



**COLLEGE TEAM PRODUCT SUPPLY & SALES CONTRACT**

This is a contract ("Contract") made and entered into by and among the MARSHALL UNIVERSITY ("University"), with offices at 1 John Marshall Drive, Huntington WV 25755 and NIKE USA, Inc., ("NIKE"), with offices at One Bowerman Drive, Beaverton, Oregon 97005, with regard to the purchase and supply of NIKE products for use by University and its athletic programs. In consideration of the mutual promises and obligations contained herein, including the Standard Terms, the parties agree as follows:

**CONTRACT PERIOD.**

Seven (7) year deal commencing July 1, 2023, and expiring June 30, 2030 (the "Contract Period" unless earlier terminated in accordance with this Contract).

**COVERED PROGRAMS.**

The listed sports shall be defined as "Covered Programs"

**Men's:** Baseball, Basketball, Cross Country, Football, Golf, Track and Field, Soccer, General Issue

**Women's:** Basketball, Beach Volleyball, Cross Country, Golf, Soccer, Softball, Swimming and Diving, Tennis, Track & Field, Volleyball, General Issue

**NIKE SPONSOR BENEFITS.**

- (a) NIKE shall receive four (4) tickets (best available, lower level) to each regular season home game of each Intercollegiate Athletic Program, and two (2) tickets (best available, lower level) to any bowl or championship game.
- (b) At each home athletic game, suitable in-game P.A. announcements and/or electronic board messages recognizing NIKE as the preferred Products supplier and sponsor of the School's athletic programs.
- (c) Prominent NIKE name and/or logo recognition in all athletic related publications or other athletically related media published by the School, including, but not limited to, one full-page NIKE sponsor acknowledgment (camera-ready ad to be produced and provided by NIKE at its cost) in the home regular season (men's and women's) game day programs.
- (d) During regular season home games of the men's and women's basketball program, NIKE name and/or logo on the baseline video board rotating signage, LED scorer's table signage and LED scoreboard.
- (e) In addition to the above, University shall afford NIKE advance notice and the opportunity to consider participation in any and all additional advertising opportunities, in any media, made available during the Contract Period if applicable.

**PRODUCT CONSIDERATION.**

University may order and receive from Nike product in the amounts set forth below (retail value). Any unused Product allotments may not be rolled over to any subsequent contract year and shall have no cash value.

<b>Covered Program</b>	<b>Amount</b>
<i>Athletic Department (to be allocated by AD)</i>	
Contract Year 1	\$250,000 (retail value)
Contract Year 2	\$250,000 (retail value)
Contract Year 3	\$250,000 (retail value)
Contract Year 4	\$275,000 (retail value)
Contract Year 5	\$275,000 (retail value)
Contract Year 6	\$275,000 (retail value)
Contract Year 7	\$300,000 (retail value)

- In Year 2 of the agreement, the Men's Baseball and Women's Softball programs will receive one free set of Nike Uniforms retail value of \$25,000
- In Year 3 of the agreement, the Men's and Women's Basketball programs will receive one free set of Nike Uniforms retail value of \$25,000

**SALES/SERVICE AGREEMENT.**

University agrees to purchase a minimum of \$500,000 (the "Purchase Minimum") at specified Team Dealer pricing each contract year. Failure to meet the Purchase Minimum at specified Team Dealer pricing in a contract year will result in a \$10,000 (retail value) reduction in the Athletic Department allotment in the following contract year, or \$10,000 reimbursement from University to NIKE if such failure occurs in the final contract year.

If in any contract year University requires additional products for use by any Covered Program, University-operated athletic camp, clinic, tournament or other athletic event which is related to any Covered Program in amounts that exceed the specified complimentary amounts, then University shall seek to purchase any and all such products directly from a NIKE authorized and approved team dealer, which NIKE prefers to be **BSN SPORTS**, and in no event shall University purchase such Products from any third-party as a first resort supplier. The pricing for such products is set forth in the preferred supplier agreement ("Supplier Agreement"). School must comply within Nike ordering guidelines, approximately six (6) to nine (9) months in advance to guarantee delivery. In the event that any provision of the Supplier Agreement conflicts with or is inconsistent with this Contract, this Contract shall control.

**PERFORMANCE BONUSES.**

NIKE shall pay University the Performance Bonuses set forth below (payable in merchandise, having the corresponding retail value; such merchandise to be mutually determined by the parties) within 30 days of NIKE's receipt of an invoice and written confirmation that such bonus was earned. University will forfeit any Performance Bonus that is not invoiced to NIKE in the calendar year in which such Performance Bonus is earned.

Performance Achievement	Merchandise Bonus (retail value)
<b>Football (non-cumulative):</b>	
Bowl Game Appearance	\$5,000
Qualifies for NCAA FBS Playoffs	\$10,000
Qualifies for NCAA FBS Championship Game	\$25,000
Wins NCAA FBS Championship	\$50,000
<b>Men's &amp; Women's Basketball (non-cumulative)</b>	
Wins Conference Championship	\$2,500
Plays in NCAA Sweet Sixteen	\$2,500
Plays in NCAA Elite Eight	\$5,000
Plays in NCAA Final Four	\$10,000
Wins NCAA Championship	\$25,000
<b>Other Varsity Programs</b>	
Wins Conference Championship	\$1,500
Makes NCAA Tournament	\$2,500
Wins NCAA Championship	\$10,000
<b>All Head Coaches</b>	
Named Conference Coach of the Year	\$1,000


**PRE-EXISTING AGREEMENTS.**


COVERED PROGRAM	SUPPLIED PRODUCT	SPONSORING COMPANY

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

MARSHALL UNIVERSITY

NIKE USA, Inc.

By:   
 Its: DIRECTOR OF ATHLETICS

By:   
 Its: DIRECTOR NA TEAM COLLEGE PROMO

Dated: 10/6/22

## STANDARD TERMS AND CONDITIONS

### APPROVALS AND GRANT OF RIGHTS.

University grants NIKE, and NIKE accepts the designations of "the official athletic footwear, apparel and accessories sponsor of "University" and/or such similar, mutually agreed designations (the "Designations"). NIKE's external use of the names, nicknames, mascots, trademarks, service marks, logos, or any other recognized reference to University or any Covered Program ("Licensed Marks") or University-controlled game photographs, videotape, or footage ("Game Photos or Footage") shall be preapproved by University, such approval not to be unreasonably withheld. University hereby grants to NIKE the worldwide right and license during the Contract Period to use approved Designations, Licensed Marks, and Game Photos or Footage in any media now known or hereafter created in connection with the advertising, marketing, promotion and sale of NIKE Products and NIKE brands, without the payment of any additional fee to University. Upon expiration or termination of this Contract for any reason, NIKE may exhaust all materials depicting the Licensed Marks and/or Designations that were produced prior to the effective date of expiration or termination. Notwithstanding the foregoing, NIKE may use in perpetuity and without restriction, for its own internal historical, educational, or commemorative purposes, videotape, film or photographs showing NIKE Products provided under this Contract.

### EXCLUSIVE USE OF NIKE PRODUCTS.

(a) Throughout the Contract Period, University shall make NIKE Products available on an exclusive basis to each Covered Program to be worn and/or used by each student-athlete on the roster of a Covered Program ("Team Members") and all University-employed coaches, equipment managers, trainers and any on-field court-side staff (e.g., ballpersons, basketball stat crews, etc.) providing services to any Covered Program (collectively "Staff") during practices, games, exhibitions (including during locker room activities), locker room and/or sideline/courtside celebrations and/or presentations, and other official or University-sanctioned activities (including but not limited to photo sessions and interviews) during which Team Members and Staff wear and/or use Products except as otherwise provided under this Paragraph.

(b) University shall ensure that no Team Member or Staff shall (i) alter or permit the alteration of any NIKE Product worn or used by them to resemble a non-NIKE Product; or (ii) wear any non-NIKE Products which have been altered or resemble NIKE Products. University acknowledges that "polishing-out", "spatting" or otherwise taping, so as to cover or obscure any portion of any NIKE trademark, the NIKE Products worn by Team Member and/or Staff as required under this Paragraph is inconsistent with the purpose of this Contract and is a material breach of this Contract. NIKE acknowledges that, notwithstanding anything in this Paragraph to the contrary, Staff may wear non-athletic footwear or apparel (e.g., business attire) in connection with their official duties.

(c) As used in this Contract, "Products" shall mean (i) all athletic and athletically inspired or derived footwear that any Team Member may wear or may be reasonably expected to wear while participating in his/her respective sport ("Footwear"); (ii) authentic competition apparel consisting of uniforms, warm-ups, basketball shooting shirts, practicewear, sideline/courtside apparel, and similar apparel, that Team Members or Staff wear or may be reasonably expected to wear while participating in their respective sport; (iii) all other apparel articles of an athletic or athleisure nature including but not limited to polo shirts, golf shirts, tank-tops, T-shirts, sweatsuits, separates and other headwear, headbands, wristbands, bags, socks, protective gloves that a Team Member or Staff member wears or uses or may be reasonably expected to wear or use while participating in his/her respective sport; (iv) competition balls (i.e., footballs, basketballs, soccer balls); (v) protective eyewear, eyewear with performance attributes and non-prescription sunglasses; and (vi) any other sports equipment NIKE currently makes. "NIKE Products" shall mean all "Products" in connection with which, or upon which, the NIKE name, the Swoosh Design, the NIKE AIR Design, the Basketball Player Silhouette ("Jumpman") Design or any other trademarks or brands (e.g., Converse, Brand Jordan) now or hereafter owned and/or controlled by NIKE appear (collectively, the "NIKE Marks"), singly or in any combination.

(d) NIKE acknowledges that University is a party to pre-existing contracts with respect to product supply as disclosed above, and NIKE agrees that such contracts may be maintained, extended and/or replaced during the Contract Period provided, however, in the event any such agreement is replaced by another supplier, such replacement supplier cannot be a company or brand well-known to the public as a footwear company or footwear brand.

### RIGHTS OF FIRST DEALING & FIRST REFUSAL.

(a) At NIKE's request made no later than ninety (90) days prior to the expiration of this Contract, University shall for a period of thirty (30) days negotiate with NIKE in good faith with respect to the terms of a renewal of this Contract. The parties shall not be obligated to enter into an agreement if they cannot settle on mutually satisfactory terms. Until sixty (60) days prior to the expiration of this Contract (the "Exclusive Negotiating End Date"), University shall not (nor shall University permit its agents, attorneys or representatives to) engage in discussions or negotiations with any third-party regarding product supply with respect to any Products, or sponsorship of any Covered Program (or similar supply or promotional arrangement) with respect to any Products ("Product Supply/Endorsement"), to commence after the expiration of this Contract.

(b) During the Contract Period and for a period of ninety (90) days thereafter, NIKE shall have the right of first refusal for Product Supply/Endorsement, as follows. If University receives any bona fide third-party offer at any time on or after the Exclusive Negotiating End Date with respect to any Product Supply/Endorsement, University shall submit to NIKE in writing the specific terms of such bona fide third-party offer in its entirety in the form of a true and complete copy which shall be on the offeror's letterhead or other identifiable stationery or imprint readily authenticatable by NIKE as having originated with such third-party offeror. NIKE shall have fifteen (15) business days from the date of its receipt of such true copy of the third-party offer to notify University in writing if it will enter into a new contract with University on terms no less favorable to University than the material, measurable and matchable terms of such third-party offer. If NIKE so notifies University within such 15-day period, University shall enter into a contract with NIKE on the terms of NIKE's offer. If NIKE fails or declines to match or better the material, measurable and matchable terms of such third-party offer within such 15-day period, University may thereafter consummate an agreement with such third-party on the terms of the offer made to University. Prior to the Exclusive Negotiating End Date, University shall not solicit, consider or present to NIKE, and NIKE shall not be obligated to respond to, any third-party offer for any Product Supply/Endorsement.

### REPRESENTATIONS, WARRANTIES.

University represents and warrants that: (a) it has the full legal right and authority to enter into and fully perform this Contract in accordance with its terms and to grant to NIKE all the rights granted herein; (b) neither University nor any Staff member is party to any oral or written agreement, contract or understanding that would prevent, limit or hinder the performance of any obligations hereunder; (c) neither it nor any Staff member will publicly disparage the quality and/or performance of NIKE Products; and (d) University and its representatives have complied and will comply with all applicable anti-bribery and anti-corruption laws and regulations in connection with this Contract, and have not engaged and will not engage, directly or indirectly, in the offer, payment, promise, solicitation, or acceptance of a bribe, kickback, or other improper benefit in connection with this Contract. If University or its representatives become aware of any violation (as opposed to unfounded claims) of the foregoing provision or any anti-bribery or anti-corruption laws or regulation in connection with this Contract, University shall give notice to NIKE. University has undertaken and will undertake reasonable measures to ensure compliance with the foregoing provisions by University and its representatives. In addition, University represents and warrants that during the Contract Period it will not, in connection with any Covered Program: (i) sponsor, endorse, or allow any Staff member to sponsor or endorse, Products sold by any manufacturer or seller of Products other than NIKE, or (ii) enter into, or allow any Staff member to enter into, any endorsement, promotional, consulting or similar agreement (including the sale of signage or other media) with any manufacturer or seller of Products other than NIKE that manufacturers, licenses or sells, or is brand-identified to, Footwear (e.g., adidas, Under Armour, Polo/Hilfiger, etc.).

### RIGHTS OF TERMINATION.

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

(b) NIKE shall have the right to terminate this Contract immediately upon written notice to University if: (i) University breach of this Contract, including any representations and warranties, and fails to cure such breach, if curable, within thirty (30) days of University's receipt of written notice from NIKE specifying such breach, or (ii) University or any of its representatives engages in a persistent pattern of conduct or activity (including acts or omissions) that fails to safeguard members of the University community (or otherwise demonstrates contempt or disregard for such safeguarding).

### CONFIDENTIALITY.

University shall not (nor shall it permit or cause its agents, attorneys, accountants, representatives or employees to) disclose the financial or other material terms of this Contract to any third-party, with the exception only of University's agents, attorneys, accountants, representatives or employees, except as may be required by law. This Paragraph shall survive the expiration or termination of this Contract.

### MISCELLANEOUS.

Nothing contained in this Contract shall be construed as establishing a partnership, agency or joint venture relationship between the parties. The rights and obligations granted under this Contract are personal to each party hereto and shall not be assigned or delegated to any third-party without the prior written consent of the non-assigning party except that NIKE may freely assign or delegate rights and obligations to any entity within the NIKE Group. This Contract shall constitute the entire understanding between University and NIKE and may not be altered or modified except by a written agreement, signed by both parties. Any previous agreements between the parties (including any agreements with or on behalf of Covered Program head coaches) shall have no further force or effect.

