

## COLLEGE TEAM PRODUCT SUPPLY & SALES CONTRACT

THIS IS A CONTRACT made and entered into by and among **MARSHALL UNIVERSITY** ("University"), with offices at 2001 3rd Avenue, Huntington, WV 25703, and **NIKE USA, Inc.**, ("NIKE"), with offices at One Bowerman Drive, Beaverton, Oregon 97005, with regard to the purchase and supply of NIKE products for use by the University and its athletic programs. In consideration of the mutual promises, terms and conditions set forth in this "Contract Terms Sheet" and in the attached NIKE Standard Terms and Conditions (the "Standard Terms") the parties agree as follows:

**A. CONTRACT PERIOD:** The Contract term shall be July 1, 2018 to June 30, 2023 (the Contract Period").

**B. GRANT OF ENDORSEMENT RIGHTS & USE OF NIKE PRODUCT:** In consideration of the product supplied, preferential pricing and purchase credit provided by NIKE under this Contract, and subject to the Standard Terms, the University: (1) grants to NIKE, and NIKE hereby accepts, the exclusive right to (i) supply products to each "Covered Program" (as defined in the Standard Terms), and (ii) utilize (subject to the approval provisions of this Contract) the "Designations", the "Licensed Marks", and/or "Game Photos" or "Game Footage" (as each term is defined in the Standard Terms) worldwide, in any media (now known or hereafter created) including, but not limited to, the worldwide web, CD-ROM and other interactive and multi-media technologies, in connection with the advertising, marketing, promotion and sale of "Products" (as defined in the Standard Terms), and NIKE brands; and (2) shall ensure that the players and staff of each the Covered Programs wear and/or use exclusively NIKE Product in accordance with Paragraph 2 of the Standard Terms.

**C. PRODUCT CONSIDERATION:** In consideration for the rights granted under this Contract:

- (1) Each "Contract Year" (as defined in the Standard Terms), for use by or in connection with the Covered Programs, the UNIVERSITY shall be entitled to order directly from NIKE, and receive, the following: Up to Sixty Thousand Dollars (\$60,000, retail value) worth of NIKE Product for UNIVERSITY's Covered Programs; up to Two Hundred Twenty Six Thousand Dollars (\$226,000 retail value) worth of NIKE Product for the football program; and the following allotments for men's and women's basketball as below listed (collectively, the "Annual Product Allotment"):

Product – Men's Basketball	Quantity
Team Apparel Allotment	\$2,000 (retail value)
Footwear	105
Balls	20*
Bags	24
Warm-Ups	24
Camp Allotment	\$3,000 (wholesale value)
<b>Product – Women's Basketball</b>	
Team Apparel Allotment	\$1,000 (retail value)
Footwear	30
Balls	12*
Bags	20
Warm-Ups	20

\* provided only if a Conference agreement does not exist and they will be used in all home contests.

- (2) Each Contract Year, the following UNIVERSITY individuals shall have the right to shop on-line through [nikeelite.com](http://nikeelite.com) (subject to registration on such website) and order up to the below-indicated amounts (retail value).

<b>Football:</b>	
Head Coach	\$7,000
Assistant Coaches (x12)	\$ 500
Assistant Coaches (x2) OC & DC	\$ 750
Equipment Manager	\$1,000

Athletic Director	\$3,500
<b>Men's Basketball:</b>	
Head Coach	\$4,000
Assistant Coach (x4)	\$1,000
<b>Women's Basketball:</b>	
Head Coach	\$1,000
Assistant Coach (x4)	\$ 250

- (3) If in any Contract Year UNIVERSITY requires additional NIKE Product in quantities in excess of that provided under this Section C, UNIVERSITY agrees that all Product for Covered Program use shall be purchased directly from NIKE. UNIVERSITY shall be entitled to purchase such product direct from NIKE in accordance with the discounts set forth in Section D below, and subject to availability and NIKE standard sales terms and conditions.

**D. PURCHASE OBLIGATIONS & PRICING DISCOUNTS:**

In consideration of the product supply, merchandise credit and preferential pricing provided by NIKE under this Contract, the UNIVERSITY agrees that all Product for Covered Program use shall be purchased directly from NIKE and that the UNIVERSITY shall not purchase or accept any Products from any party other than NIKE for the use outlined in this Contract. All Product purchased pursuant to this provision shall be sold to the UNIVERSITY at the discount rate set opposite the indicated category of product:

Product Description	Discount
Apparel	@ wholesale
Uniforms	@ wholesale
Footwear	@ wholesale
Equipment*	@ wholesale

\* does not include equipment sourced through distributors (i.e., Marchon, JR286, etc.)

**E. SPONSOR BENEFITS:** As a sponsor of the Covered Programs, each Contract Year and at no charge to NIKE, the UNIVERSITY shall provide to NIKE:

- (1) Four (4) complimentary tickets to all NCAA tournament games that the men's and women's basketball teams participate in and the option for NIKE to purchase an additional eight (8) tickets;
- (2) Two (2) appearances by the head coach of the men's and women's basketball coach, if requested; and
- (3) One (1) full-page ad in a team media guide or all game programs for home men's and women's basketball games.

**F. PERFORMANCE BONUSES:** In the event the football program achieves any of the following performances during any Contract Year, UNIVERSITY shall, within thirty (30) days of such accomplishment, invoice NIKE for payment the corresponding bonus amount (and which bonus UNIVERSITY acknowledges may be subject to forfeit if not timely invoiced) which NIKE shall pay directly to the University within thirty (30) days of its receipt thereof:

USA Today/Coaches Final Rankings (as published annually in the month of January):	
#1	\$5,000 cash
#2	\$4,000 cash
#3	\$3,000 cash
#4	\$2,000 cash
#5	\$1,000 cash

[Signature Page Immediately Follows]

IN WITNESS WHEREOF, the parties have duly executed this Contract as of the date indicated below.

MARSHALL UNIVERSITY

By: 

Its: ATHLETIC DIRECTOR

University Address:

2001 3RD AVENUE  
HUNTINGTON, WV 25703

Federal Identification No.: \_\_\_\_\_

556000709

NIKE USA, Inc.,

*KIT MORRIS*

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

Its: Senior Director, College Sports Marketing

Dated: Sep 4, 2018

### NIKE STANDARD TERMS & CONDITIONS

1. **ADDITIONAL DEFINITIONS.** The terms set forth below in this Paragraph shall be defined for all purposes under this Contract as follows:
  - (a) "NIKE Group" shall mean NIKE USA, Inc., NIKE Retail Services, Inc. (d/b/a NikeTown), their parent company NIKE, Inc., their licensees, distributors, subsidiaries, affiliates and any successor company.
  - (b) "Licensed Marks" shall mean all the names, nicknames, mascots, identifications, trademarks, service marks, logographics and/or symbols, and any other recognized reference to the University or any Covered Program.
  - (c) "Covered Program" shall mean each of the National Collegiate Athletic Association ("NCAA") varsity intercollegiate athletic programs that are fielded by University and listed on Exhibit A hereto.
  - (d) "Team Member" shall mean a student-athlete attending University during the term of this Contract and on the roster of a Covered Program.
  - (e) "Staff" shall mean, collectively, all coaches, equipment managers, trainers and any on-field courtside staff (e.g., ballpersons, basketball stat crews, etc.) employed by the University during the term of this Contract to provide services to any Covered Program.
  - (f) "Contract Year" shall mean each consecutive twelve (12) month period from July 1 through June 30 during the term of this Contract.
  - (g) "Products" shall mean (i) all athletic and athletically inspired or derived footwear that any Team Member may wear or may be reasonably expected to wear while participating in his/her respective sport ("Footwear"); (ii) authentic competition apparel consisting of uniforms, warm-ups, basketball shooting shirts, practicewear, sideline/courtside apparel, and similar apparel, that Team Members or Staff wear or may be reasonably expected to wear while participating in their respective sport; (iii) all other apparel articles of an athletic or athleisure nature including but not limited to polo shirts, golf shirts, tank-tops, T-shirts, sweatsuits, separates and other headwear, headbands, wristbands, bags, socks, protective gloves that a Team Member or Staff member wears or uses or may be reasonably expected to wear or use while participating in his/her respective sport; (iv) competition balls (i.e., footballs, basketballs, soccer balls); (v) protective eyewear, eyewear with performance attributes and non-prescription sunglasses; and (vi) any other sports equipment NIKE currently makes.
  - (h) "NIKE Products" shall mean all "Products" 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., Converse, Brand Jordan, SLP.28) now or hereafter owned and/or controlled by NIKE appear (collectively, the "NIKE Marks"), singly or in any combination.
  - (i) "Game Photos" shall mean University-controlled game photographs.
  - (j) "Game Footage" shall mean University-controlled videotape and/or film footage.
2. **EXCLUSIVE USE OF NIKE PRODUCTS.** Throughout the Contract Period, the University shall make NIKE Products available on an exclusive basis to each Covered Program to be worn and/or used by Team Members and Staff during practices, games, exhibitions (including during locker room activities), clinics and/or sports camps, lockerroom and/or sideline/courtside celebrations and/or presentations, and other official or University-sanctioned intercollegiate activities (including but not limited to photo sessions and interviews) during which Team Members and Staff wear and/or use Products except as otherwise provided under this Paragraph. The University shall ensure that no Team Member or Staff shall (a) alter or permit the alteration of any NIKE Product worn or used by them to resemble a non-NIKE Product; or (b) wear any non-NIKE Products which have been altered to resemble NIKE Products. The University acknowledges that "polishing-out", "spatting" or otherwise taping, so as to cover or obscure any portion of any NIKE trademark, the NIKE Products worn by Team Member and/or Staff as required under this Paragraph is inconsistent with the purpose of this

Contract and is a material breach of this Contract. NIKE acknowledges that, notwithstanding anything in this Paragraph to the contrary, Staff may wear, as is appropriate for the circumstances, non-athletic footwear or apparel (e.g., business attire) in connection with their official duties and that wearing such apparel shall not constitute a breach of this Paragraph. University shall not permit (a) 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, if approved by NIKE, to appear on NIKE Products worn or used by Staff or Team Members, or (b) any third party to screen-print upon, or otherwise embellish, any NIKE Product worn or used by Staff or Team Members, or (c) re-sell any Product provided pursuant to this Contract 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. 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 this Paragraph.

3. **MERCHANDISE ORDERS & DELIVERY.** All product to be supplied by NIKE under Section C above shall be delivered F.O.B. to the University. Only properly submitted orders from the Athletic Director (or other authorized representative of the University) shall be filled by NIKE. Provided the University places its complete annual product orders on a timely basis in accordance with NIKE's standard ordering deadlines (which are typically 9-12 months in advance of the desired delivery date), the annual product allotments for each upcoming season shall be delivered to the University generally thirty (30) days prior to the start of the regular season. Notwithstanding the foregoing, the University acknowledges that product delivery may be staggered in accordance with a mutually agreed priority schedule. Additional early order discounts may be provided for custom uniform orders placed during early order futures deadlines.
4. **ADVERTISING APPROVALS & USE OF GAME PHOTOS/FOOTAGE.** In the event NIKE desires to use the Licensed Marks, Designations or Game Photos or Footage in any external advertising, NIKE shall submit a sample of such intended use to the University's designated representative for approval prior to actual commercial use, such approval not to be unreasonably withheld. NIKE acknowledges that the right to use Game Photos and/or Game Footage is subject to applicable NCAA rules and regulations with respect to the depiction of eligible athletes. In connection therewith, at NIKE's request, the University shall permit NIKE to utilize, consistent with this Contract, Game Photos and Game Footage (owned and/or controlled by the University), without a use fee, other than reasonable search and edit charges.
5. **RIGHTS OF FIRST DEALING & FIRST REFUSAL.**
  - (a) At NIKE's request, University shall for a 30-day period negotiate with NIKE in good faith with respect to the terms of a renewal of this Contract. The parties shall not be obligated to enter into an agreement if they cannot settle on mutually satisfactory terms. Prior to May 1, 2023 (the "Exclusive Negotiating End Date"), the University shall not (nor shall the University permit its agents, attorneys or representatives to) engage in discussions or negotiations with any third-party regarding product supply with respect to any Products, or sponsorship of any Covered Program (or similar supply or promotional arrangement) with respect to any Products, after the Contract Period ("Product Supply/Endorsement").
  - (c) During the Contract Period and for a period of one hundred eighty days (180) days thereafter, NIKE shall have the right of first refusal for Product Supply/Endorsement, as follows. If the 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/Endorsement, the University shall submit to NIKE in writing the specific terms of such bona fide third-party offer in its entirety 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 fifteen (15) business days from the date of its receipt of such true copy of the third-party offer to notify the University in writing if it will enter into a new contract with the University on terms no less favorable to the University than the material, measurable and matchable terms of such third-party offer. If NIKE so notifies the University

within such 15-day period, the 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, the University may thereafter consummate an agreement with such third-party on the terms of the offer made to the University. Prior to the Exclusive Negotiating End Date, the 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/Endorsement.

#### **6. RIGHTS OF TERMINATION.**

- (a) The University shall have the right to terminate this Contract immediately upon written notice to NIKE if: (i) NIKE is adjudicated insolvent or declares bankruptcy; or (ii) NIKE shall be in material breach of this Contract, which breach NIKE fails to cure, if curable, within thirty (30) days of NIKE's receipt of written notice from the University specifying such breach.

In addition to the foregoing termination rights, (1) University shall have the right to terminate this Contract if NIKE ceases production and offering of team apparel in Kelly Green, the official color of University, effective at the end of the Contract Year in which Kelly Green product was made available; and (2) in the event the West Virginia Legislature ceases to allocate funding for University to perform its obligations under this Contract, University shall have the right to terminate this Contract upon thirty (30) days' written notice to NIKE and provided University agrees to pay NIKE for services rendered, or goods ordered, prior to the effective date of termination, and provided further that if such funding is later restored at any time during the stated term of this Contract, University shall resume performance under the terms of this Contract (including the rights granted under Paragraph 5 above) for the balance of the stated term.

- (b) NIKE shall have the right to terminate this Contract immediately upon written notice to the University if: (i) Team or Staff members fail to wear or use NIKE Products in violation of Paragraph 2 above, or wear NIKE Products altered, spatted or taped, in violation of the provisions thereof; (ii) the University shall be in material breach of this Contract, which breach the University fails to cure, if curable, within thirty (30) days of the University's receipt of written notice from NIKE specifying such breach. In the event of termination under this Paragraph, the University shall forfeit any accrued purchase credit.

#### **7. RIGHT TO USE LICENSED MARKS EXPIRATION/TERMINATION.** Upon expiration or termination of this Contract for any reason, NIKE shall, for one year, have the right to exhaust all advertising and promotional materials bearing and/or including the Licensed Marks and/or Designations that were produced prior to the effective date of expiration or termination. Notwithstanding the foregoing, NIKE shall have the right to use in perpetuity and without restriction, for its own internal historical, educational, or commemorative purposes, videotape, film or photographs showing NIKE Products provided under this Contract.

#### **8. REPRESENTATIONS, WARRANTIES.** The University represents and warrants that: (a) it has the full legal right and authority to enter into and fully perform this Contract in accordance with its terms and to grant to NIKE all the rights granted herein; (b) neither the University nor any Staff member is party to any oral or written agreement, contract or understanding that would prevent, limit or hinder the performance of any obligations hereunder of the University or Staff member. (c) The University further represents and warrants that during the term hereof it will not in connection with any Covered Program: (i) sponsor, endorse, or allow any Staff member to sponsor or endorse, Products sold by any manufacturer or seller of Products other than NIKE, or (ii) enter into, or allow any Staff member to enter into, any endorsement, promotional, consulting or similar agreement (including the sale of signage or other media) with any manufacturer or seller of Product other than NIKE; sell to any person or entity Products purchased or provided hereunder by NIKE, 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 2; (iii) 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 (including, but not limited to, practices, games, exhibitions, clinics, sports camps,

photo sessions and interviews); or (iv) take any action inconsistent with the endorsement of NIKE Products, or allow any Staff member to take any such action.

9. **NOTICES.** Any notice of breach or default shall be in writing and deemed given if sent postage prepaid via registered or certified mail, by verifiable facsimile transmission or hand delivery, or by express courier service with confirmed delivery, to the breaching party at the addresses set forth above (unless writing notice of a change of address has been provided) and shall be deemed to have been given at the time it is sent properly addressed and posted. Notices to NIKE shall be sent to the Legal Department, attention: Contract Specialist.
10. **CONFIDENTIALITY.** The University shall not (nor shall it permit or cause its agents, attorneys, accountants, representatives or employees to) disclose the financial or other material terms of this Contract to any third-party, with the exception only of the University's agents, attorneys, accountants, representatives or employees, or except as may be required by law. This Paragraph shall survive the expiration or termination of this Contract.
11. **MISCELLANEOUS.** Nothing contained in this Contract shall be construed as establishing a partnership, agency or joint venture relationship between the parties. Every provision of this Contract is severable. The rights and obligations granted under this Contract are personal to each party hereto and shall not assigned or delegated to any third-party without the prior written consent of the non-assigning party except that NIKE may freely assign or delegate rights and obligations to any entity within the NIKE Group. This Contract shall constitute the entire understanding between the University and NIKE and may not be altered or modified except by a written agreement, signed by both parties. Any previous agreements between the parties shall have no further force or effect.

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**EXHIBIT A**  
**Covered Programs**

Football
Basketball (m/w)
Baseball
Cross Country (m/w)
Golf (m/w)
Soccer (m/w)
Softball
Tennis (w)
Track and Field (w)
Volleyball
Swimming & Diving (w)