

E-Commerce and Retail Agreement

This E-Commerce and Retail Agreement (this “**Agreement**”), dated as of July [____], 2018 (the “**Effective Date**”), is made and entered into by and between [REDACTED] (the “**Operator**”), and Auburn University (the “**Institution**”). Each of the Operator and the Institution are hereinafter sometimes referred to as a “**Party**” and collectively as the “**Parties**.”

Recitals

WHEREAS, the Institution owns and/or operates, or has the right to operate, the Regular Retail Locations and the Event Retail Locations (in each case, as defined herein, and limited to those locations set forth on Exhibit A, as may be amended by written agreement of the Parties from time to time); and

WHEREAS, the Institution owns and/or operates, or has the right to operate, the Institution Sites (as defined herein); and

WHEREAS, the Institution, on behalf of the Department (as defined herein), desires to grant to the Operator (i) the exclusive right to operate the Regular Retail Locations and the Event Retail Locations, (ii) the exclusive right to establish and operate the Institution Online Store, and (iii) a license to use the Institution Trademarks (as defined herein) in connection with the foregoing, all pursuant to the terms and conditions of this Agreement, for the purpose of providing merchandise services for faculty, staff, students, alumni, fans and other appropriate constituencies.

Agreement

NOW, THEREFORE, in reliance upon the above recitals (which are made a part of this Agreement) and in consideration of the agreements herein, the Operator and the Institution, intending to be legally bound, agree as follows:

Section 1. Definitions. Whenever used in this Agreement, capitalized terms will have the meanings set forth herein or as otherwise defined in Appendix “A” attached hereto.

Section 2. Operation of Retail Locations.

2.1 **Retail Locations.** As set forth in more detail in Section 3 below, the Institution hereby grants to the Operator the exclusive right and license to operate the Regular Retail Locations and the Event Retail Locations during the Term (as defined herein). The Retail Locations shall be branded as “The Auburn Team Shop,” or such other branding as may be mutually agreed upon by the Parties. The foregoing right and license grant includes the exclusive right for the Operator to (a) sell Licensed Merchandise and Institution Sourced Merchandise at the Retail Locations, and (b) conduct any and all advertising, marketing and promotional activities related thereto; provided, however, that the foregoing right and license grant shall not prevent the Institution from allowing other advertising, marketing and promotional activities at or in the vicinity of the Retail Locations.

2.2 **Off-Campus Retail Locations.** The Institution may grant the Operator the right to open and operate certain off-campus retail locations for the sale of Licensed Merchandise and Institution Sourced Merchandise during the Term. The Parties acknowledge and agree, however, that (a) this Agreement does not extend to any such off-campus retail locations, (b) this Agreement places no obligation on either the Institution or the Operator with respect to such off-campus retail locations, and (c) the terms and conditions of the operation by the Operator of any such off-campus retail location,

including the applicable revenue share payment, must be agreed upon by the Parties and set forth in a subsequent agreement.

2.3 General Retail Location Operations.

(a) The Operator will operate the Retail Locations in a professional manner and will be responsible for providing and obtaining all required management, staffing, technology, order processing, customer service and related services necessary to operate the Retail Locations, including, but not limited to, those services specifically set forth in Section 2.3(b), all in accordance with the terms and conditions of this Agreement and in a manner designed to be, at a minimum, comparable with then prevailing industry standards for other retail operations of similar size and that sell similar merchandise. The Operator may from time to time make such changes and alterations to its operation of the Retail Locations as may be reasonably necessary for the Operator to comply with applicable laws, rules, regulations and policies of any governmental authority, licensor or other third party or any contractual obligation; provided, however, that any such changes and alterations that alter or amend any of the terms and conditions of this Agreement shall be subject to the prior written approval of the Institution.

(b) More specifically, the Operator will provide the following services to the Institution in connection with the operation of the Retail Locations:

(i) provide personnel and merchandise sales set-ups at the Retail Locations and restrict sales activities to areas approved by the Department;

(ii) operate the Regular Retail Location located in the Auburn Arena on a daily basis, Monday through Sunday, with hours for business to be a minimum of eight (8) hours on each of Monday through Saturday and a minimum of four (4) hours on Sunday;

(iii) manage inventory for the Retail Locations;

(iv) provide all points of sale (the location of which shall be subject to the prior written approval of the Department), merchandise, personnel, equipment, portable stands, signage, units, power sources in the form of generators (if outlets are not available), supplies, transportation, security and other items necessary to operate the Retail Locations;

(v) design, purchase and post all sales support signage (price boards, point of sale, directional, etc.) within the Retail Locations consistent with the Institution's branding initiatives and only after receipt of approval in writing from the Institution;

(vi) provide high quality presentations, including tents, kiosks or other semi-permanent structures, in connection with the operation of the Retail Locations, with all such locations being prepared to accept credit card forms of payment;

(vii) provide, manage and maintain all necessary computer hardware operating systems and application systems necessary to operate the Retail Locations, including all point of sale applications adhering to payment card industry standards (i.e., PCI) compliance guidelines; and

(viii) require all working personnel to adhere to a strict dress code (to be mutually agreed upon by the Parties) while working in the Retail Locations.

2.4 **Preferred Merchandise Concessionaire.** Throughout the Term, the Institution shall, and shall cause its Affiliates to, identify the Operator and its Affiliates as the preferred merchandise concessionaire for all Department Events.

2.5 **Security.** The Operator will maintain information and data security controls for security as it relates to Customer Information and applicable credit or debit card information subject to payment card industry standards (i.e., PCI) for the Retail Locations that are equal to the applicable payment card industry standards imposed by the applicable payment card companies (e.g., Visa, MasterCard, American Express, etc.) with which the Operator is required to comply, and the Operator has provided the Institution a sworn affidavit to this end. The information security guidelines shall include (a) a plan to assess and manage system failures, (b) a regular assessment of data security risks, with adjustments made to the data security program to reduce such risks and (c) notice and incident response procedures. At least one time each year during the Term, the Operator will require a reputable third party to conduct a penetration test of the Operator's infrastructure designed to detect any material security weaknesses in such infrastructure. The Operator will reasonably discuss the results of such testing with the Institution, including disclosure of the nature of any security weaknesses identified, to the extent that such weaknesses could impact the Institution or the operation of the Retail Locations pursuant to this Agreement and, to the extent that any such material weakness is found, will reasonably discuss with the Institution the Operator's intended actions to remedy such weakness.

Section 3. License for Retail Locations.

3.1 License Grant.

(a) The Institution hereby grants to the Operator a license to use, access and occupy the Retail Locations during the Term, together with the right to use and access all other areas in and about the buildings in which the Retail Locations are located (each, a "**Building**"), that are used in common with others, such as lobbies, hallways, elevators, stairways, restrooms, delivery areas and parking areas (collectively, the "**Common Areas**"), for the sole purpose of performing its obligations under this Agreement; provided, however, that the Operator may, in certain instances and in the sole discretion of the Institution, be required to submit employee and other information in order to obtain special credentials and approvals from the Institution to access certain of the Common Areas, and the Operator shall be responsible for any and all damage or unapproved conduct committed by employees, contractors and agents of the Operator who inappropriately utilize such credentials. The Retail Locations and the Common Areas shall be used for the foregoing purposes and for no other purposes except as may be reasonably agreed upon by the Parties in writing. Without additional charge, during the Term, the Operator shall have the right to use such of the Institution's furniture, fixtures and furnishings as may be located in the Retail Locations on the Effective Date, to be returned to the Institution at the expiration or earlier termination of the Term pursuant to the terms and conditions of this Agreement.

(b) The Institution shall provide all utilities, including electric light and power, heat, air conditioning, air exchange, water and sewer, recycling and trash removal services, for the Retail Locations as are necessary for the Operator to operate the Retail Locations and fulfill its obligations under this Agreement. The Operator shall keep all areas in and around the Retail Locations clean and free from trash at all times and shall be responsible for maintaining appropriate pest control services for the Retail Locations.

(c) The Institution and its employees, contractors and agents shall have the right of access to the Retail Locations and the Common Areas in order to perform the Institution's obligations under this Agreement, or for any other purpose, twenty-four (24) hours per day, seven (7) days per week, upon not less than twelve (12) hours' prior notice to the Operator; provided, however, that, in the event that there is

an emergency, the Institution shall provide as much advance notice as is reasonable under the circumstances. The Institution shall, and shall cause its employees, contractors and agents to, make reasonable efforts to ensure that any such access does not disrupt or interfere with the Operator's use and quiet enjoyment of the Retail Locations and the Common Areas, or the Operator's business and operations at the Retail Locations.

3.2 Damage and Destruction.

(a) Throughout the Term, the Operator shall take reasonable care of the Retail Locations and the furniture, furnishings, fixtures and appurtenances therein. The Operator shall also be responsible for any costs incurred to repair any damage to the Retail Locations, other than damage from the elements, fire or other casualty to the Retail Locations, or from the negligence or intentional misconduct of the Institution, or its employees, contractors and agents. The Institution shall make all necessary structural repairs to the Retail Locations. Neither the Institution nor the Operator shall have any responsibility to the other or their respective agents, contractors, tenants or other invitees in the event of any damage to or theft or loss of any equipment or property of the other Party, and the Party incurring such damage, theft or loss shall first look to its own insurance coverage (and to any self-insured portion of the damage, theft or loss), if any, for recovery in the event of any such damage, theft or loss.

(b) If all, or a portion, of any of the Retail Locations is destroyed or damaged by fire or other casualty, the Institution shall, subject to the following provisions of this section, promptly proceed after adjustment of the insurance loss (if any) to repair such damage and restore the affected Retail Location (but not the Operator's installed property and equipment therein) to the condition existing prior to such damage. If the time required to complete the repairs is estimated by a contractor to exceed three (3) months, then the Operator may terminate this Agreement with respect to the affected Retail Location by written notice to the Institution within ten (10) Business Days after receipt of the estimate.

3.3 Alteration; Restoration. No alterations may be made by the Operator to the Retail Locations without the prior written consent of the Institution. Notwithstanding the foregoing, the Operator shall have the right to make certain non-structural alterations without the Institution's consent. Non-structural alterations can be alterations that include one or more of the following: (a) are not visible from the outside of the Building; (b) do not affect any part of the Building other than the Retail Locations or require any alterations, installations, improvements, additions or other physical changes to be performed in or made to any portion of the Building other than the Retail Locations; (c) do not affect any service required to be furnished by the Institution to the Operator or to any other tenant, licensee or occupant of the Building; (d) do not affect any Building systems or portion thereof; (e) have an estimated cost for labor and materials that do not exceed \$50,000 in any twelve month period during the Term; or (f) do not affect the certificate of occupancy for the Building or the Retail Location. In addition, the Operator may install trade fixtures, signs, furnishings and items of a decorative nature in the Retail Locations, so long as these installations are not deemed to be structural alterations, and all of which, if affixed to the premises, shall become the property of the Institution upon installation.

3.4 Surrender. On or before the expiration or sooner termination of this Agreement, the Operator shall remove all furniture, electronic equipment, computers and other personal property and furnishings from the Retail Locations, to the extent owned or leased by the Operator, but shall leave in place all furniture, fixtures and any furnishings owned by the Institution in substantially similar condition as such items were as of the Effective Date (subject to reasonable wear and tear and damage caused by the Institution). Further, the Operator shall vacate and surrender full and complete possession of the Retail Locations to the Institution, vacant and broom clean, in "as is" condition and state of repair, subject to reasonable wear and tear, damage by the elements, fire or other casualty (unless such damage is caused

by the negligence or wrongful act of the Operator, its employees or agents) and the negligence or wrongful act of the Institution.

3.5 Relocation. During the Term, the Institution shall not relocate the Operator from any Regular Retail Location to other space, whether within its existing Building, or to another building located within a reasonable distance from the Building and owned and/or operated by the Institution, without the prior written consent of the Operator.

Section 4. Institution Online Store.

4.1 Creation of the Institution Online Store.

(a) The Operator shall create and establish the Institution Online Store for the sale of Licensed Merchandise and Institution Sourced Merchandise during the Term. The Institution Online Store shall be delivered through a URL link on the Institution Sites and shall have a Look and Feel consistent with that of the Institution Sites as in effect from time to time (or such other design as may be mutually agreed by the Parties). The Institution Online Store branding shall include the applicable Institution Trademarks and other Institution branding as mutually agreed by the Parties. After the Launch Date, the Institution Online Store will be maintained at the applicable Designated URL and all applicable Secondary URLs, each as approved in writing by the Institution, and all of which shall be owned by the Institution, both during and after the Term of this Agreement. The Institution agrees that the Operator will have the right, throughout the Term, to provide all domain name server services for the Designated URL and all applicable Secondary URLs. Without limiting the generality of the preceding sentence, the Institution will ensure that (i) the Designated URL and all applicable Secondary URLs are registered with a reputable registrar approved by the Operator in such a way that such URLs point to the operational servers designated by the Operator; provided, however, that registered ownership of such URLs shall remain in the Institution's name, (ii) the Operator or its designee will be appointed as technical contact with the applicable registrar for the Designated URL and all applicable Secondary URLs and (iii) the Institution will comply with reasonable requirements and provide reasonable information with respect to SSL certificates, DNS and e-mail aliases applicable to the URLs for the Institution Online Store. In connection with the rights granted to the Operator for the Institution Online Store, the Operator agrees that it will not advertise or market any URL other than the Designated URL and any applicable Secondary URLs that are approved in writing by the Institution pursuant to this Section 4.1. [OPTION II: Please propose alternative language and attach addendum with a list of all URL's in Operator's Network]

(b) More specifically, the Operator shall ensure that the Institution Online Store incorporates the following features:

- (i) an online product catalog and secure online shopping and payment (via credit card);
- (ii) the ability to search the product catalog by category/type of item, brand and price;
- (iii) for each good offered for sale via the Institution Online Store, the product catalog will set forth, at a minimum, the following information, which shall be updated or revised as circumstances merit: (A) name of the good, (B) an accurate description of the features of the good, (C) at least one (1) professional-quality photograph of the good, which shall be displayed at a size of at least 100 pixels by 100 pixels, (D) pricing for the good; (E) current, accurate information regarding the availability of the good (e.g., "in stock," "out of stock," "back-ordered," etc.), and (F) such other information as reasonably requested by the Institution;

(iv) secure functionalities allowing Customers to (i) create and maintain an account for the Institution Online Store, (ii) make payment via credit or debit card; (iii) check the shipment status of pending orders (including parcel tracking), and (iv) receive support, including, without limitation, assistance with product questions and returns/refunds processing;

(v) a targeted search engine optimization program and paid search advertising focusing on popular search engines including, but not limited to, Yahoo, Google, Bing, etc. to generate additional Institution Online Store impressions and increased sales;

(vi) secure functionality for Customers to purchase gift cards in varying dollar amounts for merchandise, if elected by the Operator; and

(vii) such other features or functionalities as the Institution may reasonably specify from time to time.

4.2 Promotional Links. Commencing on the Launch Date and continuing throughout the Term, the Institution shall establish and maintain on each of the Institution Sites a navigation “shop” tab that links directly to the Home Page (or other applicable page) of the Institution Online Store. Any links shall be in the form provided by the Operator.

4.3 Customer Service. The Operator shall establish one or more toll-free customer service telephone numbers for Customers making purchases through the Institution Online Store, staffed by at least one (1) live support representative for every one hundred (100) Customer accounts then of record with the Operator. Such number(s) shall be separate from the customer service telephone numbers for the Operator Site. The Operator shall be responsible for providing customer service to users of the Institution Online Store, including online and telephone support. The Operator shall provide such customer service in a professional and courteous manner and shall provide for customer feedback through appropriate online support features. The Operator shall ensure that no customer service representative represents that he or she represents, is acting on behalf of, is an agent of or is otherwise affiliated with the Institution, the Department or any of their Affiliates. The Operator will provide the Institution with an online mechanism through which users may send customer service issues with respect to the Institution Online Store, and the Operator shall respond directly to those users. All customer service responses, whether by phone or e-mail or other means, will be branded to the Institution Online Store. The Operator shall provide to the Institution, within ten (10) Business Days of the end of each calendar quarter during the Term, written reports of customer service inquiries and responses, such reports to include, at a minimum, call logs and summaries of the nature and resolution of each customer service inquiry.

4.4 Tracking and Reporting of Customers Linking to Institution Online Store. Commencing on the Launch Date and continuing throughout the Term, the Operator shall track and keep accurate records of all Customers that link to the Institution Online Store from the applicable Institution Site and/or place Orders through the applicable customer service telephone numbers for the Institution Online Store, in each case as necessary to calculate the amounts due the Institution hereunder.

4.5 Launch Date. The Parties will work together in good faith and use all commercially reasonable efforts to cause the Launch Date for the Institution Online Store to be as soon as commercially practicable after the Effective Date. Promptly after the Effective Date, the Parties will develop a time and responsibility schedule to launch the Institution Online Store, and each Party agrees to dedicate the necessary time and resources to comply with such time and responsibility schedule.

4.6 General Institution Online Store Operations.

(a) From and after the Launch Date, the Operator will operate and maintain the Institution Online Store and manage the shopping experience for the Institution Online Store [OPTION II: and other E-Commerce Sites in Operator's Network] in a professional manner and will be responsible for providing and obtaining all required technology, order processing, fulfillment, customer service and related services necessary to operate and maintain such sites, including, but not limited to, those services specifically set forth in Section 4.6(b), all in accordance with the terms and conditions of this Agreement and in a manner designed to be and perform, at a minimum, comparable with then prevailing industry standards for other leading e-commerce operations of similar size and that sell similar merchandise. The Operator may from time to time make such changes and alterations to the Institution Online Store as may be reasonably necessary for the Operator to comply with applicable laws, rules, regulations and policies of any governmental authority, licensor or other third party or any contractual obligation; provided, however, that any such changes and alterations that alter or amend any of the terms and conditions of this Agreement shall be subject to the prior written approval of the Institution.

(b) More specifically, the Operator agrees to the following conditions and will provide the following services to the Institution in connection with the operation of the Institution Online Store:

(i) the Operator shall ensure that the speed, functionality and accessibility of the Institution Online Store are consistent with industry standards for high quality, reputable web hosting companies;

(ii) at the Operator's expense, the Operator shall develop, implement and comply with a commercially reasonable disaster recovery plan with respect to the Institution Online Store, which disaster recovery plan shall be subject to the approval of the Institution and shall, at a minimum, be at all times consistent with then-current industry best practices for disaster recovery plans associated high quality, reputable web hosting companies;

(iii) the Operator shall, at its expense, maintain a complete and current copy of the Institution Online Store and all data related thereto (including all data relating to Orders) on no less than two (2) servers, which two (2) servers shall not be located on the same premises. In the event that public access to the copy of the Institution Online Store and/or related data located on one server is interrupted, the Operator shall promptly activate the second server so that public access to the Institution Online Store and/or related data may be restored within a commercially reasonable time, not to exceed one-quarter (1/4) of an hour after the commencement of such interruption;

(iv) the Operator shall, at its expense, ensure that all servers and other hardware, software and transmission capabilities used by the Operator to perform its obligations under this Agreement are at all times properly equipped and configured (including, without limitation, ensuring that all necessary software is installed and configured with respect thereto) to permit Customers to accurately access, perceive and interact with all content set forth in the Institution Online Store (including, without limitation, all interactive or multimedia content of whatever type or protocol), whether such content is created prior to or after the Effective Date;

(v) the Operator shall back up the Institution Online Store and all data related thereto (including all data relating to Orders) at least once every twenty-four (24) hours and shall store such back-up materials in a secure manner and place;

(vi) the Institution Online Store shall be publicly available to, and accessible by, Customers for a minimum of (i) ninety-nine percent (99%) of the time during any twenty-four

(24) hour period, (ii) ninety-eight percent (98%) of the time during any seven (7) day period and (iii) ninety-eight percent (98%) of the time during any thirty (30) day period; and there will be no period during which the public may not access the Institution Online Store that exceeds one (1) continuous hour;

(vii) the mean server response time for all accesses and inquiries to the Institution Online Store shall not exceed more than two (2) seconds during any one (1) hour period;

(viii) the bandwidth representing the Institution Online Store's connection to the Internet shall be operating at capacity no more than five (5) minutes in any twenty-four (24) hour period;

(ix) the Operator shall promptly and accurately process and manage all Orders, including (i) acceptance of Orders and payment, (ii) procuring goods from vendors, (iii) causing the timely provision of all services and shipment of all products ordered by each Customer and (iv) provision of all support applicable thereto, with the Parties expressly agreeing and acknowledging that the Operator shall seek payment for each Order only directly from the Customer(s) involved in such Order, and that the Institution shall have no liability whatsoever to the Operator or to any vendor or to any Customer with respect to any Order (except with respect to Orders to which the Institution is a party in the capacity of buyer);

(x) the Operator shall promptly and accurately process Orders daily to ensure that the goods so ordered shall be shipped as quickly as possible. If inventory is in stock for all goods set forth in a given Order, such Order shall be shipped in no more than two (2) Business Days after the date of Order receipt;

(xi) the Operator shall promptly fulfill and package ordered goods using shrink-wrap, bubble pack, peanuts, foam, tissue, bags or other generally accepted industry standard materials necessary or desirable to protect such goods against damage during shipment;

(xii) the Operator shall offer to Customers a full range of shipping options, including, without limitation, UPS, Federal Express, parcel post, foreign mail and Express Mail, and the Operator shall handle all aspects of effectuating such shipment, including, without limitation, weighing, labeling, coding as to type of delivery services required and delivery of items to, or arranging pickup by, carriers, all in accordance with this Agreement and generally accepted industry standards. The Operator shall be the shipper of record and, where applicable, shall issue appropriate requests for proof of delivery from delivery carriers and file all tracers and claims for non-delivery or damage;

(xiii) the Operator shall update Customer accounts with, and make available to such Customers, accurate and timely information regarding the status of pending Orders, including the expected shipping date (in the case of backorders), changes in status, shipping and tracking information and the status of delivery and problems with any Order, shipment or payment;

(xiv) the Operator shall provide all necessary support, including, without limitation, processing all returns of goods and applicable refunds, exchanges, replacements and credits in an expeditious manner; and

(xv) the Operator shall maintain accurate books and records with respect to all Orders and each Order individually.

4.7 **Product Images and Descriptions.** From and after the Launch Date, the Operator will be responsible for all applicable product images and descriptions for Licensed Merchandise to be sold by the Operator or its Affiliates through the Institution Online Store **[OPTION II: and other E-Commerce Sites in Operator's Network]**, subject to and incorporating the specific terms and conditions set forth in this Agreement. Notwithstanding the foregoing, within a commercially reasonable period of time prior to the Launch Date, the Institution will provide to the Operator, and the Operator and its Affiliates may use, all product images and descriptions for Institution Sourced Merchandise then in the possession or control of the Institution or its Affiliates.

4.8 **Privacy Policy.** The Operator shall establish and maintain a privacy policy for the Institution Online Store **[OPTION II: and other E-Commerce Sites in Operator's Network]**, which shall be subject to approval by the Institution. The Operator will update and maintain the privacy policy for the Institution Online Store to reflect the Parties' rights and obligations and as required by applicable law or to be factually accurate. Each Party will abide by the privacy policy for the Institution Online Store, as may be amended from time to time by the Parties.

4.9 **Terms of Use.** The Operator shall establish and maintain the terms of use for the Institution Online Store and the terms and conditions related to the transactions occurring through the Institution Online Store, subject to and incorporating the specific terms and conditions set forth in this Agreement. The Operator will update and maintain the terms of use for the Institution Online Store to reflect the Parties' rights and obligations and as required by applicable law or to be factually accurate. Each Party will abide by the terms of use for the Institution Online Store, as may be amended from time to time.

4.10 **Customer Information.** **OPTION 1:** During the Term, the Operator may use Customer Information obtained from Customers of the Institution Online Store for promotion of the Institution Online Store and performing its obligations under this Agreement, subject to the prior written approval of the Institution. During and after the Term, all Customer Information shall be owned solely by the Institution; provided, however, that the Institution shall not sell or provide any such Customer Information to any competitor of the Operator or use such Customer Information for purposes of promoting any competitive product. Each Party agrees to treat all Customer Information owned by the other Party as Confidential Information of such other Party. Each Party agrees to use all Customer Information in accordance with the applicable privacy policy and all applicable laws, rules and regulations. Any Customer Information possessed by the Operator shall be shared with the Institution on a monthly basis. **OPTION 2:** As between Institution and Operator, the seller of record hereunder, (a) Operator shall have sole ownership of Customer Information obtained from Customer of the E-Commerce Sites within Operator's Network other than the Institution Online Store, (b) the Parties shall have joint ownership of Customer Information obtained from Customers of the Institution Online Store, and (c) subject to applicable laws, rules and regulations, and any applicable restrictions (e.g., contractual restrictions), during the Term, Operator shall provide Institution with access to Customer Information obtained from Customers of the Operator's Network during the Terms, but only if and to the extent such Customers purchase Licensed Merchandise. By way of example only, if a Customer purchases merchandise other than Licensed Merchandise from an E-Commerce Site within the Operator's Network, the Institution shall not be entitled to Customer Information for such Customer. Institution may use Customer Information described in Section 4.10(c) above, but solely for operation of the Institution's business (e.g., ticket sales, fan clubs, etc.). In no event shall Parties sell, rent or license any such Customer Information described in Section 4.10(c) above, and Parties shall not share such Customer Information with any third party. Each Party agrees to treat all Customer Information as Confidential Information. Each Party agrees to use all Customer Information in accordance with all applicable laws rules and regulations.

4.11 **Security.** The Operator will maintain information and data security controls for security as it relates to Customer Information and applicable credit or debit card information subject to payment card industry standards (i.e., PCI) for the Institution Online Store [OPTION II: and other E-Commerce Sites in Operator's Network] that are equal to the applicable payment card industry standards imposed by the applicable payment card companies (e.g., Visa, MasterCard, American Express, etc.) with which the Operator is required to comply, and the Operator has provided the Institution a sworn affidavit to this end. The information security guidelines shall include (i) a plan to assess and manage system failures, (ii) a regular assessment of data security risks, with adjustments made to the data security program to reduce such risks, and (iii) notice and incident response procedures. At least one time each year during the Term, the Operator will require a reputable third party to conduct a penetration test of the Operator's infrastructure, including the Institution Online Store [OPTION II: and other E-Commerce Sites in Operator's Network], designed to detect any material security weaknesses in such infrastructure. The Operator will reasonably discuss the results of such testing with the Institution, including disclosure of the nature of any security weaknesses identified, to the extent that such weaknesses could impact the Institution or the operation of the Institution Online Store pursuant to this Agreement and, to the extent that any such material weakness is found, will reasonably discuss with the Institution the Operator's intended actions to remedy such weakness.

4.12 **Other Use; Other Advertising.** The Parties agree that any use by the Operator or its Affiliates of Institution Trademarks in a URL on any other Web Sites other than as contemplated by this Agreement shall subject any sales made by the Operator or its Affiliates on such Web Sites to the revenue share payment provisions set forth in Section 9.2. Additionally, the Operator shall not cause or permit any advertising by any third party or by the Operator (including, without limitation, any "pop up" or "banner" advertising) to appear in or on the Institution Online Store without the prior written consent of the Institution. In the event that the Operator causes or permits any unauthorized advertising to appear in or on the Institution Online Store, including, without limitation, by embedding such advertising into the source code of the Institution Online Store or by embedding a hypertext link to non-Institution Online Store materials in the source code of the Institution Online Store, the Operator shall remit to the Institution, no less frequently than once per calendar quarter, one hundred percent (100%) of all revenues received by the Operator as a result of or in connection with such advertising, including, without limitation, any fees due to the Operator from any third party for placing or maintaining such advertising in or on the Institution Online Store.

Section 5. Seller of Record; Pricing; Sales Taxes. At all times during the Term, the Operator (or one of its Affiliates, as applicable) will be (i) the seller of record for all goods and services through the operation of the Retail Locations and the Institution Online Store [OPTION II: and other E-Commerce Sites in Operator's Network], (ii) responsible for establishing the selling price for all such goods and services and (iii) responsible for determining, reporting, remitting and paying all sales and similar taxes on goods and services sold.

Section 6. Marketing and Promotions.

(a) Except as otherwise set forth herein, as the seller of record of the Licensed Merchandise and the Institution Sourced Merchandise, the Operator shall be solely responsible for all marketing and promotions with respect thereto. Operator shall take all commercially reasonable and legally permissible actions, consistent with its past practices to notify Operator of Web Sites that sell counterfeit Institution merchandise.

(b) On or before the anniversary date of each year of the Term, the Operator shall provide the Institution with a written comprehensive marketing plan to actively promote the Retail Locations and the Institution Online Store [OPTION II: and other E-Commerce Sites in Operator's Network] throughout

the upcoming year. Such marketing plan should include special promotional commitments that target certain “hot market” times of the year (i.e., championships, holidays, start of season, big games, etc.) and proposed advertising expenditures (both to external audiences and through the Department’s media rights holder), to include new or emerging campaigns that have been successfully implemented for other universities and/or organizations.

(c) The Operator shall utilize only official Institution Trademarks, branding elements and Institution imagery in all advertising and promotional initiatives.

(d) The Operator shall produce the necessary materials to include in the following marketing activities as provided by the Department:

(i) in-game announcements;

(ii) promotional opportunities (at least three times during each year of the Term), to include newspaper ads, street team canvassing, direct (database) marketing, e-mail blasts, social media, etc.; and

(iii) ads in programs for Department Events, fan guides, donor magazines, etc.

(e) The Operator shall maintain communication with the Department’s designated liaison(s) regarding upcoming promotions and marketing and promotion initiatives.

(f) The Operator have the right, but not the obligation, to conduct auctions (the “Auctions”) of licensed sports memorabilia (“Memorabilia”) per the guidelines set forth in Exhibit D.

Section 7. Merchandising; Capital Expenditures.

7.1 **Merchandising.** The Operator shall be responsible for obtaining and maintaining a commercially reasonable assortment of Licensed Merchandise for sale at the Retail Locations and through the Institution Online Store [OPTION II: and other E-Commerce Sites in Operator’s Network], including Under Armour merchandise, Under Armour being the Department’s official team apparel partner, which merchandise is reasonably likely to appeal to Customers who are enthusiasts of the Institution and/or the Department. Notwithstanding the foregoing, the Operator shall not be obligated to offer any Licensed Merchandise or Institution Sourced Merchandise to the extent prohibited by applicable law. The Institution shall not take or approve any action to materially reduce the overall assortment of Licensed Merchandise made available and offered for sale by the Operator hereunder. All merchandise sold at the Retail Locations and through the Institution Online Store [OPTION II: and other E-Commerce Sites in Operator’s Network] must be of high quality and officially licensed by the Institution and/or IMG College Licensing, and prices for such merchandise shall not exceed the general levels of prices charged for similar merchandise at other Southeastern Conference (“SEC”) schools. The Operator acknowledges and agrees that this Agreement does not grant any right to sell food, beverages, programs for Department Events or any other items of merchandise other than as set forth herein and, further, that the rights and licenses granted to the Operator pursuant to this Agreement do not extend to the sale of Tigers Unlimited merchandise, autographed memorabilia or any other items deemed by the Institution to fall outside this Agreement, which other items may be specifically excepted in writing by the Institution from time to time. The Operator shall not promote, offer for sale or sell any good that, in the Institution’s sole discretion, jeopardizes, or has the possibility of jeopardizing, the eligibility of any Institution athlete to participate in any athletic competition or event, or that otherwise diminishes, or may have the possibility of diminishing, in the Institution’s sole discretion, the Institution, the Department or any goodwill associated therewith.

7.2 Institution Sourced Merchandise. During the Term, the Parties will review in good faith any Institution Sourced Merchandise owned or controlled by the Institution or its Affiliates to determine if any such merchandise will be made available by the Operator through the Retail Locations or the Institution Online Store. To the extent that the Parties agree to make any Institution Sourced Merchandise available for sale through the Retail Locations and/or the Institution Online Store **[OPTION II: and other E-Commerce Sites in Operator's Network]**, the Parties will agree upon the terms and conditions pursuant to which the Operator (or one of its Affiliates) will purchase such merchandise from the Institution (or one of its Affiliates); provided, however, that the Institution agrees that it will (or will cause its Affiliates to) make such Institution Sourced Merchandise available to the Operator on terms and conditions (including price) that are no less favorable than the Institution or its Affiliates make such merchandise available to any other third party.

7.3 Fulfillment and Returns. The Operator will fulfill orders, as applicable, and accept returns for Licensed Merchandise and Institution Sourced Merchandise sold through the Retail Locations and/or the Institution Online Store **[OPTION II: and other E-Commerce Sites in Operator's Network]** in accordance with the Operator's standard policies and practices for other Operator customers that have e-commerce or retail location operations of similar size to that of the Institution Online Store and the Retail Locations operated hereunder and that sell merchandise similar to that sold hereunder. Unless otherwise agreed upon by the Parties, at the end of each calendar quarter during the Term (but solely with respect to any Institution Sourced Merchandise that is not then currently being offered for sale by the Operator) and upon any termination or expiration of this Agreement, the Institution will repurchase from the Operator, at the Operator's original cost, all Institution Sourced Merchandise that the Operator then has in its possession or control. The Operator will return such merchandise, at the Institution's cost, to a destination provided by the Institution.

7.4 Gift Certificates and Cards. The Operator or one of its Affiliates will have the non-exclusive right, but not the obligation, during the Term, to create, offer, distribute and redeem (whether offline or online) gift certificates and/or gift cards that include Institution Trademark, for use in the Retail Locations or the Institution Online Store **[OPTION II: and other E-Commerce Sites in Operator's Network]**. As between the Parties, the Operator will be solely responsible for all costs and expenses associated with the creation, offer, distribution and redemption of such gift certificates and/or gift cards. For the sake of clarity, the sale of gift certificates and/or gift cards will be included in the calculation of Net Merchandise Revenue hereunder.

7.5 Capital Expenditures. The Operator shall ensure that an amount up to **(\$xxx,xxx.xx)** in capital expenditures or other improvements with respect to the Regular Retail Locations is made during the Term, all such capital expenditures or other improvements being subject to prior written approval by the Institution. Operator shall reinvest **%** annually in capital expenditures or other improvements. Such capital expenditures or other improvements may include merchandising, fixtures and system improvements, e.g., retail kiosks, mobile device interfaces. Within thirty (30) days after the end of each calendar quarter during the Term, the Operator will prepare and provide to the Institution a report setting forth, in reasonable detail, a description of any such capital expenditures or other improvements made during the quarter in satisfaction of the obligations set forth in this Section 7.5. In the event that the Operator does not, during the Term, make capital expenditures or other improvements to the Regular Retail Locations of at least **(\$xxx,xxx.xx)**, the Operator will, within thirty (30) days after the expiration of the Term or other termination of this Agreement, pay to the Institution an amount equal to the difference between the amount actually spent to date on such capital expenditures or other improvements and **(\$xxx,xxx.xx)**.

Section 8. Liaisons; Dispute Resolution.

8.1 **Liaisons.** Each Party will designate one (1) or more specific individuals to oversee the performance of such Party's obligations under this Agreement, to serve as liaisons for communications with the other Party and to facilitate coordination of the Parties' performance of their respective obligations. Each Party's respective liaison(s) will be the other Party's primary contact(s) with respect to transactions contemplated hereunder. Each Party's liaison(s) may be subject to change from time to time by either Party upon written notice to the other Party. The liaisons will meet as frequently as may be necessary during the Term to review the implementation of this Agreement and to address applicable matters related hereto.

8.2 **Dispute Resolution.** If any dispute arises relating to either Party's rights or obligations under this Agreement, and the Parties are unable to resolve the dispute in the ordinary course of business, the Institution and the Operator will use good-faith efforts to resolve the matter in accordance with this Section 8.2. Within five (5) Business Days following the written request of either Party (which will describe the nature of the dispute and other relevant information), the Parties' liaisons assigned pursuant to Section 8.1 will meet to resolve the dispute at a mutually convenient time and place. If the liaisons are unable to resolve the dispute within three (3) Business Days following their initial meeting, such liaisons will refer the matter, to the extent unresolved, to the Parties' divisional executives or other individuals with executive-like authority over this Agreement, e.g., in the case of the Institution, the Assistant Athletic Director for Marketing (the "**Executive Sponsors**"), along with a written statement describing the nature of the dispute and other relevant information. Within five (5) Business Days following the referral of the matter to the Executive Sponsors, the Executive Sponsors will meet to resolve the dispute at a mutually convenient time and place. Additional representatives of the Parties (but not their liaisons) may be present at the meeting. If the Executive Sponsors are unable to resolve the dispute within three (3) Business Days following their initial meeting, then either Party may pursue any rights that it may have at law or in equity.

Section 9. Compensation and Expenses.

9.1 **General.** Except as expressly set forth otherwise in this Agreement, each Party will be responsible for all costs and expenses incurred by such Party in performing its obligations under this Agreement, including taxes.

9.2 **Revenue Share Payment.** Commencing on the Effective Date, subject to the Institution complying with its obligations under this Agreement, the Operator will pay to the Institution, on a calendar quarterly basis during the Term, an amount equal to _____ (____%) of the Net Merchandise Revenue from sales of Licensed Merchandise during the immediately preceding calendar quarter at the Retail Locations and/or through the Institution Online Store. **OPTION 2: Institution Online Store and other E-Commerce sites in Operator's Network.** Each subsequent year the percentage of annual Net Merchandise Revenue shall increase by .15% from the previous year's percentage of annual Net Merchandise Revenue.

9.3 **Institution Sourced Merchandise.** During the Term, the Operator shall have the right, but not the obligation, to accept Institution Sourced Merchandise, e.g., game used merchandise, from the Institution for sale of such Institution Sourced Merchandise through the Retail Locations and/or the Institution Online Store **[OPTION II: and other E-Commerce Sites in Operator's Network]**. Throughout the Term, the Institution shall present to the Operator (as the Operator may request from time to time) a list of all Institution Sourced Merchandise then available for operator to sell through normal retail channels. Commencing on the Effective Date, subject to the Institution complying with its obligations under this Agreement, the Operator will pay to the Institution, on a calendar quarterly basis during the

Term, an amount equal to _____ (____%) of the Net Merchandise Revenue from the sales of Institution Sourced Merchandise received by the Operator during the immediately preceding calendar quarter at the Retail Locations and/or through the Institution Online Store [OPTION II: and other E-Commerce Sites in Operator's Network]

9.4. **Revenue Share Statement.** Within thirty (30) days after the end of each calendar quarter during the Term, the Operator will prepare and provide to the Institution a report setting forth, in reasonable detail, separately for each of the Regular Retail Locations, the Event Retail Locations and the Institution Online Store [OPTION II: and other E-Commerce Sites in Operator's Network], the revenue share payable to the Institution hereunder for the preceding calendar quarter and the basis of such calculation. The Operator shall provide written notice to the Institution in the event that any merchandise sale is booked at an amount that is less than the retail or consumer price.

9.5 **Payment Instructions.** Together with the report required by Section 9.4, the Operator will deliver payment to the Institution for the revenue share payment. All payments due to the Institution pursuant to this Agreement shall be made by check, payable to the Institution and remitted to the Institution's address set forth on the signature page hereto.

9.6 **Payment Guarantee.** Within sixty (60) days after each June 30 during each year of the Term, the Operator will calculate the actual aggregate revenue share payments paid or then payable to the Institution for the prior year. In the event that such actual aggregate revenue share payments are less than the Minimum Guarantee Amount, the Operator will pay to the Institution such difference within ten (10) Business Days thereafter. For the sake of clarity, in the event that the aggregate revenue share and other payments are equal to or exceed the Minimum Guarantee Amount, no additional payment will be due.

For purposes of this Agreement, "**Minimum Guarantee Amount**" means an amount equal to \$525,000.00 in year one. Each subsequent year the Minimum Guarantee Amount shall increase by 3% from the previous year's Minimum Guarantee Amount for each year of the Term; provided, however, that (a) for each such year of the Term in which the Institution's football team wins the College Football Playoff, the Minimum Guarantee Amount for that year shall be increased by \$ _____; (b) for each such year of the Term in which the Institution's men's basketball team wins the National Collegiate Athletic Association (the "NCAA") national basketball championship, the Minimum Guarantee Amount for that year shall be increased by \$ _____; and (c) for each such year of the Term in which the Institution's football team wins the SEC football championship, the Minimum Guarantee Amount for that year shall be increased by \$ _____.

9.7 **Records and Audit Rights.** During the Term, and for a period of two (2) years thereafter, the Operator will keep complete and accurate books and records sufficient to verify the amounts paid or owed under this Agreement. The Operator will, upon at least ten (10) days' prior written request by the Institution, allow the Institution, or a representative of the Institution who is reasonably acceptable to the Operator, to audit such books and records at the Operator's premises to the extent necessary to verify the amounts paid or owed pursuant to this Agreement; provided that (a) any such audit is conducted during normal business hours and in a manner designed to not unreasonably interfere with the Operator's ordinary business operations, and (b) each such audit may only cover the period commencing after the period covered by the last audit conducted pursuant to this Section 9.7, if any.

9.9 **Reporting.** In addition to the report contemplated in Section 9.4, the Operator will provide the Institution with access to the reporting portal(s) that are generally made available by the Operator to its other similarly situated clients.

9.10 **Annual Credit and Faculty Discount.** For each calendar year during the Term, the Operator shall provide to the Institution a credit of \$ [REDACTED] (the “**Annual Credit**”), in the form of gift cards, in such denominations as the Institution shall elect, to be used toward the purchase by the Institution of Licensed Merchandise at any of the Retail Locations or through the Institution Online Store. Notwithstanding anything in this Agreement to the contrary, Orders placed using the Annual Credit shall be (a) excluded from the definition of Net Merchandise Revenue and from the calculation of royalty share payments, but (b) counted towards the Minimum Guarantee Amount, meaning that the Institution is not entitled to any portion of the sales generated from the purchase of Licensed Merchandise using the Annual Credit, but the Operator is entitled to count the amount of the Annual Credit, as applicable, toward the Minimum Guarantee Amount. Any unused Annual Credit for each calendar year during the Term will expire at the expiration of such calendar year.

Section 10. Proprietary Rights.

10.1 Ownership.

(a) **Institution.** As between the Parties, the Institution reserves all right, title and interest in and to the Institution Furnished Items, along with all Intellectual Property Rights associated therewith, and no title to or ownership of any of the foregoing is transferred or, except as expressly set forth in this Agreement, licensed to the Operator or any other Person hereunder. The Operator will take, at the Institution’s expense, any actions (including execution and delivery of affidavits and other documents) reasonably requested by the Institution to effect, perfect or confirm the Institution’s or its designee’s right, title and interest therein. Upon the expiration or earlier termination of this Agreement, the Operator will return all Institution Furnished Items to the Institution, and the Operator will have no further rights thereto.

(b) **Operator.** As between the Parties, the Operator reserves all right, title and interest in and to the Operator Furnished Items, along with all Intellectual Property Rights associated with any of the foregoing, and no title to or ownership of any of the foregoing is transferred or licensed to the Institution or any other Person hereunder. The Institution will take, at the Operator’s expense, any actions (including execution and delivery of affidavits and other documents) reasonably requested by the Operator to effect, perfect or confirm the Operator’s or its designee’s right, title and interest therein. Upon expiration or earlier termination of this Agreement, the Institution will return all Operator Furnished Items to the Operator, and the Institution will have no further rights thereto.

10.2 **Institution Furnished Items License.** The Institution hereby grants to the Operator, during the Term, a worldwide, royalty free and fully paid up, non-transferable license, free and clear of all liens and encumbrances whatsoever, to use the Institution Furnished Items, solely in connection with the performance of the Operator’s obligations under this Agreement and subject to the provisions of this Agreement.

Section 11. Term and Termination.

11.1 **Term.** The term of this Agreement will commence on the Effective Date and end on June 30, 2025 (as may be extended, the “**Term**”), unless earlier terminated in accordance herewith.

11.2 **Termination for Breach.** Without limiting any other rights or remedies (including any right to seek damages and other monetary relief) that either Party may have in law or otherwise, either Party may terminate this Agreement if the other Party fails to perform any of its obligations hereunder, provided that (a) the non-breaching Party sends written notice to the breaching Party describing in reasonable detail the breach and stating its intention to terminate this Agreement unless such breach is

cured (each, a “**Breach Notice**”), and (b) the breaching Party does not cure the breach within thirty (30) days following its receipt of such notice; provided, however, that if the breaching Party has diligently attempted to cure the breach during such thirty (30) day period but has not cured the breach by the end of such thirty (30) day period, the non-breaching Party may not terminate this Agreement so long as the breaching Party continues to diligently attempt to cure the breach. More specifically with respect to the Institution:

(i) the Institution reserves the right to terminate this Agreement, subject to the cure provisions set forth above, in the event that the Operator breaches any provision of this Agreement and to assess as liquidated damages an amount equal to all amounts payable by the Operator to the Institution for that annual period of the Term, which amount may be satisfied, in whole or in part, by the Security Instrument;

(ii) the Institution reserves the right to terminate this Agreement, subject to the cure provisions set forth above, in the event that the Operator fails to achieve reasonable industry quality standards in its performance of this Agreement; and

(iii) the Institution reserves the right to terminate this Agreement, subject to the cure provisions set forth above, in the event of a failure of the Operator to provide the reports called for by Section 9.4 to the subjective satisfaction of the Institution.

11.3 Institution Termination. The Institution will be entitled to terminate this Agreement immediately upon written notice to the Operator if the Operator admits in writing its inability to pay debts as they mature, institutes or has instituted against it any bankruptcy, reorganization, debt arrangement, assignment for the benefit of creditors, or other proceeding under any bankruptcy or insolvency law or dissolution, receivership, or liquidation proceeding (and, if such proceeding is instituted against it, such proceeding is not dismissed within sixty (60) days).

11.4 Operator Termination. The Operator will be entitled to terminate this Agreement immediately upon written notice to the Institution if the Institution admits in writing its inability to pay debts as they mature, institutes or has instituted against it any bankruptcy, reorganization, debt arrangement, assignment for the benefit of creditors, or other proceeding under any bankruptcy or insolvency law or dissolution, receivership, or liquidation proceeding (and, if such proceeding is instituted against it, such proceeding is not dismissed within sixty (60) days).

11.5 Effect of Termination. Upon the expiration or earlier termination of this Agreement, each Party in receipt, possession or control of the other Party’s intellectual or proprietary property, information and materials or Confidential Information pursuant to this Agreement must return to the other Party (or at the other Party’s written request, destroy) such property, information and materials. Sections 9.7, 11.5, 13.3, 13.4, 14 and 15 will survive any such expiration or termination. Notwithstanding the foregoing, the expiration or earlier termination of this Agreement will not relieve either Party from its obligation to pay any monies due to the other Party for any period, full or partial, prior to the effective date of such expiration or termination.

Section 12. Exclusivity. During the entire Term, the Operator will be the exclusive provider of all services necessary to create and operate the businesses of the Department that sell Licensed Merchandise to consumers on or through the Internet and at the Retail Locations. The Institution Online Store shall be the official online store of the Department, and the Operator shall have the exclusive right to operate and brand the Institution Online Store as such, pursuant to the terms and conditions of this Agreement. The Retail Locations shall be the official stores of the Department, and the Operator shall have the exclusive right to operate and brand the Retail Locations as such, pursuant to the terms and conditions of this

Agreement. The Department will not, directly or indirectly, offer, market or sell Licensed Merchandise to consumers on or through the Internet or brick and mortar retail locations other than pursuant to this Agreement. This section notwithstanding, the Parties hereby acknowledge and agree that the Institution can sell advertising on any publication or Web Site that could lead consumers to sales outlets other than the Retail Locations and the Institution Online Store.

Section 13. Representations; Insurance; Indemnification.

13.1 **Representations.** Each Party represents and warrants to the other that: (a) it has the full right, power and authority to enter into this Agreement and perform its obligations hereunder and holds all licenses and permits required in connection with the performance its obligations hereunder; (b) its execution, delivery and performance of this Agreement, and the other Party's exercise of such other Party's rights under this Agreement, will not conflict with or result in a breach or violation of any of the terms or provisions or constitute a default under any material agreement by which it is bound; (c) when executed and delivered, this Agreement will constitute its legal, valid and binding obligation, enforceable against it in accordance with the terms of this Agreement; and (d) it will comply with all Federal, state and local laws and ordinances (including, but not limited to, immigration laws and fire and safety regulations), as well as all guidelines, rules and regulations of the NCAA, the SEC and the Institution, in performing its obligations hereunder.

13.2 **Insurance.** During the Term, as reasonably requested by the Institution from time to time, the Operator will furnish to the Institution certificates of insurance evidencing the following insurance coverage: (a) Workman's Compensation in accordance with statutory coverage required by the State of Alabama, (b) Employers Liability, Bodily Injury, \$1,000,000 each accident, and Bodily Injury by Disease, \$1,000,000 each employee, (c) Comprehensive General Liability, \$1,000,000 each occurrence, general occurrence, products completed operations aggregate, and personal and advertising injury, and (d) Commercial Automobile Liability Insurance, covering bodily injury and property damage arising from ownership, maintenance or use of any and all owned, non-owned and/or hired automobiles, Minimum Limit \$1,000,000 Combined Single Limit. Insurance coverage shall be by a company having minimum current A.M. Best rating of 'A'.

13.3 Indemnity; Offset. The Operator will defend, indemnify and hold harmless the Institution and its Affiliates (and their respective employees, trustees, officers, directors and representatives, and their successors in interest) from and against any and all losses, damages, judgments, costs and expenses (including reasonable attorneys' fees) arising out of any third party claim, action, suit or proceeding ("**Claim**"), to the extent based on the Operator's actions and performance of this Agreement, including the actions of the Operator's employees, officers, directors, agents, partners, subcontractors and other representatives, specifically including, but not limited to, (i) any breach of the Operator's representations, warranties and/or obligations as set forth in this Agreement, (ii) infringement, product liability, personal injury or death relating to any Licensed Merchandise (other than (A) Claims related to marketing provided by the Institution or its Affiliates, or (B) Claims that the Institution Trademarks included in or on such Licensed Merchandise infringe upon a third party's Intellectual Property Rights), (iii) the Operator Furnished Items, including any infringement of any Intellectual Property Rights with respect thereto, including Claims based upon infringement, product liability, personal injury or death relating to any Licensed Merchandise owned or sourced by the Operator or its Affiliates offered, marketed and/or sold through the Retail Locations, or (iv) any failure of the Operator to comply with any applicable law, rule or regulation. The Institution may, in addition to other remedies available to it at law or in equity, and upon written notice to the Operator, retain monies from amounts due to the Operator, or may proceed against the Security Instrument furnished by the Operator to the Institution, as may be necessary to satisfy any Claim.

13.4 Procedure. In case any Claim is at any time brought against the Institution or its Affiliates (or any of their respective employees, officers, directors or representatives) (each an "**Indemnified Party**") and such Indemnified Party is entitled to indemnification pursuant to Section 13.3 with respect thereto, the Operator (the "**Indemnifying Party**") will defend such Claim, at the sole expense of the Indemnifying Party, using counsel selected by the Indemnifying Party but subject to the Indemnified Party's reasonable approval. If the Indemnifying Party fails to take timely action to defend such Claim after having received written notice from the Indemnified Party of such failure, the Indemnified Party may defend such Claim at the Indemnifying Party's expense. The Indemnifying Party will keep the Indemnified Party fully advised with respect to such Claim. The Indemnified Party will have the right to participate, at the Indemnified Party's expense, in any suit instituted against it and to select attorneys to defend it, which attorneys will be independent of any attorneys chosen by the Indemnifying Party relating to such Claim or any related claim. The Indemnified Party and the Indemnifying Party shall cooperate in all reasonable respects with the investigation, disclosure and defense of any Claim. The Indemnifying Party will not settle, compromise or otherwise enter into any agreement regarding the disposition of any Claim against the Indemnified Party without the prior written consent and approval of the Indemnified Party, unless such settlement, compromise or disposition of any Claim against the Indemnified Party (i) provides for a complete and unconditional release of the Indemnified Party in respect of the Claim, (ii) does not include a statement as to, or an admission of, fault, culpability or failure to act by or on behalf of the Indemnified Party and (iii) does not impose any ongoing payment obligation on the Indemnified Party.

Section 14. Disclaimers and Limitations of Liability.

14.1 DISCLAIMER OF WARRANTIES. EXCEPT AS OTHERWISE PROVIDED IN THIS AGREEMENT, NEITHER PARTY MAKES, AND EACH PARTY HEREBY WAIVES AND DISCLAIMS, ANY REPRESENTATIONS OR WARRANTIES REGARDING THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT OR IMPLIED WARRANTIES ARISING OUT OF COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE.

14.2 LIMITATION OF DAMAGES. EXCEPT TO THE EXTENT (A) AWARDED TO A THIRD PARTY IN A JUDGMENT AGAINST WHICH A PARTY IS ENTITLED TO INDEMNIFICATION PURSUANT TO SECTION 13, OR (B) RESULTING FROM WILLFUL MISCONDUCT OR WRONGFUL TERMINATION, NEITHER PARTY WILL BE LIABLE (WHETHER IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR OTHER THEORY), TO THE OTHER PARTY OR ANY OTHER PERSON OR ENTITY FOR COST OF COVER OR FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES OR DAMAGES FOR LOSS OF PROFIT, REPUTATION, BUSINESS OR DATA ARISING OUT OF THIS AGREEMENT.

Section 15. Miscellaneous.

15.1 Press Releases. Unless required by law, neither the Institution nor the Operator will make any public announcement or issue any press release concerning the transactions contemplated by this Agreement without the prior written consent of the other Party. Notwithstanding the preceding sentence, (a) commencing on the Effective Date, the Operator may reference the Institution as an entity for which the Operator has an agreement and operates an e-commerce and retail business, (b) after the initial public announcement of a specific matter or transaction has been approved in writing by the Parties, either Party's subsequent reference to that specific matter or transaction will not require another approval from the other Party and (c) each Party may make any public announcement or issue any press release that it is required by law or rule or regulation of any governmental authority or self-regulatory organization to issue, provided that such Party gives reasonable prior written notice of such announcement or press release to the other Party so that such other Party may either seek an appropriate protective order or other relief.

15.2 Independent Contractors; Performance. The Parties are entering into this Agreement as independent contractors, and this Agreement will not be construed to create a partnership, joint venture or employment relationship between them. Neither Party will represent itself to be an employee or agent of the other or enter into any agreement or legally binding commitment or statement on the other's behalf of or in the other's name.

15.3 Confidentiality.

(a) Each Party will protect and keep confidential the Confidential Information of the other Party from misappropriation and unauthorized use or disclosure, and, at a minimum, will take precautions at least as great as those taken to protect its own Confidential Information of a similar nature. Without limiting the foregoing, the receiving Party will (i) use such Confidential Information solely for the purposes for which it has been disclosed and (ii) disclose such Confidential Information only to those of its employees, consultants and agents, and others who have a need to know the same, for the purpose of performing this Agreement and who are informed of and agree to a duty of nondisclosure. The receiving Party may also disclose Confidential Information of the disclosing Party to the extent necessary to comply with applicable law or legal process, provided that the receiving Party gives the disclosing Party reasonable advance written notice thereof. Upon request of the other Party, or in any event upon the expiration or earlier termination of this Agreement, each Party will return to the other all materials, in any medium, that contain, embody, reflect or reference all or any part of any Confidential Information of the other Party; provided, however, that the receiving Party may retain copies of the disclosing Party's Confidential Information for the receiving Party's files to the extent necessary for the receiving Party to comply with legal and/or regulatory requirements. Notwithstanding the return of Confidential Information, each Party will continue to be bound by its obligations of confidentiality under this Agreement.

(b) Neither Party will disclose this Agreement or the transactions contemplated herein, or make any filing of this Agreement or other agreements relating to the transactions contemplated herein, without the prior written consent of the other, except as provided in Section 15.3(a) above, and either Party shall have the right to disclose any Confidential Information to any of its Affiliates (each under an equivalent duty of confidentiality to that set forth in this Agreement) without the other Party's consent; provided, however, that if a Party is required by applicable law or rule or regulation of any governmental authority or self-regulatory organization, or open records requests, to provide public disclosure of this Agreement or the transactions contemplated herein, such Party will use all reasonable efforts to coordinate the disclosure with the other Party before making such disclosure of an application for confidential treatment of certain terms (which terms will be agreed upon by the Parties) of this Agreement. Each Party will provide to the other for review a copy of any proposed disclosure of this Agreement or its terms and any application for confidential treatment prior to the time any such disclosure or application is made, and the Parties will work together to mutually approve such disclosure or application.

15.4 Force Majeure. If either Party is unable to perform any of its obligations under this Agreement due to an event beyond the control of that Party, including natural disaster, acts of God, actions or decrees of governmental bodies, act of war, terrorism, failure or discontinuance of the Internet or failure of communications lines or networks, that Party will use commercially reasonable efforts to eliminate or minimize the effect of such events upon performance of its obligations under this Agreement and to resume performance of its obligations, but will have no liability to the other Party for failure to perform its obligations under this Agreement for so long as it is unable to do so as a result of such event.

15.5 Notices. Unless otherwise provided, all notices, consents or other communications required or permitted to be given under this Agreement must be in writing and will be deemed to have been duly given (a) when delivered personally, (b) three (3) Business Days after being mailed by first class mail, postage prepaid, or (c) one (1) Business Day after being sent by a reputable overnight delivery service, postage or delivery charges prepaid, to the Parties at their respective addresses stated on the signature page of this Agreement. Notices may also be given by facsimile or e-mail and will be effective on the date transmitted if confirmed within twenty-four (24) hours thereafter by a signed original sent in the manner provided in the preceding sentence. Notices to the Operator will be sent to its address stated on the signature page of this Agreement to the attention of the General Counsel, with a copy sent simultaneously to the same address to the attention of its Chief Financial Officer. Notices to the Institution will be sent to its address stated on the signature page of this Agreement, with a copy sent simultaneously to its General Counsel. Either Party may change its address for notice and the address to which copies must be sent by giving notice of the new addresses to the other Party in accordance with this Section 15.5, except that any such change of address notice will not be effective unless and until received.

15.6 Assignment. Neither Party may assign this Agreement or any of its rights or obligations hereunder, whether voluntarily or involuntarily, without the other Party's prior written consent. Subject to the foregoing, this Agreement will be binding on and enforceable by the Parties and their respective successors and permitted assigns.

15.7 Amendment. This Agreement may be amended, modified or supplemented by the Parties, provided that any such amendment, modification or supplement must be in writing and signed by a duly authorized representative of each Party.

15.8 Waiver. No waiver by a Party with respect to this Agreement will be effective or enforceable against a Party unless in writing and signed by that Party. Except as otherwise expressly provided herein, no failure to exercise, delay in exercising, or single or partial exercise of any right, power or remedy by a Party, and no course of dealing between or among any of the Parties, will constitute

a waiver of, or will preclude any other or further exercise of the same or any other right, power or remedy.

15.9 Counterparts and Transmitted Copies. This Agreement may be executed in any number of counterparts, each of which when executed and delivered will be deemed an original, but all of which taken together will constitute but one and the same instrument, and it will not be necessary in making proof of this Agreement to produce or account for more than one original counterpart hereof. The Parties acknowledge that Transmitted Copies (as defined below) of this Agreement will be equivalent to original documents until such time (if any) as original documents are completely executed and delivered. As used herein, “**Transmitted Copies**” means copies that are reproduced or transmitted via facsimile, e-mail or another process of complete and accurate reproduction and transmission.

15.10 Entire Agreement. This Agreement, together with the Exhibits to this Agreement, represents the entire understanding between the Parties with respect to the subject matter hereof and supersedes all previous oral or written communications or agreements, and all contemporaneous oral communications and agreements, between the Parties and their respective Affiliates regarding such subject matter, including, without limitation, any request for proposal or response thereto. No breach of this Agreement by either Party will affect the rights or obligations of either Party under any other agreement between the Parties.

15.11 Severability. If any provision of this Agreement is construed to be invalid, illegal or unenforceable, then the remaining provisions hereof will not be affected thereby and will be enforceable without regard thereto.

15.12 Choice of Law; Jurisdiction and Venue. This Agreement shall governed by and construed in accordance the laws of the State of Alabama applicable to contracts entered into and performed entirely within that state, without giving effect to any choice or conflict of law provision or rule (whether of the State of Alabama or any other jurisdiction) that would cause application of the laws of any jurisdiction other than the State of Alabama. Venue for any actions arising under this Agreement shall vest exclusively in courts located in the United States District Court for the Middle District of Alabama or in any court of the State of Alabama sitting in Lee County. The Operator hereby submits to the exclusive personal jurisdiction and venue of the aforementioned courts and agrees that it will not assert lack of personal jurisdiction or improper venue as a defense to any such action.

15.13 Headings. The headings of sections and subsections of this Agreement are for convenience of reference only and are not intended to restrict, affect or otherwise influence the interpretation or construction of any provision of this Agreement.

15.14 References. All words used in this Agreement will be construed to be of such number and gender as the context requires or permits. Unless a particular context clearly provides otherwise (a) the words “hereof” and “hereunder” and similar references refer to this Agreement in its entirety and not to any specific section or subsection hereof, and (b) the word “include” or “including” will mean “include, without limitation,” or “including, without limitation.”

15.15 Construction. The Parties agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting Party will not be applied in the construction or interpretation of this Agreement or any other agreements or documents delivered in connection with the transactions contemplated by this Agreement.

15.16 Compliance With Laws. Each Party shall comply, in all material respects, with all applicable laws and rules and regulations with respect to the performance of its obligations pursuant to

this Agreement.

15.17 Affiliates and Subcontractors. Each Party (i) shall, to the extent that any rights granted by such Party hereunder are owned or controlled by any other Person, obtain the necessary rights to provide the other Party hereunder such rights or cause such other Person to provide such rights to the other Party hereunder, (ii) in performance of its obligations hereunder, and with prior written notice to the other Party, may utilize one or more Affiliates or subcontractors and provide such Affiliate or subcontractor with any materials or other information necessary to perform any obligation; provided that such Party shall remain liable to the other Party for the performance of such obligations, and any such Affiliate or subcontractor must agree to be bound by the terms and conditions of this Agreement, and (iii) with prior written notice to the other Party, may elect to have such Party's rights under this Agreement exercised by such Party or by an Affiliate of such Party that is performing any related services or fulfilling any related obligation hereunder.

(Signatures Appear on the Following Page)

IN WITNESS WHEREOF, intending to be legally bound, the Parties hereby execute this Agreement on the Effective Date.

OPERATOR:



INSTITUTION:

AUBURN UNIVERSITY

By: _____

Name:

Title:

Address:

Telephone:

Facsimile:

By: _____

Name:

Title:

Address:

Telephone:

Facsimile:

Appendix “A”

Defined Terms

“**Affiliate**” means, as to any Person, any other Person that, directly or indirectly, is controlled by, is under common control with, or controls such Person, but only as long as such control exists. For this purpose, “control” means ownership or voting rights over at least 50% of the outstanding voting or equity securities of the Person in question or the power to direct or cause the direction of management or policies of such Person, whether through voting securities, by contract, or otherwise. For the sake of clarity, in the case of the Operator, “Affiliate” shall not include any entity that is not also a subsidiary of Fanatics, Inc.

“**Business Day**” means any day which is not a Saturday, Sunday or official federal holiday in the United States.

“**Confidential Information**” means all nonpublic information relating to a Party or its Affiliates that is designated as confidential or that, given the nature of the information or the circumstances surrounding its disclosure, reasonably should be considered as confidential. Confidential Information includes (i) all nonpublic information relating to a Party’s or its Affiliates’ technology, customers, business plans, agreements, promotional and marketing activities, finances and other business affairs and (ii) all third party information that a Party or its Affiliates is obligated to keep confidential. Confidential Information may be contained in tangible materials, such as drawings, data, specifications, reports and computer programs, or may be in the nature of unwritten knowledge. Confidential Information does not include any information that (1) has become publicly available without breach of this Agreement, (2) can be shown by documentation to have been known to the receiving Party at the time of its receipt from the disclosing Party or its Affiliates, (3) is received from a third party who did not acquire or disclose such information by a wrongful or tortious act or (4) can be shown by documentation to have been independently developed by the receiving Party without reference to any Confidential Information.

“**Customer**” means a Person who (a) purchases merchandise at a Retail Location or (b) accesses the Institution Online Store [OPTION II: and other E-Commerce Sites in Operator’s Network] in any manner, whether or not a purchase is made, including access through placing a call to the toll-free customer service number.

“**Customer Information**” means name, mailing address, telephone number, e-mail address and any other personally identifying information provided by or obtained through the Retail Locations and/or the Institution Online Store [OPTION II: and other E-Commerce Sites in Operator’s Network]; provided, however, that Customer Information does not include any information that either the Operator or the Institution owns or to which the Operator or the Institution has the rights and that is obtained from Customers other than through transactions contemplated under this Agreement.

“**Department**” means the Auburn University Department of Intercollegiate Athletics.

“**Department Event**” means any event sponsored, hosted by or otherwise involving or relating to the Department and held at a location owned and/or operated by the Institution, including all Institution Sporting Events and any other special events as the Department deems appropriate (i.e., NCAA or other post-season events, Fan Day, the A-Day Spring Football Game, the Baseball Home Run Derby, team scrimmages, Midnight Madness, high school sports championship events held at a location owned and/or operated by the Institution, etc.).

“**Designated URLs**” means the applicable URLs set forth on Exhibit B attached hereto (or any successor or replacement URL).

OPTION II: "E-commerce Site" means any point of presence maintained for the purpose of E-commerce, whether through any public data network or platform or otherwise, including Web Sites. References to an E-commerce Site shall be deemed to include (i) all electronic pages (or similar unit of information presented in any relevant data protocol) that a user reasonably would conclude are part of an integrated information or service offering related to the sale of merchandise, and (ii) all versions or iterations of an E-commerce Site that may be established from time to time to allow for one or more Methods of Access (e.g., the mobile version of a Web Site).

OPTION II: "Operator's Network" means the E-commerce Sites owned and operated by Operator and its Affiliates from time to time during the Term, but only to the extent that such E-commerce Sites are then owned or operated by Operator and/or its Affiliates. As of the Effective Date, the Operator's Network includes the following the Web Sites:

"Event Retail Locations" means the retail locations at the ancillary locations outlined on Exhibit A, operated before, during and/or after a Department Event, the exact locations and hours of operations of which are to be determined by mutual agreement of the Parties, as well as such additional or different locations made a part of this Agreement during the Term by mutual agreement of the Parties. For the sake of clarity, the terms of this Agreement shall govern the use and occupancy of any such location.

"Home Page" means, with respect to a Web Site, the Web page designated by the operator of the Web Site as the initial and primary end user interface for the Web Site.

"Institution Content" means the content or information owned or controlled (e.g., by license or otherwise) by the Institution or its Affiliates, including text, graphics, photographs, video, audio and/or other data or information, and e-mail addresses provided by or on behalf of the Institution to the Operator in connection with this Agreement, the Retail Locations and/or the Institution Online Store **OPTION II: and other E-Commerce Sites in Operator's Network**.

"Institution Furnished Items" means the Institution Content and Institution Trademarks that are furnished by the Institution for use in connection with the activities contemplated by this Agreement. As used herein, Institution Furnished Item also includes any adaptation, modification, improvement or derivative work of any Institution Furnished Item that is developed by either Party or jointly by the Parties.

"Institution Online Store" means the Web Site as operated by the Operator pursuant to this Agreement, the primary Home Page for which is identified by the applicable Designated URLs (and any successor or replacement Web Sites) and the Secondary URLs, if any.

"Institution Sites" means each Web Site owned, operated or controlled by the Department (and any successor or replacement URL or Web Site), including (as of the Effective Date) those Web Sites whose primary Home Pages are identified by the URLs set forth on Exhibit B.

"Institution Sourced Merchandise" Game used merchandise provided by the Institution or its Affiliates. All other merchandise must be sourced from a company that holds a license with Auburn University Office of Trademark Management and Licensing or agency.

"Institution Sporting Events" means all Institution sporting events (men's and women's), including but not limited to football, baseball, basketball, cross country, equestrian, volleyball, softball, soccer, track and field, golf, tennis, swimming and diving and gymnastics.

“Institution Trademarks” means all Trademarks owned or controlled by the Institution or its Affiliates.

“Intellectual Property Rights” means any and all now known or hereafter known tangible and intangible (i) rights associated with works of authorship throughout the universe, including copyrights, moral rights and mask-works, (ii) trademark, trade dress and trade name rights and similar rights, (iii) trade secret rights, (iv) patents, designs, algorithms and other industrial property rights, (v) all other intellectual and industrial property rights of every kind and nature throughout the universe and however designated (including domain names, logos, “rental” rights and rights to remuneration), whether arising by operation of law, contract, license or otherwise, and (vi) all registrations, initial applications, renewals, extensions, continuations, divisions or reissues thereof now or hereafter in force (including any rights in any of the foregoing).

“Launch Date” means the first date on which the Operator makes the Institution Online Store publicly available to Customers under this Agreement.

“Licensed Merchandise” means any goods or services bearing the Institution Trademarks or otherwise designated as licensed by the Institution’s Office of Trademark Management and Licensing.

“Look and Feel” means the appearance, coloring, graphics, fonts, logos and other look and feel characteristics of a Web Site that are unique to the Web Site and that are consistent from page to page and that indicate a common identity of the various pages and identify such pages as forming a part of a single Web Site.

“Net Merchandise Revenue” means the amount equal to all cash consideration from the sale of Licensed Merchandise and Institution Sourced Merchandise through the Retail Locations or Orders on the Institution Online Store [OPTION II: and other E-Commerce Sites in Operator’s Network] during the applicable period pursuant to this Agreement, less all taxes, shipping and handling charges, payment tender processing fees, wrapping charges, refunds and returns.

“Operator Content” means any and all content or information owned or controlled (e.g., by license or otherwise) by the Operator or its Affiliates, including text, graphics, photographs, video and audio.

“Operator Furnished Item” means any Operator Content, Trademarks or Technology that, as between the Parties, is owned or controlled (e.g., by license or otherwise) by the Operator or its Affiliates, as the case may be. As used herein, Operator Furnished Item will also include any adaptation, modification, improvement or derivative work of any Operator Furnished Item that is developed by either Party or jointly by the Parties. Notwithstanding the foregoing, Operator Furnished Items do not include any Institution Furnished Items.

“Operator Site” means the Web Site, the primary Home Page of which is identified by the URL [redacted] (and any successor or replacement URL or Web Site); provided, however, that, at its option but only after written notice to the Institution, the Operator has the right to substitute one or more other Operator or its Affiliates’ owned and controlled Web Sites, and all references to Operator Site will thereafter refer to such substitute Web Site(s).

“Order” means a completed order for Licensed Merchandise or Institution Sourced Merchandise sold by the Operator or its Affiliates and placed through the Institution Online Store. For the sake of clarity, Orders placed through any of the above include orders placed via the telephone numbers for any of the above, and/or through access to any of the above via a mobile device.

“Person” means any individual, corporation (including any non-profit corporation), general or limited partnership, limited liability company, joint venture, estate, trust, association, organization, labor union, or other entity or governmental body.

“Regular Retail Locations” means the brick and mortar retail locations that are owned, leased or licensed by the Institution or one of its Affiliates and operated on a regular basis, as outlined on Exhibit A, as well as such additional or different brick and mortar retail locations as may become owned, leased or licensed by the Institution or one of its Affiliates during the Term and made a part of this Agreement by mutual agreement of the Parties. For the sake of clarity, the terms of this Agreement shall govern the use and occupancy of any such location.

“Retail Locations” means the Regular Retail Locations and the Event Retail Locations.

“Secondary URLs” means uniform resource locators used by the Institution, other than the Designated URLs, that the Institution or its Affiliates identify(ies) as being intended to point to the same Web page as the applicable Designated URL, and that include one or more Trademarks or other references used by the Institution or its Affiliates or any variant of such Trademarks or other references to the Institution or the Institution’s business.

“Security Instrument” means that certain security instrument in the amount of \$125,000 provided by the Operator to the Institution prior to or in connection with the execution of this Agreement as security for the Operator’s performance and settlement of its accounts with the Institution, which instrument must be maintained in force until at least ninety (90) days after the termination of this Agreement. Proof of the existence of the Security Instrument is attached hereto as Exhibit C.

“Technology” means any design, specification, data, database, process, system, method of operation, concept, software, code, template, user interface, protocol, format, technique, algorithm, method, process, device, procedure, functionality or other technology or similar item.

“Trademark” means any trademark, service mark, trade name, URL, domain name, trade dress, proprietary logo or insignia, or other source or business identifier.

“URL” means the uniform resource locator of a Web Site.

“Web Site” means any point of presence maintained on the Internet or on any other public data network. With respect to any Web Site maintained on the World Wide Web or any successor public data network, such Web Site includes all HTML pages (or similar unit of information presented in any relevant data protocol) that either (i) are identified by the same second-level domain by the same equivalent level identifier in any relevant address scheme or (ii) contain branding, graphics, navigation or other characteristics such that a user reasonably would conclude that the pages are part of an integrated information or service offering.

Exhibit A

Retail Locations

Regular Retail Locations

Auburn Arena Team Shop

Event Retail Locations

Jordan-Hare Stadium

- A. Stadium Sales Locations:
 - At Minimum 10 mutually agreed upon Stadium Sales Locations.

- B. Exterior Sales Locations:
 - At Minimum 7 mutually agreed upon Exterior Sales Locations.

*Club Levels or Executive Suite Levels of stadium not included, unless otherwise agreed in writing.

Auburn Arena

- A. Team Shop (subject to special conditions/obligations in this RFP)
- B. Additional locations on concourse as approved by Athletics and where space permits

Plainsman Park

- A. Baseball

AU Soccer/Track Complex

- A. Soccer

Jane B. Moore Field

- A. Softball

Exhibit B

Designated URLs and Institution Sites

Designated URL(s):

www.aufanshop.com
www.auteamshop.com

Institution Site(s):

www.auburntigers.com

Exhibit C

Security Instrument

(see attached)

Exhibit D

EVENT AUCTION AGREEMENT

This Event Auction Agreement (“Agreement”), dated as of July [REDACTED], 2018 (the “Effective Date”), is by and between [REDACTED], a [REDACTED] (“Operator”), and Auburn University (the “Institution”).

WHEREAS, the Institution is the organizer of athletic events, including football games (the “Events”) at the University’s Jordan-Hare Stadium and other University locations (the “Event Locations”); and

WHEREAS, Operator and the Institution desire that Operator have the right, but not the obligation, to conduct auctions (the “Auctions”) of licensed sports memorabilia (“Memorabilia”) at the Event Locations during the Events and the two-hour periods immediately preceding the Events and immediately following the Events (the “Auction Period”).

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Auctions. The Institution hereby engages Operator, and Operator hereby accepts such engagement, to conduct, on an exclusive basis, Auctions of Memorabilia at the Event Locations during all Events held during the Term. For the sake of clarity, Operator shall have the right to conduct such Auctions, but not the obligation to do so. The Institution represents, warrants, covenants and agrees that Operator is and will be the exclusive seller of Memorabilia at the Event Location during the Events. Operator shall have the right, but not the obligation, to set up Auction displays for the sale of Memorabilia at mutually agreeable locations, including throughout and in the vicinity of, the Event Locations, during the Events. Such displays may consist of tables, chairs and promotional materials. The Institution will be responsible for providing all necessary space, venue access, and staff credentials (if required) for such displays. Operator shall be responsible for providing staff for set-up, management, and tear down of each display at each Event, and all display materials (i.e. tents, table skirts, etc.).
2. Memorabilia. All Memorabilia will be procured and provided solely by Operator or its affiliates. Operator acknowledges and agrees that it will be solely responsible for securing any and all necessary licenses associated with Memorabilia displayed and made available for sale at the Events.
3. Fees; Other.
 - (a) Except as expressly set forth otherwise in this Agreement, each party will be responsible for all costs and expenses incurred by such party in performing its obligations under this Agreement, including taxes. Commencing on the Effective Date, subject to the Institution complying with its obligations under this Agreement, Operator will pay to the University, on a calendar quarterly basis during the Term, an amount equal to [REDACTED] (___ %) of the Net Merchandise Revenue from sales of Memorabilia received by Operator during the immediately preceding calendar quarter at the Auctions. Within thirty (30) days after the end of each calendar quarter during the Term, Operator will prepare and provide to the Institution a report setting forth, in reasonable detail, the revenue share payable to the Institution hereunder for the preceding calendar quarter and the basis of such calculation. Together with such report, Operator will deliver payment to the Institution for the revenue share payment. All payments due to the

Institution pursuant to this Agreement shall be made by check, payable to the Institution and remitted to the address designated by the Institution.

(b) Within sixty (60) days after the end of each Contract Year, Operator will calculate the actual aggregate revenue share payments paid or then payable to the University for the Term. Subject to Section 3(c) below, in the event that such actual aggregate revenue share payments are less than the Minimum Guarantee Amount, then Operator will pay to the University such difference within ten (10) business days thereafter. For the sake of clarity, in the event that the aggregate revenue share and other payments are equal to or exceed the Minimum Guarantee Amount, no additional payment will be due. For purposes of this Agreement, (i) “**Contract Year**” means the applicable twelve month period during the Term, with the first twelve month period commencing on the Effective Date; (ii) “**Minimum Guarantee Amount**” means [REDACTED] (\$ [REDACTED]) for the first Contract Year, [REDACTED] (\$ [REDACTED]) for the second Contract Year, and [REDACTED] (\$ [REDACTED]) for the third Contract Year; and (iii) “**Net Merchandise Revenue**” means the amount equal to all cash consideration from the sale of Memorabilia through the Auctions at the Events during the applicable period pursuant to this Agreement, less all taxes, shipping and handling charges, customer discounts, payment tender processing fees, wrapping and other value-added service charges, cancellations, returns and chargebacks.”