



## EXCLUSIVE SUPPLIER AGREEMENT

BSN SPORTS, LLC, a Delaware limited liability company ("BSN SPORTS") is pleased to offer the MARSHALL UNIVERSITY Athletic Department ("School") the **BSN SPORTS EXCLUSIVE SUPPLIER AGREEMENT** (the "Agreement") for the purchase and supply of NIKE uniforms, apparel and footwear along with any and all other branded footwear, apparel & equipment offered for sale to School by BSN SPORTS.

### Benefits:

1. "Premier Pricing" shall apply to all footwear, apparel and equipment purchased by School at the following rates\*:

- 50% off retail price on all NIKE apparel
- 45% off retail price on all NIKE footwear
- 45% off retail price on all NIKE Custom uniforms purchased within the timeframe specified in the BSN SPORTS Collegiate Planning Calendar.
- 35% off retail price on all NIKE licensees such as ENI-JR286, Marchon Eyewear, Paramount Headwear, Perry Ellis Swim & APS Wrestling/Volleyball.
- 20% minimum off catalog price on all BSN SPORTS proprietary products (as defined below) from BSN SPORTS catalog (exclusive of closeout and sale items)
  - BSN SPORTS proprietary products are identified in our catalog with a black star icon next to the product code.
- 10% minimum off catalog price on all non-branded products from BSN SPORTS catalog.
  - BSN SPORTS catalog non-branded products are products distributed by BSN SPORTS from a third-party manufacturer such as Wilson, Spalding, Rawlings, etc.
- All other campus organizations outside of the athletic department working directly with BSN SPORTS will receive the following NIKE discounts listed below. All purchases, regardless of brand or product, from any campus organization will count towards the BSN SPORTS Product / Apparel Rebate program.
  - 40% Discount off retail price on all NIKE apparel.
  - 35% Discount off retail price on all NIKE footwear.

\* If the footwear, apparel or equipment has an associated fee (e.g., royalty, licensing fee), the discounts above are subject to change in BSN SPORTS' sole discretion.

2. **BSN SPORTS Product / Apparel Allotment:** School shall receive the following in free product allotment pursuant to its purchase of NIKE apparel, and footwear along with any and all other footwear, apparel & equipment under this Agreement ("Product Allotment"). Subject to the terms below, the School will receive a Product Allotment from the catalog(s) provided by BSN SPORTS and subject to availability at the time of order. Product Allotments are available after the requirements below are met (including, without limitation, the Annual Spending Level with BSN SPORTS as set forth below) and must be utilized prior to the end of the school year in which the Allotment was earned. A Product Allotment balance does not carry over from school year to school year. School

FOOTBALL  
BASKETBALL  
VOLLEYBALL  
SOCCER  
BASEBALL  
LACROSSE  
TENNIS  
SOFTBALL  
UNIFORMS  
TRACK & FIELD  
STRENGTH & FITNESS  
WRESTLING  
SPORTS MED  
SPEED  
AGILITY  
SCOREBOARDS  
BENCHES & BLEACHERS  
COACHING  
AQUATICS



## BSN SPORTS™

must be current on all payment obligations to BSN SPORTS to be eligible for the Product Allotment.

Annual Spending Level  
\$500,000+

Annual Allotment Amount  
\$62,500 in NIKE apparel, footwear, stock uniforms or BSN SPORTS proprietary equipment & apparel at retail catalog price.

- BSN SPORTS proprietary equipment & apparel is identified in BSN SPORTS catalog with a black star icon next to the product code.
- \$30,000 in advance upfront comp for each year of agreement, from above tiered allotment and the other \$30,000 after 6 months.
- Promotional product cannot be returned or exchanged.
- Unused promotional product amounts, as of 5:00 pm on 6/30 of each year of the agreement, are forfeited. As a result, promotional merchandise cannot be carried over from one school year to the next.
- BSN SPORTS to provide school monthly sold to report, by sport & department by brand, for tracking of allotment status.
- School is required to spend a minimum of \$500,000 total spend with BSN Sports on all products and equipment. If School does not reach the \$500,000 annual minimum spend in any contract year, then the following contract year the Product Allotment will be reduced by 25%.
- At the end of year 5 of the Agreement, if School has not met the \$500,000 minimum total spend, BSN SPORTS will invoice School for the difference. For example, only, if School spends \$400,000, then the invoiced amount would be 50% off of the \$100,000 spend deficit at the discounted price listed under the premier pricing section above.

**BSN SPORTS Spend Level Allotment Incentive**

- Spend \$600,000 with BSN SPORTS during a school year & School will receive an additional \$12,500 in NIKE apparel, footwear, stock uniforms or BSN SPORTS proprietary equipment & apparel at retail catalog price
  - Spend \$700,000 with BSN SPORTS during a school year & School will receive an additional \$12,500 in NIKE apparel, footwear, stock uniforms or BSN SPORTS proprietary equipment & apparel at retail catalog price
  - Spend \$800,000 with BSN SPORTS during a school year & School will receive an additional \$12,500 in NIKE apparel, footwear, stock uniforms or BSN SPORTS proprietary equipment & apparel at retail catalog price
3. **BSN SPORTS E-Commerce Incentive:** Opportunity for setup of BSN SPORTS Sideline Store with link on main athletic department website, at no charge for School with a **10% CASH** royalty, for each year of contract.
  4. **BSN SPORTS Cover the Campus Incentive:** 20% discount given to all friends, alumni, family, staff and administration on BSNSPORTS.com. Additionally, during a mutually

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agreed upon 2-day period and prior to December 1, 2023, BSN SPORTS will offer school a discounted rate of **45%** off retail price on NIKE stock apparel and **45%** off retail price on NIKE stock footwear for use by school staff and employees through [www.bsnsports.com](http://www.bsnsports.com). These incentives will be offered yearly throughout length of agreement & do not count towards BSN SPORTS product / apparel rebate program.

- BSN SPORTS Service Promise:** BSN SPORTS will provide a dedicated sales professional ("BSN SPORTS Representative") to conduct bi-weekly on-site visits to School throughout the term of this Agreement. BSN SPORTS Representative will be responsible for showing product samples, communicating order deadlines and providing 24-hour response for all questions and concerns. BSN SPORTS will also carry a minimum of \$25 Million dollars of NIKE product at any given time.

**Terms and Conditions:**

- Exclusive Supplier.** Subject to the listed pre-existing agreements, School will use BSN SPORTS as their exclusive supplier for any and all of its athletic apparel, footwear, and equipment needs. It is also agreed that School will adhere to the BSN SPORTS collegiate ordering calendar to help ensure availability and delivery in a timely manner.

**PRE-EXISTING AGREEMENTS.**

COVERED PROGRAM	SUPPLIED PRODUCT	SPONSORING COMPANY

- NIKE Apparel at Events.** School's coaching staff and athletes will only wear NIKE branded footwear and apparel at competitions whenever possible.
- Purchase of NIKE & Other Products.** School shall notify its athletes that My Team Shop, which is operated and owned by BSN SPORTS, will serve as the online purchasing site for all additional NIKE products purchased directly by athletes, as well as their family and friends. School cannot guarantee that athletes and their family and friends will exclusively use the My Team Shop to purchase NIKE products. Each sport will offer a minimum of two (2) My Team Shop opportunities to their student athlete families/fans/alumni per year throughout length of agreement.
- Promotion.** School will promote this partnership through public announcements at events and digital media advertising as listed below, at football, basketball, baseball games, and any other sporting event where applicable. Also, BSN SPORTS will receive: (i) four (4) tickets or passes, as applicable, to all School athletic games, competitions, and tournaments or similar events, and (ii) three (3) vendor / athletic parking pass for use by the BSN SPORTS Representative for sales calls, meetings, presentations, and campus visits. BSN SPORTS will receive one free hole sponsorship and foursome at annual golf outing. Static logos for BSN SPORTS & NIKE to appear on banner of athletic department website as the official supplier.

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*Football - Inventory will be mirrored and delivered for each regular & post season game when permissible by conference and NCAA rules and/or policies.*

- One (1) static signage location, TV visible, location TBD
- Lower LED rotation, 1-minute, non-TV visible
- Two (2) :15 second PA announcements
- One (1) :30 second videoboard commercial
- BSN/Nike branded goal post pads – to be supplied at no charge & used at each event
- BSN SPORTS logo to appear on head coach sideline headset
- BSN SPORTS down marker – to be supplied at no charge & used at each event
- Head Coach Appearance –two (2) times per year. Dates will be requested forty-five (45) days in advance of event.

*Men's & Women's Basketball – Inventory will be mirrored and delivered for each regular & post season game when permissible by conference and NCAA rules and/or policies.*

Two (2) minutes of courtside LED signage, TV visible

- Two (2) minutes of stanchion LED signage, TV visible
- Two (2) minutes of lower LED signage, non-TV visible
- Two (2) :15 second PA announcements
- One (1) :30 second video board commercial

- 5. Payment Terms.** School must be current on all payment obligations to BSN SPORTS to be eligible for all promotional products and rebates. Payments will be made within thirty (30) days of invoice unless alternate payment arrangements have been made and agreed to in writing by both parties.
- 6. Additional Charges.** Decoration charges (including charges for embroidery and screen printing) are extra, and count towards rebate tiers.
- 7. Exclusions.** Products sold through Varsity Brands companies, including, Varsity Spirit & Herff Jones, will not be included in spending level totals.
- 8. Freight and Shipping.** School is responsible for all freight/shipping charges of up to 7% on all small parcel shipments via FedEx ground with a minimum freight charge of \$8.95. Quoted shipping charges for all LTL, FTL Freight Truck & expedited air shipping when requested by the school, resulting from merchandise purchased and/or received under this Agreement. However, School shall not be responsible for freight/shipping charges in connection with the return of merchandise shipped incorrectly by the fault of BSN SPORTS.
- 9. Term of Agreement.** The term of this Agreement shall be for seven (7) years, beginning on July 1, 2023, and continuing through June 30, 2030 (the "Initial Term" unless earlier terminated in accordance with this Agreement. This Agreement may be renewed by the parties for successive three (3) year terms (each a "Renewal Term" and together with the Initial Term, the "Term"); provided that: (i) School may solicit offers from competitors of BSN SPORTS for the provision of apparel, footwear, and equipment to commence after the Initial Term or then-current Renewal Term until six months prior to the expiration of the Initial Term or such Renewal Term (the "Shopping Period"); (ii) should School receive an

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offer during the Shopping Period, School shall communicate such offer to BSN SPORTS and provide BSN SPORTS with the opportunity to match such terms in the following Renewal Term. In any event, the parties may renew this Agreement in writing signed by both parties no later than ninety (90) days before the expiration of the Initial Term or then-current Renewal Term.

- 10. Force Majeure Event:** Neither party shall be liable to the other for any costs or damage (including consequential and liquidated damages), arising out of delay or nonperformance under this Agreement arising, directly or indirectly, out of a Force Majeure Event including, without limitation, strike, work stoppage, fire, earthquake, flood, windstorm, riot, accident, acts of war or terrorism, civil or military disturbances, pandemic, nuclear or natural catastrophes or acts of God, court order or injunction, an order or directive restricting action by a relevant governmental authority, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services, or any other similar event that is beyond the reasonable control of the parties. The parties agree and acknowledge that, in no event, shall additional expenses or other adverse financial conditions be deemed a Force Majeure Event. Upon such Force Majeure Event, the inability to comply with any term of this Agreement shall be excused and either party shall be released from all current and future obligations under the Agreement provided that (i) written notice setting forth in detail the nature of the Force Majeure Event is given by such party to the other party as soon as such party is aware of the Force Majeure Event; and (ii) such party shall use all commercially reasonable efforts to minimize the extent of delay or nonperformance caused by the Force Majeure event.

Upon a Force Majeure event, the parties will make a good faith effort to reschedule the event as set forth herein at a mutually agreeable date and time. Any deposits will be applied to the rescheduled event; or will be fully refunded if the event is not rescheduled.

- 11. COVID-19.** The parties acknowledge the ongoing risk and uncertainty regarding the impact of COVID-19 on their obligations under this Agreement. Notwithstanding the potential foreseeability of such impact, the parties acknowledge and agree that any actions taken by one party in response to or in compliance with recommendations, guidance, orders or other actions or directives of governmental or other applicable authorities with expertise in infectious diseases (e.g., WHO, CDC, NIAID, etc.) pertaining to COVID-19 shall constitute a Force Majeure event under this Agreement. In addition, if either party reasonably and in good faith determines that COVID-19 has made its obligations under this Agreement unworkable or overly burdensome, the affected party may terminate or postpone the Agreement without penalty, provided written notice is provided to the other party at least 30 days before the event.

**12. Termination of Agreement.**

a. Breach

- i. If BSN SPORTS or School should fail to perform or be in breach of any of the warranties, representation, covenants or obligations contained in this Agreement, or anticipatorily breach this Agreement, and such default is not curable or such default is curable but remains uncured for thirty (30)

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days after written notice thereof has been given to the defaulting party, the other party, at its sole election, may immediately terminate this Agreement with written notice to the defaulting party.

b. Early Termination

- i. In the event that School elects to terminate this Agreement prior to the end of the Term, School shall pay to BSN SPORTS, as liquidated damages and not as a penalty, (i) the cash equivalent of the free product allotment received by School under Section 2 of "Benefits", for the year in which it was termed.

13. Right of Suspension or Reduction.

a. Dropped Programs

- i. In the event School drops any sports programs during the Term of this Agreement, BSN SPORTS may, in its sole discretion, suspend, reduce, or alter product allotments available to School accordingly.

b. Breach

- i. If BSN SPORTS believes that School has breached any term of this Agreement, then BSN SPORTS may, in its sole discretion, suspend or reduce product allotments available to School according to the following schedule:

For the first offense, there will be a 25% reduction in Promotional Product Allotment. The second offense will incur a 50% off reduction in Promotional Product Allotment. The third offense will incur a 100% reduction in Promotional Product Allotment & possible termination of Agreement, at BSN's sole discretion. Any reductions in the amount of Promotional Product Allotments will be deducted in the following school year unless the breach occurs in the final year, in which case the deduction will happen in the current school year or the first renewal year. The decision to apply the deduction in the current school year or the first renewal year is at BSN SPORTS discretion.

14. **Confidentiality.** Excluding disclosures required by Freedom of Information requests, made to attorneys, auditors, or other third-party consultants, the terms and conditions of this Agreement are absolutely confidential between the parties and shall not be disclosed to anyone else, except as shall be necessary to effectuate its terms. In the event of a Freedom of Information request, School shall, to the extent permitted by law, notify BSN of such request and give BSN an opportunity to redact or protect any or all portions of this Agreement prior to disclosure.

15. **Severability.** Should any provision of this agreement be found to be invalid, illegal, or unenforceable for any reason, the invalidity or unenforceability of such provision shall not affect the validity of the remaining provisions hereof.

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16. **Non-waiver.** Non-enforcement of any provision of this agreement by either party shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this agreement.
17. **Headings.** The headings in this Agreement have been inserted for convenient reference only and shall not be considered in any questions of interpretation or construction of this Agreement.
18. **Assignments.** Except for assignments pursuant to a Change of Control, this Agreement is not assignable in whole or in part by either party without the prior written consent of the non-assigning party, which consent shall not be unreasonably withheld, but is binding on any corporate successor of either party. As used herein, a "Change of Control" means a merger, sale, transfer, or other disposal of all or substantially all of the assets of the assignee or its ultimate direct or indirect parent corporation or holding company in one or more transactions.
19. **Notices.** Any notice or other communication provided under this Agreement will be in writing and will be effective either when delivered personally to the other party, or five (5) days following deposit into the United States mail (certified mail, return receipt requested), or upon overnight delivery service (with confirmation of delivery), addressed to such party at the address set forth herein, or upon electronic delivery by confirmed means.

If to BSN SPORTS:  
BSN SPORTS, LLC  
14460 Varsity Brands Way  
Farmers Branch, TX 75244  
ATTN: Todd Northrop

With a copy to:  
Varsity Brands, LLC  
14460 Varsity Brands Way  
Farmers Branch, TX 75244  
ATTN: Chief Legal Officer

If to School:  
Marshall University Director of Purchasing  
Marshall University  
One John Marshall Drive  
Old Main  
Huntington, WV 25755

20. **Governing Law.** This Agreement shall be interpreted and construed in accordance with the laws of the State of Texas.

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21. **Modification of Agreement.** This document contains the entire Agreement between the parties and may not be changed, modified, amended, or supplemented except by express written agreement signed by both parties.

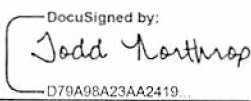
This Agreement is made and entered into by and between the parties this \_\_\_\_ day of November 2023.

Signed:   
9/6/2023

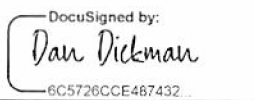
Director of Athletics  
MARSHALL UNIVERSITY  
Name *Christian Spears*

Signed:   
9/7/2023

Business Office,  
MARSHALL UNIVERSITY  
Name Michelle Wheeler  
Office of Purchasing

Signed:   
9/6/2023

Vice President – Collegiate Select  
BSN SPORTS, LLC  
Todd Northrop

Signed:   
9/6/2023

Senior VP - Collegiate Select  
BSN SPORTS, LLC  
Dan Dickman

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WV-96  
11/1/2019

**STATE OF WEST VIRGINIA  
ADDENDUM TO VENDOR'S STANDARD CONTRACTUAL FORMS**

State Agency, Board, or Commission (the "State"): Marshall University

Vendor: BSN Sports, LLC

Contract/Lease Number ("Contract"):

Commodity/Service: Exclusive Supplier of Nike Uniforms and Equipment

The State and the Vendor are entering into the Contract identified above. The Vendor desires to incorporate one or more forms it created into the Contract. Vendor's form(s), however, include(s) one or more contractual terms and conditions that the State cannot or will not accept. In consideration for the State's incorporating Vendor's form(s) into the Contract, the Vendor enters into this Addendum which specifically eliminates or alters the legal enforceability of certain terms and conditions contained in Vendor's form(s). Therefore, on the date shown below each signature line, the parties agree to the following contractual terms and conditions in this Addendum are dominate over any competing terms made a part of the Contract:


1. **ORDER OF PRECEDENCE:** This Addendum modifies and supersedes anything contained on Vendor's form(s) whether or not they are submitted before or after the signing of this Addendum. **IN THE EVENT OF ANY CONFLICT BETWEEN VENDOR'S FORM(S) AND THIS ADDENDUM, THIS ADDENDUM SHALL CONTROL.**
2. **PAYMENT** – Payments for goods/services will be made in arrears only upon receipt of a proper invoice, detailing the goods/services provided or receipt of the goods/services, whichever is later. Notwithstanding the foregoing, payments for software licenses, subscriptions, or maintenance may be paid annually in advance.  
Any language imposing any interest or charges due to late payment is deleted.
3. **FISCAL YEAR FUNDING** – Performance of this Contract is contingent upon funds being appropriated by the WV Legislature or otherwise being available for this Contract. In the event funds are not appropriated or otherwise available, the Contract becomes of no effect and is null and void after June 30 of the current fiscal year. If that occurs, the State may notify the Vendor that an alternative source of funding has been obtained and thereby avoid the automatic termination. Non-appropriation or non-funding shall not be considered an event of default.
4. **RIGHT TO TERMINATE** – The State reserves the right to terminate this Contract upon thirty (30) days written notice to the Vendor. If this right is exercised, the State agrees to pay the Vendor only for all undisputed services rendered or goods received before the termination's effective date. All provisions are deleted that seek to require the State to (1) compensate Vendor, in whole or in part, for lost profit, (2) pay a termination fee, or (3) pay liquidated damages if the Contract is terminated early.  
Any language seeking to accelerate payments in the event of Contract termination, default, or non-funding is hereby deleted.
5. **DISPUTES** – Any language binding the State to any arbitration or to the decision of any arbitration board, commission, panel or other entity is deleted; as is any requirement to waive a jury trial.  
Any language requiring or permitting disputes under this Contract to be resolved in the courts of any state other than the State of West Virginia is deleted. All legal actions for damages brought by Vendor against the State shall be brought in the West Virginia Claims Commission. Other causes of action must be brought in the West Virginia court authorized by statute to exercise jurisdiction over it.  
Any language requiring the State to agree to, or be subject to, any form of equitable relief not authorized by the Constitution or laws of State of West Virginia is deleted.
6. **FEES OR COSTS:** Any language obligating the State to pay costs of collection, court costs, or attorney's fees, unless ordered by a court of competent jurisdiction is deleted.
7. **GOVERNING LAW** – Any language requiring the application of the law of any state other than the State of West Virginia in interpreting or enforcing the Contract is deleted. The Contract shall be governed by the laws of the State of West Virginia.
8. **RISK SHIFTING** – Any provision requiring the State to bear the costs of all or a majority of business/legal risks associated with this Contract, to indemnify the Vendor, or hold the Vendor or a third party harmless for any act or omission is hereby deleted.
9. **LIMITING LIABILITY** – Any language limiting the Vendor's liability for direct damages to person or property is deleted.
10. **TAXES** – Any provisions requiring the State to pay Federal, State or local taxes or file tax returns or reports on behalf of Vendor are deleted. The State will, upon request, provide a tax exempt certificate to confirm its tax exempt status.
11. **NO WAIVER** – Any provision requiring the State to waive any rights, claims or defenses is hereby deleted.

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11/1/2019

- 12. **STATUTE OF LIMITATIONS** – Any clauses limiting the time in which the State may bring suit against the Vendor or any other third party are deleted.
- 13. **ASSIGNMENT** – The Vendor and agrees not to assign the Contract to any person or entity without the State prior written consent, which will not be unreasonably delayed or denied. The State reserves the right to assign this Contract to another State agency, board or commission upon thirty (30) days written notice to the Vendor. These restrictions do not apply to the payments made by the State. Any assignment will not become effective and binding upon the State until the State is notified of the assignment, and the State and Vendor execute a change order to the Contract.
- 14. **RENEWAL** – Any language that seeks to automatically renew, modify, or extend the Contract beyond the initial term or automatically continue the Contract period from term to term is deleted. The Contract may be renewed or continued only upon mutual written agreement of the Parties.
- 15. **INSURANCE** – Any provision requiring the State to maintain any type of insurance for either its or the Vendor’s benefit is deleted.
- 16. **RIGHT TO REPOSSESSION NOTICE** – Any provision for repossession of equipment without notice is hereby deleted. However, the State does recognize a right of repossession with notice.
- 17. **DELIVERY** – All deliveries under the Contract will be FOB destination unless the State expressly and knowingly agrees otherwise. Any contrary delivery terms are hereby deleted.
- 18. **CONFIDENTIALITY** – Any provisions regarding confidential treatment or non-disclosure of the terms and conditions of the Contract are hereby deleted. State contracts are public records under the West Virginia Freedom of Information Act (“FOIA”) (W. Va. Code §29B-a-1, et seq.) and public procurement laws. ~~This Contract and other public records may be disclosed without notice to the vendor at the State’s sole discretion.~~ *The State shall, to the extent permitted by law, notify Vendor of such request and give Vendor an opportunity to redact or protect any or all portions of this Agreement prior to disclosure. Provided that, there will be no liability to or cause of action for Vendor for any documents that may be released without prior notice.*  
  
Any provisions regarding confidentiality or non-disclosure related to contract performance are only effective to the extent they are consistent with FOIA and incorporated into the Contract through a separately approved and signed non-disclosure agreement.
- 19. **THIRD-PARTY SOFTWARE** – If this Contract contemplates or requires the use of third-party software, the vendor represents that none of the mandatory click-through, unsigned, or web-linked terms and conditions presented or required before using such third-party software conflict with any term of this Addendum or that is has the authority to modify such third-party software’s terms and conditions to be subordinate to this Addendum. The Vendor shall indemnify and defend the State against all claims resulting from an assertion that such third-party terms and conditions are not in accord with, or subordinate to, this Addendum.
- 20. **AMENDMENTS** – The parties agree that all amendments, modifications, alterations or changes to the Contract shall be by mutual agreement, in writing, and signed by both parties. Any language to the contrary is deleted.

Notwithstanding the foregoing, this Addendum can only be amended by (1) identifying the alterations to this form by using *Italics* to identify language being added and ~~strikethrough~~ for language being deleted (do not use track-changes) and (2) having the Office of the West Virginia Attorney General’s authorized representative expressly agree to and knowingly approve those alterations.

State: Marshall University

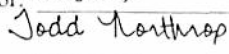
By: 

Printed Name: Michelle Wheeler

Title: Interim Director of Purchasing

Date: 9/7/2023

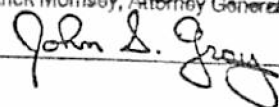
Vendor: DocuSigned by: BSN Sports, LLC

By: 

Printed Name: Todd Northrop

Title: Vice President - Collegiate/Pro select

Date: 9/6/2023

Approved as to form prior to acknowledgment thereof  
 this 1st day of Sept, 2023  
 Patrick Morrissey, Attorney General  
 By: 

STATE OF WEST VIRGINIA  
Purchasing Division

**PURCHASING AFFIDAVIT**

**CONSTRUCTION CONTRACTS:** Under W. Va. Code § 5-22-1(i), the contracting public entity shall not award a construction contract to any bidder that is known to be in default on any monetary obligation owed to the state or a political subdivision of the state, including, but not limited to, obligations related to payroll taxes, property taxes, sales and use taxes, fire service fees, or other fines or fees.

**ALL CONTRACTS:** Under W. Va. Code §5A-3-10a, no contract or renewal of any contract may be awarded by the state or any of its political subdivisions to any vendor or prospective vendor when the vendor or prospective vendor or a related party to the vendor or prospective vendor is a debtor and: (1) the debt owed is an amount greater than one thousand dollars in the aggregate; or (2) the debtor is in employer default.

**EXCEPTION:** The prohibition listed above does not apply where a vendor has contested any tax administered pursuant to chapter eleven of the W. Va. Code, workers' compensation premium, permit fee or environmental fee or assessment and the matter has not become final or where the vendor has entered into a payment plan or agreement and the vendor is not in default of any of the provisions of such plan or agreement.

**DEFINITIONS:**

**"Debt"** means any assessment, premium, penalty, fine, tax or other amount of money owed to the state or any of its political subdivisions because of a judgment, fine, permit violation, license assessment, defaulted workers' compensation premium, penalty or other assessment presently delinquent or due and required to be paid to the state or any of its political subdivisions, including any interest or additional penalties accrued thereon.

**"Employer default"** means having an outstanding balance or liability to the old fund or to the uninsured employers' fund or being in policy default, as defined in W. Va. Code § 23-2c-2, failure to maintain mandatory workers' compensation coverage, or failure to fully meet its obligations as a workers' compensation self-insured employer. An employer is not in employer default if it has entered into a repayment agreement with the Insurance Commissioner and remains in compliance with the obligations under the repayment agreement.

**"Related party"** means a party, whether an individual, corporation, partnership, association, limited liability company or any other form or business association or other entity whatsoever, related to any vendor by blood, marriage, ownership or contract through which the party has a relationship of ownership or other interest with the vendor so that the party will actually or by effect receive or control a portion of the benefit, profit or other consideration from performance of a vendor contract with the party receiving an amount that meets or exceeds five percent of the total contract amount.

**AFFIRMATION:** By signing this form, the vendor's authorized signer affirms and acknowledges under penalty of law for false swearing (W. Va. Code §61-5-3) that: (1) for construction contracts, the vendor is not in default on any monetary obligation owed to the state or a political subdivision of the state, and (2) for all other contracts, that neither vendor nor any related party owe a debt as defined above and that neither vendor nor any related party are in employer default as defined above, unless the debt or employer default is permitted under the exception above.

**WITNESS THE FOLLOWING SIGNATURE:**

Vendor's Name: BSN Sports, LLC

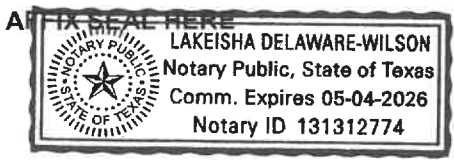
Authorized Signature: Mickenzie Seely Date: 6/21/23

State of Texas

County of Dallas, to-wit:

Taken, subscribed, and sworn to before me this 21 day of June, 2023

My Commission expires 5/4/2026, 20    .



NOTARY PUBLIC [Signature]