions.
- Live Stats are available for FB,SOC/FH,VB,BB,ICE,LAX,BASE/SB

Example Fan Stats	Example Media Stats
<a href="http://www.sidearmstats.com/texas/football">www.sidearmstats.com/texas/football</a>	<a href="http://www.sidearmstats.com/texas/football/media">www.sidearmstats.com/texas/football/media</a>
<a href="http://www.sidearmstats.com/syracuse/mbball">www.sidearmstats.com/syracuse/mbball</a>	<a href="http://www.sidearmstats.com/syracuse/mbball/media">www.sidearmstats.com/syracuse/mbball/media</a>

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Any modifications that ("CLIENT") wishes to make to their website after launch may result in additional billable hours. The current billable rate is \$150 per hour, price subject to change.

Changes to the headers after launch are not included in the annual fee and warrant a charge of \$75 per header, price subject to change.

## SIDEARM PLATFORM COMPONENTS

### Stories

Clients can integrate stories with photos, videos, statistical data, and social sharing.

### Rosters

Supports dynamic action photos, season stats, career stats, and related headlines.

### Schedules

Includes team logos/info, dynamic box scores, and ability for fans to sync to their devices.

### Sports Files

Unlimited static pages within the Website (i.e., compliance, facilities). Ability to password protect.

### Documents

Upload unlimited number of documents (i.e., PDF, Word, Excel)

### Navigation

CLIENT has complete control over all navigational links throughout the site.

### Images

CLIENT has the ability to upload and edit images (i.e., crop, resize, adjust)

### Photo Gallery

Upload unlimited galleries with up to 100 photos per gallery.

### Staff Directory

Upload and manage photos, bios, as well as the ability to categorize staff by sport.

### Administrators

Ability to grant authenticated permission for specific areas of SIDEARM.

### Event Calendar

Dynamically display upcoming games/events.

### Recent Results

Dynamically display results of recent games/events.

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**Student-Athlete Awards**

Display Athlete of the week/month with their dynamic photo and bio.

**Hall of Fame**

Manage your HOF with similar functionality of a roster.

**Poll Management**

Create interactive fan polls and show dynamic results.

**Additional Components**

**Advertising**

Manage ad campaigns across the Website with reporting. CLIENT agrees to incorporate at least three (3) standard IAB advertising units per page (such as: 728x90-leaderboard, 970x66- super leaderboard, 300x250- story ad, etc.) with at least one and a half units (1.5 units) "above the fold", with exception of the Home page which may include a minimum of 2 standard IAB ad units, with at least one (1) "above the fold" to be mutually agreed upon.

**Splash Pages/Drop Downs**

Ability to create and upload unlimited scheduled promotions.

**Auctions**

Generate revenue by utilizing auctions. CLIENT is responsible for shipping and any applicable sales tax.

**Storefront**

Generate revenue by promoting your team store by utilizing promotional pieces of the CMS.

**RSS Feeds**

Allow fans to consume content (stories, schedules, rosters) from any RSS reader.

**Factlets**

Post facts about the athletic program such as "Did You Know" or "This Day in CLIENT History."

**Press Clips/In The News**

Highlight content from 3<sup>rd</sup> party sources (i.e., ESPN, USA Today).

**Email Designer/Newsletter**

Send out custom designed newsletters to fans, media, donors, athletes.

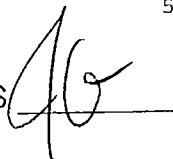
**URL Redirects**

Ability to create custom short URL's for any page on the website.

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### Customer Relationship Management

Generate reports and engage with customers based on past activity.

### Forms/Surveys/Questionnaires

Build and deploy a non-payment/sensitive form on the website. Export results to Excel.

### Forms Which Accept Payment

SS can build custom payment forms (e.g. camps, golf outing, donations).

## Typical Project Timeline

### Phase 1 Planning (3-5 Business Days)

- Meet with designers virtually to discuss your design requirements
- Provide SIDEARM Sports with your logos/photos/ and any other design materials
- Choose a domain if you don't already have one secured

### Phase 2 Conception (20-35 Business Days)

- Discuss design requirements & CLIENT supplies assets. SS will create a prototype
- SS collects feedback from CLIENT based on prototype. Makes necessary revisions
- CLIENT approves design (no changes may be made after this approval)
- CLIENT & SS set launch date

### Phase 3 Integration (5-10 Business Days)

- SS Integrates approved design into SIDEARM Software
- SS begins work on creating customized graphic headers
- CLIENT will receive virtual training on SIDEARM Software

### Phase 4 Content (10-20 Business Days)

- SS Imports any approved data Export
- Once trained, CLIENT adds content to the SIDEARM Software
- CLIENT informs SS when all content has been added

### Phase 5 Launch (3-5 Business Days)

- SS completes final review of the site
- Launch of CLIENT'S new SS website based on agreed upon date
- SS setup Google analytics to gather website traffic information

### Phase 6 Support (on-going)

- SS will address any technical or integration concerns expeditiously
- Ensure any critical issues are addressed immediately

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### SIDEARM Support

Unlimited platinum level support is included in the annual fees. Reach SS via phone, email, or our ticketing system.

Standard academic year support hours are:

Monday – Thursday	8am-10pm EST
Friday	8am-1am EST
Saturday	11am-1am EST
Sunday	12 pm-5pm EST

Nightly software upgrades are provided at no charge and administered between 3-6 am EST.

### Social Stadium

A sticky social experience great for game-day. Combines social data from Twitter & Instagram, as well as CLIENT official content (stories, photos, videos) in real time. Includes gameification engine that allows the content fans are talking most to rise to the top  
Example: <http://dayton.sidearmsocial.com>

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### iOS/Android Apps

SS will launch a branded App in both the Apple and Android App Stores through YinzCam. SS integrates with the SS website and eliminates dual entry.

Apps can pull in stories, schedules, rosters, photo galleries. Support push notifications, and integration with social content, etc.

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### Audio/Video Live Streaming (Paid Subscription model)

SS will launch a dedicated All-Access streaming portal.

- No Setup or Ongoing Fees
- No limit as to the number of events streamed
- CLIENT and SS set package pricing for end user
- Ability to Archive Games

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If CLIENT prefers to stream events FREE to the end user, SS will determine pricing based on event details.

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### Compensation Terms:

#### Contract Terms

CLIENT receives 80% of Auction  
 CLIENT receives SIDEARM Social (No Fee)  
 CLIENT receives Tier 3 YinzCam iOS/Android App (\$10,000.00 value No Fee)  
 CLIENT receives Live Stats, both Fan and Media for all available sports (No Fee)  
 CLIENT receives 100 On Demand videos per year at no cost (Anything above 100 would cost .50/GB)  
 With respect to Team Store Merchandise Gross Revenue, SS is guaranteed minimum \$7,500 annual payment, which payment allows UNM to have permanent third-party e-commerce locations on its website in UNM's sole discretion.  
 CLIENT/Learfield receives 100% of advertising inventory

#### Contract Pricing

One Time Design and Build including Data Transfer (included)  
 SIDEARM Software and Support (included)

Yearly technology updates (included)

Redesign in year two & year four if wanted by UNM (included). At no additional charge, SS will provide Client with yearly technology updates to existing modules. At no additional charge, SS will provide a redesign in years two and year four if requested by UNM, such redesign to include SS's then available core technology offerings, modules, and functionality, including but not limited to social and apps. Where such technology is completely new or unrelated to the technology provided under this Agreement, SS will be obligated to use only commercially reasonable efforts to include such technology, modules and functionality in such redesigns. In considering whether a specific update would be commercially reasonable, the parties will consider, among other things, the terms on which SS offers such technology to its existing and its prospective clients.

In consideration for the services provided herein, CLIENT agrees to provide the following payments:

(July 15, 2015-July 14, 2016)	No Fee
(July 15, 2016-July 14, 2017)	No Fee
(July 15, 2017-July 14, 2018)	No Fee
(July 15, 2018-July 14, 2019)	No Fee

Pricing is valid for 60 days.  
 SS accepts checks, credit cards and purchase orders.

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## Website Development & Hosting Services Terms & Conditions

1. **GENERAL** These terms and conditions, the attendant proposal for professional services ("Proposal"), and all documents incorporated by reference therein, are binding upon you ("Client") and Internet Consulting Services, Inc. d/b/a SIDEARM Sports ("SS", "we" or "us"), constitute the entire agreement between Client and SS regarding the website development and hosting and other services to be provided to you, and unless specifically indicated to the contrary in a writing signed by us, will override any contradictory terms and/or conditions shown on any requests for proposals, specifications, bid packages, purchase orders, contracts, etc.

2. **SERVICES** SS will provide the design, programming, hosting and other consulting services (the "Services") related to the development and maintenance of Client's athletic website (the "Client Site") throughout the Term in accordance with the specifications set forth in the Proposal. Client shall deliver to SS all text, pictures, sound, graphics, video and other materials ("Content") to be incorporated by SS into the Client Site.

3. **FEE** The fee for the Services includes a one-time site design and build, the SIDEARM software license fee, and such other fees as shall be set forth in the Proposal (collectively, the "Fee"). Any services requested by Client outside the scope of the Proposal will be billed separately in accordance with Section 4 hereof. Client may elect to pay the Fee annually, quarterly or monthly, in advance. In the event the Fee is overdue by more than 30 days, the overdue amount shall be subject to a late payment charge of 1.5% per month, or the maximum rate allowed by law, whichever is less. The Fee shall be paid in full each pay period, without reduction or set off of any kind.

3.1 **Suspension of Service; Costs.** Failure to pay the Fee within 30 days following the due date may result in suspension of Services. We reserve the right to charge a reconnection fee to re-establish connection after suspension due to non-payment

3.2 **Taxes.** All Fees due hereunder shall be exclusive of federal, state, municipal or other government excise, sales, use, occupational or similar taxes existing as of the date of this Agreement or enacted in the future. Client shall reimburse SS any tax (excluding taxes on SS' net income) that SS may be required to collect or pay, now or at any time in the future, and that are imposed upon the sale or delivery of items or Services provided under this Agreement.

4. **ADDITIONAL SERVICES** In the event Client requests any services beyond the Services set forth in the Proposal, then, absent an agreement to the contrary, following prior notification to Client, SS will bill Client for such services at the hourly rate (\$150 per hour, subject to change) then in effect. Additional services include, but are not limited to, any custom enhancements, additional programming, additional design, and custom upgrades. SS shall send Client an invoice for any additional services at the end of the calendar month in which such services were rendered, and Client shall pay each invoice within 30 days after receipt. During the Term, Client shall not engage any third party to provide additional services in the

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nature of software or applications with respect to the Client Site, without the prior written consent of SS, which shall not be unreasonably withheld.

5. WARRANTY; LIMITATION OF LIABILITY

5.1 Warranty. SS warrants that the Client Site will perform in accordance with these terms and conditions and the Proposal. As Client's sole and exclusive remedy, and SS' entire liability for any breach of the foregoing warranty, SS will, at its sole option and expense, promptly remedy any deficiency in the Client Site. The software will operate at least 99.7% of the time and will maintain sufficient bandwidth for the requirements of the site. SS will establish and maintain the requisite system elements to measure and monitor such uptime calculation. Without limiting the generality of the foregoing, the parties acknowledge and agree that SS may perform regular maintenance with respect to the software and the hosted platform between the hours of 12:00 a.m. and 4:00 a.m. EST, and that provided that any such downtime, outages or related issues will not count towards downtime pursuant to this section.

5.2 Disclaimer. EXCEPT AS EXPRESSLY SET FORTH HEREIN, THE SERVICES ARE PROVIDED "AS IS," WITHOUT WARRANTY OF ANY KIND, AND SS EXPRESSLY DISCLAIMS ALL WARRANTIES OR CONDITIONS OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF TITLE, MERCHANT-ABILITY AND FITNESS FOR A PARTICULAR PURPOSE. CLIENT ACKNOWLEDGES THAT IT IS SOLELY RESPONSIBLE FOR THE CONTENT PROVIDED TO SS, AND SS DISCLAIMS LIABILITY FOR ANY ERRORS, OMISSIONS OR INACCURACIES OF THE CONTENT.

5.3 Carrier Lines. Client acknowledges that access to the Client Site is to be provided over various facilities and communications lines, and information will be transmitted over local exchange and internet backbone carrier lines and through routers, servers, switches, and other devices (collectively, "carrier lines") owned, maintained, and serviced by third-party carriers, utilities, and internet service providers, all of which are beyond SS' control. SS assumes no liability for or relating to the integrity, privacy, security, confidentiality, or use of any information while it is transmitted on the carrier lines, or any delay, failure, interruption, interception, loss, transmission, or corruption of any data or other information attributable to transmission on the carrier lines. Use of the carrier lines is solely at Client's risk and is subject to all applicable local, state, national, and international laws.

5.4 Limitation of Liability. NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY OR TO ANY THIRD PARTY FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING LOSS OF USE, DATA, BUSINESS OR PROFITS) ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, WHETHER SUCH LIABILITY ARISES FROM ANY CLAIM BASED UPON CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, AND WHETHER OR NOT A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE.

6. OWNERSHIP

6.1 Ownership of Content. As between SS and Client, any Content provided to SS by Client under this Agreement or otherwise, and all text, pictures, sound, graphics, video and other data provided

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by users of the Client Site ("User Content"), shall at all times remain the property of Client, and Client shall be solely responsible therefor. SS shall have no rights in such Content or User Content, other than the limited right to use thereof for the purposes expressly set forth in this Agreement. Client represents and warrants that, to the best of its knowledge, the Content does not violate any rights, including without limitation copyrights, of any third parties. Client shall also retain ownership of any domain names related to the Client Site.

6.2 Ownership of SS Intellectual Property. Except as set forth above, SS will retain all right, title and interest in and to (a) any software program, tools, specifications, ideas, concepts, know-how, processes, and techniques which SS has already developed or which SS independently develops, including the SIDEARM software, all modifications and updates thereto, and all intellectual property rights therein, and (b) all designs, development and other work product arising from or in connection with the Services, including without limitation the look-and-feel of the Client Site (collectively, the "SS Intellectual Property"). SS hereby grants Client a limited license to use the SS Intellectual Property during the Term solely in connection with the Client Site; all other uses are prohibited without the express written consent of SS. Nothing in this Agreement will be deemed to prohibit or limit SS' right to perform similar services for any other party during or after the Term.

6.3 Modifications; Derivative Works. Client shall not, and shall not permit others to, modify, reverse engineer, decompile, disassemble, re-engineer or otherwise create or permit or assist others to create or access the SS Intellectual Property, or to create any derivative works from the SS Intellectual Property, without SS' consent. Client shall not modify the SS Intellectual Property or combine the SS Intellectual Property with any other software or services not provided or approved by SS.

6.4 Traffic Assignment. Client agrees that Website traffic shall be assigned to SS (or its affiliate, or parent company) for purposes of syndicated audience measurement reports, during the TERM. Client may be required to complete assignment documentation, as required by those entities providing syndicated audience measurement services.

7. TERM AND TERMINATION

7.1 Term. Unless earlier terminated in accordance with this section, this Agreement shall commence on the year one starting date listed under the compensation section of this agreement and shall remain in effect through the ending date listed under the compensation section of this agreement. Thereafter, this Agreement shall automatically renew for successive terms of 1 year each, unless either party provides the other party with written notice of non-renewal not less than 90 days prior to the expiration date of the then current term.

7.2 Termination. This Agreement may be terminated by either party, upon giving written notice to the other party, if the other party breaches any material provision of this Agreement and fails to cure such breach within 30 days after receipt of written notice thereof specifying the breach.

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7.3 Effect of Termination. Upon termination of this Agreement, all Services shall terminate, all Content shall revert to Client, the license to the SS Intellectual Property shall be revoked, and Client shall have no further access to the Client Site; provided, however, that all domain names shall continue to belong to Client. Client shall pay SS for any Fees earned up to the date of termination. Notwithstanding the foregoing, in the event of early termination by Client without cause prior to the expiration of the Initial Term, Client shall pay SS, in one lump sum, as liquidated damages and not as a penalty, the balance of any Fees due hereunder for the remainder of the Initial Term.

7.4 Survival. Sections 5, 6, 7, 8 and 9 shall survive any termination or expiration of this Agreement.

8. SECURITY We have physical, electronic and managerial procedures to help safeguard, prevent unauthorized access to, and maintain data security of, your Content and the Client Site. However, we do not guarantee security. Neither people nor security systems are foolproof, including encryption systems. In addition, people can commit intentional crimes, make mistakes or fail to follow policies.

#### 9. GENERAL PROVISIONS

9.1 Governing Law. This Agreement will be governed and construed in accordance with the laws of the State of New Mexico, without giving effect to principles of conflict of laws. Both parties agree to submit to jurisdiction in the State of New Mexico.

9.2 Waiver. The waiver by either party of a breach of any provision of this Agreement will not operate or be interpreted as a waiver of any other or subsequent breach.

9.3 Headings. Headings used in this Agreement are for reference purposes only and in no way define, limit, construe or describe the scope or extent of such section or in any way affect this Agreement.

9.4 Assignment and Subcontracting. Neither party may assign this Agreement without the other party's prior written consent; provided that the foregoing will not be deemed to restrict a party from assigning this Agreement, without the other party's consent: (a) to any affiliate; or (b) to any entity which acquires all or substantially all of the assigning party's assets or to any successor in a merger or acquisition involving the assigning party.

9.5 Independent Contractors. The parties to this Agreement are independent contractors, and no agency, partnership, joint venture or employee-employer relationship is intended or created by this Agreement. Neither party will have the power to bind the other or incur obligations on the other's behalf without the other's prior written consent.

9.6 Notice. Any notices required or permitted hereunder shall be given to the appropriate party at the address specified on the signature page of the Proposal or at such other address as the party shall specify in writing. Such notice shall be deemed given: upon personal delivery; if sent by telephone

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facsimile, upon confirmation of receipt; if sent by certified or registered mail, postage prepaid, 5 days after the date of mailing; or if sent by overnight carrier, 1 business day after the date of mailing.

9.7 **Injunctive Relief.** Either party shall be entitled to seek, in addition to such monetary relief as may be recoverable by law, such injunctive or other relief as may be necessary to restrain any continuing or further breach by the other party hereof, without showing or proving actual damage sustained by such party and without posting a bond.

9.8 **SS Logo and Link.** Client hereby agrees to display the SS name and logo, which links to the SS website homepage, in the footer of the Client Site throughout the Term (and after the Term, for so long as SS Intellectual Property is used or incorporated in the Client Site upon SS' express written consent).

9.9 **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall be taken together and deemed to be one instrument. This Agreement may be executed and delivered by facsimile signatures.

9.10 **Force Majeure.** Except for payment obligations, neither party will be responsible for any failure or delay in its performance under this Agreement due to causes beyond its reasonable control, including but not limited to labor disputes, strikes, lockouts, shortages of or inability to obtain labor, energy, raw materials or supplies, war, riot, act of God or governmental action. With respect to any SS nonperformance under this paragraph, Client shall be entitled to either an extension of the term or a pro-rata refund, at SS's sole discretion, which shall be promptly determined.

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### Signatures/Acceptance

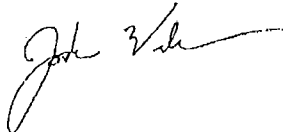
By signing below, Client hereby accepts this Proposal for Professional Services, including the Terms and Conditions attendant thereto. The effective date of this Agreement will be the date set forth in this proposal.

### Entire Agreement

The Proposal, these terms and conditions, and Exhibit A, which is incorporated into the terms of this Agreement constitute the complete and entire agreement with respect to the subject matter addressed and shall not be amended except by written amendment signed by each of SS and Client.

Agreed to:  
SIDEARM Sports  
("SS")

Agreed to:  
University of New Mexico  
("CLIENT")

By:   
Authorized Signature

By:   
Authorized Signature

Name: Josh Waldman

Date: April 16, 2015

Name: Jeff Gilmore  
Title: SR Contracts Specialist  
Date: 4-23-2015

Address:  
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EXHIBIT \_A

The Regents of The University of New Mexico -- Additional Terms Relating to Software Licenses/Cloud Based Services.

For purposes of this Exhibit, The Regents of The University of New Mexico shall be referred to as UNM and SIDEARM Sports shall be referred to as Vendor.

1. **Appropriations.** The terms of the Agreement are contingent upon sufficient appropriations and authorization being made by the Regents of the University of New Mexico or other sponsoring agency for the performance of this Agreement. If sufficient appropriations and authorization are not made, UNM will provide written notice to Vendor as soon as it has knowledge of the lack of appropriations and/or authorization, and this Agreement will terminate.
2. **Access to Data.** Vendor will provide UNM access to, and the ability to export, UNM Data during the Term of this Agreement and for thirty (30) days after the effective date of termination, after which, Vendor shall have no obligation to maintain or provide any UNM Data and shall thereafter, unless legally prohibited, retain the right to delete all UNM Data from the Service and Vendor Systems, or otherwise in its possession or under its control. Following termination of the Agreement, upon UNM's written request, Vendor shall destroy all copies of UNM Data or Confidential Information in Vendor's possession and certify to UNM that such information has been destroyed.
3. **Security Practices.** Vendor shall implement and maintain reasonable security procedures and practices, consistent with industry standards, and appropriate to the nature of the information maintained by Vendor, to protect the confidential information maintained by Vendor from unauthorized access, destruction, use, modification, or disclosure. Vendor will notify UNM ninety (90) days prior to any material changes in its security practices, processes and procedures that a reasonable person would deem would cause Vendor to provide the Services in a materially less secure manner.
4. **Definition of "Security Breach".** For purposes of this Agreement, "security breach" means the unauthorized acquisition of physical, digital or computerized data that compromises the security, confidentiality, or integrity of confidential information maintained by the Vendor on behalf of UNM.
5. **Notice of Security Breach.** In the event of security breach, Vendor shall promptly notify UNM, where applicable, of such breach, with such notice including relevant details including but not limited to: (A) Vendor's name and contact information and the date of the notice, (B) a list of the types of information that were or are reasonably believed to have been the subject of a breach, and if available (C) the date of

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the breach, the estimated date of the breach, or the date range within which the breach occurred. The notification shall also include the date of the notice, whether delivery of notice was delayed as a result of a law enforcement investigation, a general description of the breach incident, if that information is possible to determine at the time the notice is provided. Vendor shall provide such other details as UNM may reasonably subsequently request with respect to such breach. Such notice shall be made without unreasonable delay, consistent with the legitimate needs of law enforcement or any measures necessary to determine the scope of the breach and restore the reasonable integrity of the data system. Any notices under this paragraph must be in writing and addressed to UNM as designated or such other address as provided by each party by written notice. Security notices must be delivered pursuant to the notices section of this agreement and additionally must be emailed to UNM and/or the applicable party designated by UNM from time to time

6. **Security Breach-Cost of Remediation.** Vendor will pay the costs and expenses of investigation, remediation, notification and penalties to the extent the security breach is caused by the acts or omissions of Vendor or any Vendor personnel or a material breach of this Agreement by Vendor or any Vendor personnel.

7. **Virus Protection.** Vendor represents that its software and services shall be free from Disabling Devices (defined below). Vendor shall ensure that the cloud and/or programs used by Vendor in providing the Services are protected against known or suspected Disabling Devices by implementing appropriate processes for detecting, preventing and recovering from virus attacks, including all necessary data and software back-up and recovery tools and arrangements. "Disabling Devices" shall mean any software, equipment, tools or data (a) designed or able to disrupt, disable, harm or otherwise impede in any manner, including aesthetical disruptions or distortions, the operation of the systems, or any software, equipment, tools or data (e.g., "viruses" or "worms"); (b) that would disable the cloud, the portal, or UNM's access to its data, or impair in any way their operation including, for example, based on the elapsing of a period of time, exceeding an authorized number of copies, advancement to a particular date or other numeral (e.g., "time bombs", "time locks" or "drop dead" devices); (c) that would permit a third party to access the cloud, UNM Data, Confidential Information, UNM system or portal, to cause such disablement or impairment, or otherwise to circumvent the security features of the cloud or data hosted by Vendor (e.g., "traps", "access codes" or "trap door" devices); or (d) which contains any other harmful, malicious or hidden procedures, routines or mechanisms which would cause the cloud, UNM system, or portal to cease functioning or to damage or corrupt storage media, software, equipment, tools, data or communications or any part of the cloud, UNM system, or portal, or otherwise interfere with operations.

8. **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 negligence of that party's employees. The liability

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of UNM will 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. Vendor understands that UNM, as a governmental entity, cannot and will not indemnify Vendor.

9. **IP Indemnity.** Vendor warrants that it is the owner or has the necessary rights to all intellectual property licensed and sold under this Agreement. Vendor shall indemnify and hold harmless UNM from and against breach of warranty under this paragraph, and against any claims, demands, lawsuits against UNM based upon infringement of any United States copyright or patent by the software used as authorized under this Agreement provided that UNM notifies Vendor of any such claim promptly in writing and that Vendor has sole control of the defense and of all related settlement negotiations. UNM shall cooperate fully with Vendor during such proceedings. Vendor shall defend and settle at its sole expense all proceedings arising out of the foregoing, including payment of attorney's fees, costs and expenses. Vendor may replace, if possible, in whole or in part, the software with a substantially compatible and functionally equivalent computer program or modify the software to avoid the infringement.

10. **FERPA.**

(A) **Protection of Confidential Data.** Vendor agrees to abide by the limitations on re-disclosure of personally identifiable information from education records set forth in The Family Educational Rights and Privacy Act (34 CFR § 99.33 (a)(2)) and with the terms set forth below. 34 CFR 99.33 (a)(2) states that the officers, employees, and agents of a party that receive education record information from UNM and may use the information, but only for the purposes for which the disclosure was made.

(B) **Definition.** Covered data and information (CDI) includes paper and electronic student education record information supplied by UNM, as well as any data provided by UNM's students to Vendor.

(C) **Acknowledgment of Access to CDI.** Vendor acknowledges that the Agreement allows Vendor access to CDI.

(D) **Prohibition on Unauthorized Use or Disclosure of CDI.** Vendor agrees to hold CDI in strict confidence. Vendor shall not use or disclose CDI received from or on behalf of UNM or their students, except as permitted or required by the Agreement, as required by law, or as otherwise authorized in writing by UNM, respectively. Vendor agrees not to use CDI for any purpose other than the purpose for which the disclosure was made.

(E) **Return or Destruction of CDI.** Upon termination, cancellation, expiration or other conclusion of the Agreement, Vendor shall return all CDI to UNM, or, if return is not feasible, destroy any and all CDI. If Vendor destroys the information, Vendor shall provide UNM with a certificate confirming the date of destruction of the data.

(F) **Remedies.** If UNM reasonably determines in good faith that Vendor has materially breached any of its obligations under this contract, UNM, in its sole discretion, shall have the right to require Vendor to submit to a plan of monitoring and reporting; provide Vendor with a fifteen (15) day period to cure the breach; or terminate the Agreement with respect to it immediately if cure is not possible. Before exercising any of these options, UNM shall provide written notice to Vendor describing the violation and

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the action it intends to take. If the Family Policy Compliance Office of the U.S. Department of Education determines that Vendor improperly disclosed personally identifiable information obtained from UNM's education records, UNM may not allow Vendor access to education records for at least five years.

(G) Maintenance of the Security of Electronic Information. Vendor shall develop, implement, maintain and use appropriate administrative, technical and physical security measures to preserve the confidentiality, integrity and availability of all electronically maintained or transmitted CDI received from, or on behalf of UNM or its students. These measures will be extended by contract to all subcontractors used by Vendor.

(H) Reporting of Unauthorized Disclosures or Misuse of Covered Data and Information. Vendor shall promptly report to UNM any use or disclosure of CDI not authorized by this agreement or in writing by UNM. Vendor's report shall identify: (i) the nature of the unauthorized use or disclosure, (ii) the CDI used or disclosed, (iii) who made the unauthorized use or received the unauthorized disclosure, (iv) what Vendor has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure, and (v) what corrective action Vendor has taken or shall take to prevent future similar unauthorized use or disclosure. Vendor shall provide such other information, including a written report, as reasonably requested by UNM.

(I) FERPA Indemnity. Vendor shall defend and hold UNM harmless from all claims, liabilities, damages, or judgments involving a third party, including UNM's costs and attorney fees, which arise as a result of Vendor's failure to meet any of its obligations under this paragraph.

11. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the state of New Mexico.

12. **ADA.** Vendor represents and warrants that its software and services licensed under the Agreement comply with all Section 508 requirements of the Americans with disabilities Act.

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