

**FIRST REVISED AND RESTATED  
MULTI-MEDIA RIGHTS AND SPONSORSHIP RIGHTS LICENSING AGREEMENT**

**BETWEEN**

**THE UNIVERSITY OF NEW MEXICO**

**AND**

**LOBO SPORTS PROPERTIES, LLC**

**JANUARY 2013**

**EXHIBIT A**

**FIRST REVISED AND RESTATED  
MULTI-MEDIA RIGHTS AND SPONSORSHIP RIGHTS LICENSING AGREEMENT**

THIS FIRST REVISED AND RESTATED **MULTI-MEDIA RIGHTS AND SPONSORSHIP RIGHTS LICENSING AGREEMENT** ("Agreement" or "Contract") is made and entered as of the 7th day of March, 2013, by and between THE REGENTS OF THE UNIVERSITY OF NEW MEXICO, A PUBLIC UNIVERSITY OF THE STATE OF NEW MEXICO (the "University"), and LOBO SPORTS PROPERTIES, LLC ("Learfield"), a Missouri limited liability company wholly owned by LEARFIELD COMMUNICATIONS, INC.. This Agreement updates the licensing terms between the Parties and is intended to revise and restate the Multi-Media Rights and Sponsorship Rights Licensing Agreement dated July 1, 2007.

**BACKGROUND TO AGREEMENT**

- A. This Agreement is intended to set forth the rights, duties, and responsibilities of the University and Learfield with respect to the license by the University of "Multi-Media Rights" associated with the University's athletic programs. These Multi-Media Rights are being licensed to Learfield pursuant to RFP #1025-7 issued by the Purchasing Department of the University, the University's proposal 1025-7 RFP Standard terms and conditions ("Request for Proposal") and Learfield's response to Request for Proposal.
- B. For purposes of this Agreement, "Multi-Media Rights" shall mean the exclusive sales and marketing rights, as hereinafter set forth, with exceptions as set forth herein, to inventory, including print, media, sponsor, existing or new signage not already contracted to other parties, and other promotional and sponsorship rights for football, men's and women's basketball games, men's baseball games and other intercollegiate sports; now existing or to exist in the future, promotional rights for home basketball games and, if the University obtains rights from the host venue, all games played at neutral venues where the University is designated as the home team; temporary and permanent signage and promotional rights for all

the University home football games (and, if the University obtains rights from the host venue, all games played at neutral venues where the University is designated as the home team); radio play-by-play broadcast rights and coaches' shows; and selected television broadcast rights for football and men's and women's basketball; official athletic website sponsorship; and any other sponsor-related or promotional rights to the University's athletic programs that may be subsequently agreed to between the Parties. The fact that a particular right is not identified in this Paragraph B as a "Multi-Media Right" is not intended to diminish Learfield's Multi-Media Rights under this Agreement if such right(s) are specifically provided for elsewhere in this Agreement.

- C. For purposes of this Agreement, "Sponsorship" and "Sponsorship Rights" shall have the meaning given it in Section 5.2.
- D. For purposes of this Agreement, the Multi-Media Rights and Sponsorship Rights licensed to Learfield by the University under this Agreement shall be collectively referred to as "Licensed Rights."

**NOW, THEREFORE**, in consideration of the promises and the mutual covenants contained herein and the foregoing Background, the University and Learfield (individually the "Party" and jointly the "Parties") agree as follows:

## **1. AGREEMENT**

**1.1 Term of Agreement.** When executed by both Parties, this Agreement shall be effective as of January 1, 2013 (the "Effective Date") and shall continue until June 30, 2020 (the "Term") unless otherwise terminated as provided herein. Each contract year of the Agreement shall commence on July 1 and end on June 30 and such period shall sometimes hereafter be referred to as "Athletic Year."

**1.2 Communications.** Throughout the Term of this Agreement, it is the Parties' intention to maximize the opportunities that will foster interest in the athletic programs and growth in both the amounts and the potential sources of revenue under this Agreement. To that end, the Parties will meet, as necessary, to discuss the rights and inventory licensed to Learfield, Learfield's performance, and any unexpected problems

arising therefrom to arrive at mutually satisfactory solutions. In such meetings, the University will be represented by the University's Director of Athletics and/or his designee. The University will use reasonable efforts to inform the University's staff of the specific roles and responsibilities assumed by Learfield under this Agreement. Learfield will not enter into any agreement with any University employee without first consulting with the University's Director of Athletics and assuring the University to its reasonable satisfaction that such an arrangement will not adversely affect the University's interests. Learfield will advise the University of its sales and marketing plans as well as its current activities. At the request of the University, Learfield will meet periodically with the University to review Learfield's operations pursuant this Agreement and make any necessary adjustments.

**1.3 Additional Multi-Media Rights.** This Agreement licenses specific rights to Learfield. Because the development and marketing of various Multi-Media and Distribution Rights in connection with University athletic programs is both dynamic and evolving, the Parties acknowledge that additional Multi-Media and Distribution Rights may arise or be created that might not have been contemplated or specifically licensed to Learfield under this Agreement, including different ways for Learfield to leverage the existing inventory as well as digital media rights ("Additional Rights"). Learfield will notify the University of Additional Rights it seeks. If the nature of the Additional Rights requires the addition of a material item of inventory that did not already exist in a University athletic venue in any format, and the inventory proposed by Learfield would materially alter the athletic venue within which the item of inventory is to be used, then Learfield must first obtain University's written consent before the inventory can become part of the Additional Rights licensed by University to Learfield. For purposes of this Section 1.3, a cost to the University to install the inventory in excess of \$5,000.00 or a structural change to a University athletic venue shall both be conclusively presumed to be a material alteration of a University athletic venue. Unless the Additional Rights contain a prohibited category of sponsorships or are otherwise excluded under the terms of this Agreement, or require the University's consent, which consent is withheld, the Additional Rights shall be exclusively licensed to Learfield for the remainder of the Term and the revenue generated by the Additional Rights shall be added to the AGR.

**1.3.1 Olympic Broadcast Rights.** From and after the Effective Date through the remainder of the Term, University, rather than Learfield, shall have the exclusive terrestrial radio and internet streaming broadcast rights for University's Olympic events in English only ("Olympic Broadcasting Rights"); provided, however, before University exercises any of its Olympic Broadcasting Rights for which it will receive any consideration ("Consideration") it shall first grant Learfield a right of first refusal ("ROFR") to exercise any such Olympic Broadcasting Rights by giving Learfield notice of University's intention to exercise any of its Olympic Broadcasting Rights along with the amount of the Consideration it would receive ("University Notice"). Within thirty (30) days of Learfield's receipt of the University Notice, Learfield must notify University in writing if it intends to exercise its ROFR ("Learfield Notice"). If Learfield intends to exercise its ROFR, the Learfield Notice must include its agreement to match the Consideration set forth in the University Notice. If Learfield either does not provide the Learfield Notice or does not elect to exercise the ROFR for the Olympic Broadcasting Rights, then University may exercise the Olympic Broadcasting Rights. For the avoidance of doubt, each Olympic sport shall be subject to Learfield's ROFR with respect to the Olympic Broadcasting Rights for that particular sport. An Olympic sport shall not under any circumstances include football, men's basketball or women's basketball but shall include all other intercollegiate sports teams of University. In connection with University's Olympic Broadcasting Rights which University agrees are limited to terrestrial radio broadcasts and internet streaming of both audio and video on the OAS, should University wish to expand its Olympic Broadcasting Rights to include a television platform of any kind ("TV Platform"), it must first present to Learfield the University's proposed TV Platform in sufficient detail for Learfield's review and thereafter obtain Learfield's written consent which consent will not be unreasonably withheld or delayed; provided, however, it is understood and agreed by University that any proposed use of a TV Platform for any Olympic sports must be limited in its scope, failing which, Learfield need not grant its

consent and its withholding of consent under such circumstances shall be deemed reasonable.

**1.4 Permits.** Learfield will be financially responsible for obtaining all required permits and licenses to comply with pertinent University rules and policies and municipal, county, state and federal laws, and will assume liability for all applicable taxes including but not restricted to sales and property taxes.

**1.5 Rules and Regulations.** Learfield has been provided with copies of University rules, regulations and instructions (collectively the "Rules") and understands it is to perform all of the activities and functions facilitated by the University under this Agreement including Section 8, below, in conformance with the Rules as now in effect and as amended during the Term of this Agreement.

**1.6 Use of Marks.** Subject to existing licensing agreements, such as the currently existing agreement between the University and Collegiate Licensing Company ("CLC"), and the University's having obtained pertinent consents from its faculty, students, coaches and athletes participating in its athletic programs (the "Personnel"), the University licenses Learfield the non-exclusive right to use the University Athletic Department's name and its and the University's trademarks, service marks, logos or symbols, and trade dress including the likeness, appearance, and voice of its Personnel (collectively, "Marks") at no cost to Learfield in connection with (a) Learfield's use of the licensed Multi-Media Rights and (b) its securing Sponsorships and other revenue generating opportunities for the University, in accordance with the terms of this Agreement. Learfield's use of the Marks (including any use nominative fair use by sponsors of the Marks) is subject to being previously reviewed and approved in writing by the University to assure Learfield's compliance with the University's technical requirements, specifications, and any pertinent usage/style guide or manual regarding Learfield's use of the Marks. Learfield covenants and agrees to use diligent, good faith efforts to develop the value of the Marks, at its sole cost. Learfield shall not exercise any rights under this Agreement which, if exercised, would violate the terms of existing license agreements, including but not limited to the existing agreement between the University and CLC. Learfield agrees that the University may amend or extend its

existing trademark licensing agreements or enter into similar agreements with third parties so long as any amendment or extension does not, in the University's sole but reasonable discretion, limit, extinguish or otherwise impair any of Learfield's rights under this Agreement.

**1.6.1 Compliance/Approval.** Learfield and its affiliates agree to abide by the University's policies regarding use of its Marks. The University prohibits any use of the Marks in any publicity efforts, notices, releases, statements or publications without its prior written approval. All use of the Marks including, without limitation, the name/image/likeness/voice/statements (whether published or unpublished) of any Personnel shall be submitted in writing in advance to the University for approval. The University agrees to use due diligence in reviewing all such requests in a timely manner and to approve such requests within five (5) business days where reasonably practicable. Once approved, any particular use of the Marks may be re-used by Learfield without the need for re-approval so long as such approved use has not been changed either directly by Learfield or indirectly by the context of the repeated use and/or circumstances.

**1.6.2 Acknowledgments.** Learfield and its affiliates acknowledge that these terms are a reasonable precaution to protect the Marks and the goodwill that Learfield and its affiliates acknowledge are extremely valuable assets of the University. Any goodwill resulting from an approved use of the Marks by either Learfield and/or its affiliates shall inure solely and exclusively to the University.

**1.6.3 Changes requested by the University.** The University shall have the right to request Learfield and/or its affiliates to change any literature, marketing collateral and promotional materials which display the Marks, produced by or on behalf of Learfield and/or its affiliates, which the University reasonably believes is misleading or which is detrimental to the validity or reputation of the Marks or is a misuse of or which misuses the Marks, and Learfield and/or its affiliates shall immediately comply with such request as soon as is reasonably practicable under the prevailing

circumstances. Learfield shall provide copies of all uses of the Marks to the University promptly when requested by the University.

**1.6.4 Prohibited Uses.** Learfield and/or its affiliates shall not use the Marks in any manner whatsoever which may jeopardize the significance, distinctiveness or validity of the Marks and agree that all goodwill resulting or arising from use of the Marks by them shall inure to the benefit of the University. Learfield covenants and agrees not to challenge or permit any of its affiliates to challenge the validity of the Marks or support third parties in such a challenge or to adopt for them or have others adopt on their behalf any mark or marks identical or confusingly similar to the Marks. Learfield shall cause proper Mark acknowledgement to be used with the Marks in all broadcast, programming and promotional materials. Learfield agrees and acknowledges that it will not separately charge any sponsor any special fee for the nominative fair use right to use the University's Marks in connection with the sponsorships or otherwise.

**1.6.5 Prompt Notice in Case of Infringement of the Marks.**

**1.6.5.1 Enforcement of Marks.** In the event of any infringement or suspected infringement of the Marks coming to its knowledge, Learfield shall notify the University and shall give to the University such assistance as may reasonably be required by it in any proceedings or actions with respect to such infringement that the University may, but is not obligated to, bring and/or take and will agree to become a party to such proceedings if necessary. However, on no account shall Learfield take or permit any affiliate or other party acting on its or their behalf any action to combat or challenge such infringement without the prior, written consent of the University. The costs of such activities and/or proceedings shall be borne by the University, but not where any such infringement arises solely from Learfield's use of Marks not in accordance with the terms of this Agreement and/or from Learfield's fault independent of the University's legally protected rights in the Marks; any damages recovered shall be for the University's account. Learfield agrees to cooperate with the University, at Learfield's expense, in the University's enforcement or defense actions or other



proceedings under this Section 1.6.1.5. For the avoidance of doubt and clarification, Learfield's expenses in connection with its cooperation shall not include the legal fees (attorneys and paralegals) or expert fees of attorneys and experts retained by University.

**1.6.6 Acknowledgments.** Learfield shall cause proper Mark acknowledgement to be used with the Marks in all broadcasting, programming and promotional materials as stipulated by the University from time to time.

**1.7 Additional Licensed Rights.** No further or additional rights or privileges not expressly licensed or stated herein of any nature are to be implied, either by course of dealing, estoppel, or otherwise.

**1.8 Costs and Expenses.** Except as otherwise expressly provided in this Agreement, Learfield shall bear all costs and expenses of exercising the Licensed Rights granted by the University to Learfield under this Agreement.

## **2. RADIO AND TELEVISION BROADCAST RIGHTS**

**2.1 RADIO BROADCAST RIGHTS OTHER THAN OLYMPIC SPORTS IN ENGLISH AND IN SPANISH.** During the Term of this Agreement, the University licenses Learfield the exclusive right to terrestrial radio and internet streaming broadcast rights for University football games, men's and women's basketball games, and coaches' shows in English. The University – rather than Learfield – will retain the exclusive terrestrial radio and internet streaming broadcast rights for University football games, men's and women's basketball games, baseball games and coaches' shows in Spanish only. The University – rather than Learfield – shall have the exclusive terrestrial radio and internet streaming broadcast rights to broadcast University baseball games in English. Learfield shall produce and distribute the broadcasts by contracting with a flagship radio station in order that the games and coaches' shows are broadcast in Albuquerque, and will contract with other selected markets throughout New Mexico. The University will have final approval of the flagship radio station. Notwithstanding the foregoing, the University retains the exclusive right for its student stations to broadcast

games provided such stations use only a low power radio station that does not carry any commercial underwriting or commercial sponsorship or sponsor of any kind for such game. For the purposes of this Agreement "Radio Broadcast Rights" means the wireless transmission of signals, by modulation of electromagnetic waves with frequencies below those of visible light by systematically changing (modulating) some property of the radiated waves, such as their amplitude (AM) or their frequency (FM using the VHF radio spectrum). In connection with University's rights under this Section 2.1 which are limited to terrestrial radio broadcasts and internet streaming of both audio and video on the OAS, should University wish to expand such rights to include a TV Platform, it must first present to Learfield the University's proposed TV Platform in sufficient detail for Learfield's review and thereafter obtain Learfield's written consent which consent will not be unreasonably withheld or delayed; provided, however, it is understood and agreed by University that the Parties agree that any proposed use of a TV Platform for any of the sports described in this Section 2.1 must be limited in its scope, failing which, Learfield need not grant its consent and its withholding of consent under such circumstances shall be deemed reasonable. For the avoidance of doubt and clarification, the word "scope", as used in this Section 2.1 and when it is used in Section 1.3.1, is intended to encompass and weigh the effect of such factors (which are not meant to be the sole factors to take into consideration) as the parameters surrounding the content of the TV Platform and the market for such content, the potential sales by a third party, the distribution so as to comply with MWC guidelines and the effect on any existing or potential sponsors of Learfield.

### **2.1.2 Learfield's Responsibilities as Licensee.**

**2.1.2.1 On-Air Talent.** Learfield will employ, at its own expense, any and all personnel Learfield deems necessary to conduct broadcasts in English covered by the Agreement. The University will provide, at its expense, travel for up to three members of Learfield's radio crew on the team's charter to away games in which the University's football, men's basketball and women's basketball teams play, but Learfield will be responsible for its broadcasting crew's hotel, per diem, and, if applicable, commercial airline, vehicular, and other travel expenses. The University will provide, at its expense,

travel for the Spanish radio crew for any away games broadcast. Learfield shall pay for and provide for a play-by-play announcer, a color commentator, and, at Learfield's option, a producer, and pay all costs associated with the operation and production of the English broadcasts and University shall pay for all costs associated with the operation and production of the Spanish broadcasts including any on-air talent and producer that University deems necessary.

**2.1.2.2 Programming for Football and Men's Basketball.** At the sole cost and expense of Learfield, Learfield shall produce, originate, broadcast and distribute the following programming with state-of-the-art equipment and quality:

(a) **Football and Men's Basketball Games.** Learfield will (i) provide live broadcasts of each regular-season (conference and non-conference), conference championship and bowl games for the University varsity football, which may include the spring football game; (ii) provide live broadcasts of each regular-season (conference and non-conference) and post-season men's basketball game; and (iii) shall use reasonable efforts to broadcast each men's basketball exhibition game. Each broadcast shall include pre-game and post-game shows with live or taped, as available, coaches' interviews, in addition to a comprehensive description of game action. Learfield shall pay for and provide for a play-by-play announcer, a color commentator, a producer, and pay all costs associated with the operation and production of the network.

(b) **Coaches' Shows, Athletic Director's Shows, and Daily Shows.**

(i) Learfield shall produce, sell and commercially distribute a weekly radio show featuring the head football coach, the head men's basketball coach, and in some cases other athletic department officials and coaches. Learfield will produce and clear approximately thirty-five (35) one-hour weekly shows each year. The exact number of shows will be consistent with the number produced and cleared in the past. Further, the University agrees to extend Learfield's exclusive license, at Learfield's option, to produce coaches' radio shows for other sports. The coaches' shows may be broadcast with the coach participating by telephone in certain limited pre-arranged instances, or, through an assistant coach under certain limited circumstances. The

University shall use reasonable efforts to provide such head coaches shows live. However, University agrees that its production of a sixty (60) minute weekly radio show will not ordinarily unduly interfere with any coach's primary responsibility to the University.

(ii) Learfield shall also produce, sell and commercially distribute a radio show featuring the head women's basketball coach. Learfield and the University will mutually agree on the number and length of the head women's basketball shows.

(iii) Learfield shall also produce, sell and commercially distribute a radio show featuring the Athletic Director. The exact number of shows will be consistent with the number produced and cleared in the past.

(iv) Learfield shall also produce, sell and commercially distribute a daily (Monday through Friday) radio show of an approximate length of 2 minutes to 3 minutes featuring the University coaches and athletic department officials.

**2.1.1.3 Programming for Men's Baseball and Women's Basketball.** At its sole cost and expense, Learfield shall produce, originate broadcast, and distribute the programming set forth in Section 2.1.1.3 (a) below with state-of-the-art equipment and quality and at its sole cost and expense, University shall produce, originate, broadcast and distribute the programming set forth in Section 2.1.1.3 (b) below:

**(a) Women's Basketball Games.** Learfield shall produce and clear locally regular-season and post-season women's basketball. Learfield will use commercially reasonable efforts to clear selected women's basketball games on radio stations statewide. Each broadcast of women's basketball games, will include, at a minimum, a fifteen (15) minute pre-game show and a fifteen (15) minute post-game which shall include either live or taped coaches' interviews, in addition to comprehensive description of game action. Learfield shall pay for all costs associated with the operation and production of the network.

**(b) Men's Baseball Games.** University shall produce and clear locally selected regular-season and post-season men's baseball games in English.

**2.2 Satellite Radio Rights.** It is understood and agreed that the satellite radio rights for the University games are presently not available due to an existing agreement with the Mountain West Conference ("MWC"). If, however, such rights become available, the University will license the exclusive satellite radio rights to Learfield and all royalties payable with respect to such rights shall be included in AGR (as defined in Section 10.1). To the extent that satellite radio rights can be better leveraged by including them as part of an agreement between Sirius XM Satellite Radio (or any other provider of satellite radio) and the MWC (or substitute regional conference party) ("Satellite Agreement"), Learfield will grant University the right to become a party to the Satellite Agreement so long as the conference party to the Satellite Agreement does not retain all or substantially all of the revenue derived therefrom but rather the University along with the other members of the MWC (or substitute regional conference party) and not the MWC (or other substitute regional conference party) under the Satellite Agreement alone shares in the revenue. In all events, "all revenue from the Satellite Agreement attributable to University's participation in the Satellite Agreement", which for purposes of this Section 2.2 shall mean all incremental dollars as determined through the MWC distribution, shall belong to and be paid to Learfield and when paid will be included in the calculation of AGR. University agrees that if technological advances create additional formats for transmitting University games beyond those forms of transmission enumerated in this Agreement ("New Technology Formats"), University agrees to grant Learfield the exclusive rights to the New Technology formats for University games and the revenue derived by Learfield from the New Technology Formats shall be included in the AGR (as defined in Section 10.1).

**2.3 Football, Men's and Women's Basketball and Baseball Coaches'**

**Television Shows (Free TV and Cable).** Learfield shall have the exclusive rights to broadcast weekly coaches' television shows for football, men's basketball, women's basketball, and baseball (the "Coaches' Television Shows") and to secure Sponsorships for such shows in accordance with the terms and conditions of Section 5. At its own expense, Learfield shall employ or hire hosts for the Coaches' Television Shows and shall produce and distribute the Coaches' Television Shows. Learfield may sell a specific placement of the show at a location to be determined by Learfield, such as a

local restaurant. The University shall request, but will not compel, coaches to attend each show, provided the time commitment undertaken by each coach is consistent with the coach's primary coaching responsibilities. Learfield shall not require coaches to attend coaches' shows in person if the show is broadcast from outside the Albuquerque area. The University agrees that a reasonable period of time sufficient for the production of a thirty-minute weekly coaches' television show will not ordinarily unduly interfere with a coach's primary responsibilities to the University. The Coaches' Television Shows will be broadcast on an over-the-air station and/or distributed by a cable television outlet mutually agreeable to Learfield and the University. The Coaches' Television Shows will also be made available for distribution to the Mountain West (digital network) as a MWC member at no charge.

**2.4 Other Television Rights.** The University agrees to license Learfield, at Learfield's option, the exclusive rights to broadcast television play-by-play programming which is not otherwise prohibited by the University's existing agreements, the MWC or the NCAA ("Other Television Rights"). Such Other Television Rights include, but are not limited to, men's and women's basketball games, football games, football bowl preview shows live from the bowl site, football replay shows, and video magazine shows. Learfield will retain all revenue generated (less incremental costs) from the Other Television Rights and such revenue will be included in AGR as hereafter defined. The University represents that as of the Effective Date, it has not entered into any agreements which would preclude Learfield from broadcasting directly or under a contract with a third party (*i.e.*, cable TV company) football and men's basketball game replays and that the University will not during the Term enter into any agreement which grants such rights to a third party.

**2.5 Video/DVD Rights.** The University agrees to license Learfield the exclusive right to produce and distribute, at Learfield's option, videos and DVDs if Learfield and the University mutually agree that a season ending highlight video or DVD is warranted for a particular team. Learfield shall, at its own expense, produce or cause to be produced and sell or cause to be sold, such video or DVD and Learfield shall retain all

of the revenue derived therefrom; provided, however, such net revenue shall be included in AGR (as defined in Section 10.1).

### **3. GAME PROGRAM.**

**3.1 Game Programs.** The University licenses Learfield the exclusive right to print, publish, distribute and sell sponsor space as described in Section 5 in all football, baseball, men's basketball, and women's basketball game programs (or similar game day publications) for all home games played by the University and those designated as home games although played on a neutral site, during its regular seasons. The game programs will be produced in a form and size similar to that produced in the past. The Parties acknowledge that there may likely be another manner of delivering game program content and sponsorships through new technology specifically related to the replacement of printed game programs and not to the delivery of the audio or video content of the actual game ("Alternative Program Technology"). If Alternative Program Technology comes into existence during the Term of this Agreement, the right to sell sponsorships and derive any other related sources of income from the Alternative Program Technology shall belong exclusively to Learfield throughout the Term and Learfield, after consultation with University and obtaining the consent of the University, which consent will not be unreasonably withheld, may eliminate or phase out the use of game programs with the Alternative Program Technology. The net revenue from Alternative Program Technology shall be retained by Learfield but shall be included in the calculations of AGR.

**3.2 Content.** The University shall be responsible for providing and editing all written content for each program and for the design of the programs. The University retains final control over all content of its game day publications. To that end, the University shall be responsible for supplying Learfield or its printer with game program content not less than 35 days prior to a program's publication.

**3.3 Revenue and Expenses.** All costs of printing and distributing game programs will be the responsibility of Learfield. The quality and quantity of the game

programs will be not less than what has historically been produced on a per-game basis for the University based on sales demand. Learfield will provide the University with a mutually agreeable reasonable number of complimentary programs for football and men's and women's basketball games. All game day vending revenue from sales of programs shall be included in AGR (as defined in Section 10.1).

**3.4 Communications.** Learfield and the University will meet annually to discuss issues pertaining to the game programs, including the size, format, and "look" of the game programs for the upcoming seasons.

#### **4. THE UNIVERSITY'S OFFICIAL ATHLETIC WEBSITE**

**4.1 University Ownership and Control.** The University has created and will continue to control and produce the University's Official Athletic Website ("OAS").

**4.2 Sponsorships.** On behalf of the University and in accordance with the terms of Section 5, Learfield shall secure Sponsorships for the OAS.

**4.3 Audio and Video Streaming.** The Parties acknowledge that the rights to audio and video streaming on the OAS are licensed under a pre-existing agreement to CBS-Interactive. If the rights become available at any time during the Term of this Agreement, the University will license such audio and video streaming rights to Learfield on an exclusive basis, as provided in section 5.6.

**4.4 Other Revenue Generating Opportunities.** University and Learfield acknowledge that the OAS offers other revenue generating opportunities and it is the Parties intent for Learfield to identify, develop, produce, execute and manage such opportunities for the University; provided that 1) such opportunities are not already contracted to a third party; and 2) such opportunities do not produce Unrelated Business Taxable Income ("UBTI"), as defined in the Internal Revenue Code of 1986, as amended. Learfield shall present to the University prior to each Athletic Year a plan for revenue generating opportunities for the OAS and shall obtain the University's prior written approval for such plan. The University may withhold approval for any plan that that is not consistent with the University's policies, mission and image. Learfield shall



not engage in any revenue generating opportunity that may produce UBTI without obtaining prior written approval from the University, which approval may be withheld in the University's sole discretion. If any revenue generating activity on the OAS produces UBTI, Learfield shall provide a separate accounting for said revenue generating activity in a form and on a schedule that will enable UNM to report that income to the internal Revenue Service and calculate taxes owed. The University appoints Learfield as its special agent to act on its behalf in connection with such additional revenue opportunities and to collect revenues therefore on behalf of the University.

**4.5 Adjusted Gross Revenue.** All revenue derived by Learfield from revenue generating activities on the OAS shall be included in the calculation of AGR (as hereafter defined in Section 10.1) and shall include net revenue derived from the exclusive rights to manage the University's OAS, if such rights become available, shall be added into the calculation of AGR (as defined in Section 10.1).

## **5. SPONSORSHIPS FOR ATHLETIC PROGRAMS.**

**5.1 Learfield's Duties and Responsibilities.** Subject to the terms and conditions of this Agreement and in accordance with this Section 5, Learfield shall seek Sponsorships for the athletic programs.

**5.2 Definition of Sponsorship.** For purposes of this Agreement, "Sponsorship" is has the same meaning as "qualified sponsorship payments" in Section 513(i) of the Internal Revenue Code of 1986, as amended, and any successor section in any future tax code. "Sponsor" means a person or entity that makes a Sponsorship payment. The term "Sponsorship" specifically excludes any payment for which a person receives a substantial return benefit other than the use or acknowledgement of the name or logo (or product lines) of the Sponsor in connection with the athletic programs. Sponsorships may not include (i) advertising ; (ii) exclusive provider arrangements; (iii) goods, facilities, services or other privileges (unless the value is less than 2% of the Sponsorship payment); (iv) exclusive or non-exclusive rights to use an intangible asset of the University including but not limited to the Marks (as hereinafter defined); (v) qualitative or comparative language, price information or other indications of savings or

value; (vi) an endorsement; or (vii) an inducement to purchase, sell, or use such products or services (the "Excluded Activities"). For the avoidance of doubt and clarification, the granting of exclusivity by Learfield in a sponsorship category (i.e., telecom) to a Sponsor who has the right to use the Marks solely within the category shall not be considered an Excluded Activity.

**5.3 Excluded Activities.** The Excluded Activities are not permitted under this Agreement and Learfield does not have the right to offer the Excluded Activities to Sponsors or to engage in any way with any person in the Excluded Activities; provided, however, that Learfield may offer Excluded Activities to a person or engage in Excluded Activities if Learfield obtains the prior written approval of the Director of the Department of Athletics. If Learfield engages in any Excluded Activities or any Sponsors secured by Learfield engage in any Excluded Activities, without Learfield first obtaining the prior written approval of the Vice President of Athletics, University shall promptly notify Learfield and Learfield shall forthwith take such action as may be necessary to bring the sponsorship into compliance so as to make it a qualified Sponsorship or eliminate such sponsorship if it cannot be brought into compliance, but in no event shall Learfield be responsible to the University for the amount of any federal unrelated business income tax (or similar tax under the laws of the State of New Mexico) for which the University is liable as a result of the Excluded Activities. For the avoidance of doubt and clarification, relieving Learfield of tax liability in this paragraph does not relieve Learfield of any other liability or damages as a result of offering Excluded Activities to Sponsors or engaging in Excluded Activities.

**5.4 Contract with Sponsors.** Learfield shall obtain a signed Sponsorship Agreement from each Sponsor in the form of a contract that does not offer Excluded Activities. The University appoints Learfield as its limited agent for the sole purpose of signing Sponsorship Agreements on behalf of the University and collecting revenues on behalf of the University. A current copy of Learfield's form of Sponsorship Agreement will be attached hereto as Exhibit 1.

**5.5 Broadcast Rights.** Learfield has the exclusive right to obtain Sponsorships on behalf of the University for all radio shows, television shows, and videos and DVDs that it has the right to produce under Section 2 of this Agreement.

**5.6 OAS.** On behalf of the University, Learfield shall secure Sponsorships for the OAS and Sponsors may be acknowledged with a link to Sponsor websites from the OAS and from Sponsor websites from the OAS by use of hypertext links (provided such sponsor websites do not deep-link, in-line link, frame, copy or aggregate any of the University's content, use any Marks (as defined below), and comply with the OAS' terms of use and privacy policies. At the University's request, Learfield shall use best efforts to remove or have removed promptly a link to a Sponsor's website that, in the University's sole judgment, contains content that might adversely affect the University's tax-exempt status or is inconsistent with the University's policies, mission and image. Learfield shall have the exclusive right to make use of social media platforms including the University's Athletic Facebook, You Tube and Twitter accounts and the right to use and monetize University Athletic Department's content such as game clips and highlights ("Content") which University agrees to supply to Learfield at no cost to Learfield. Content supplied by University to Learfield shall be up-to-date, relevant and enriched with its focus being to drive more traffic to the OAS. University may use its own applications ("Apps") for its athletic teams to be used on mobile devices and computers for recruiting and similar purposes but in no event shall University Apps contain or reference any commercial sponsorships of any kind or be monetized in any manner such as through the sale of subscriptions for the Apps or the sale of merchandise through the Apps without Learfield's prior approval which will not be unreasonably withheld, delayed or conditioned; provided, however, if any University App is competitive with the rights of any Learfield sponsor, then Learfield's approval may be withheld. Any net revenue derived by University from a University App shall be shared with Learfield on a basis to be negotiated by the Parties in good faith. Further, University agrees that it will not supply Content for the Apps to the detriment of the Content to be supplied by University to Learfield under this Section 5.6. Learfield may create and monetize its own Apps using Content with the net revenue from Learfield Apps included in the calculation of AGR ("Learfield Apps"). University will supply to

Learfield at no cost to Learfield, all licenses, rights, clearances, consents and permissions related to Content which may be required for Learfield Apps. All resulting net revenue derived by Learfield under this Section 5.6 shall be added into the calculation of AGR.

**5.7 Game Programs.** Learfield shall have the exclusive right to obtain Sponsorships on behalf of the University in all programs printed by Learfield under Section 3.

**5.8 Signage.** Learfield shall have the exclusive right to obtain Sponsorships for all existing as well as all future temporary or permanent signage (electronic or otherwise) in all the University athletic venues including the University Stadium and the University Arena ("The Pit"). When the University upgrades its existing signage or installs new signage in The Pit including LED or LDP signage or a new jumbotron (collectively the "New Signage"), Learfield shall advise the University about sponsorships interests that will result from the New Signage. The foregoing notwithstanding, the University reserves the rights to utilize signage (electronic or otherwise) for pre-game, half-time, quarter breaks, game time-outs or post-game for the University's promotion of sports, the University or the University events or accomplishments, or athletically-related activities as deemed reasonably necessary by the University but in no event for any commercial underwriting or commercial sponsorship or sponsor of any kind.

**5.8.1 Athletic Venue Sponsor Rights.** The specific athletic venue sponsor rights licensed to Learfield include the following existing signage:

**5.8.1.1 The University Stadium ("Stadium") Elements:**

- The University's fixed scoreboard signage
- Any sideline and end-line sponsor panels
- Façade, tunnel and concourse signage
- Electronic ribbon-board fascia displays

- Video displays
- Temporary signage for events as approved by the University which approval will not be unreasonably withheld
- Message Center displays
- Videoboard sponsor displays and promotions at all events
- Public Address announcements at the University events (of an amount similar to such sponsorship announcements used by the University in the past)
- Concourse displays
- Press conference backdrops
- Coaches' headsets
- Temporary logo rights on the field if they are approved by the MWC and the University. Learfield shall be responsible for all expenses relative to said logo rights on the field.
- Plastic souvenir cups and concession (food) containers.
- Field Goal Net signage
- Football Goal Post pad signage subject to NCAA rules
- Cup Holders
- Other opportunities as reasonably approved by the University

#### **5.8.1.2 The Pit Elements:**

- Rights to the University's main scoreboard ad panels, auxiliary boards, fascia and vomitory displays except naming rights signage currently in existence
- Any scorer's table, press row or baseline table sponsor panels (rotational or static)
- Message center displays

- Video sponsor displays
- Public address sponsorship announcements (of an amount similar to that used by the University in the past)
- Basketball goal post padding subject to NCAA rules
- Basketball backboard supports subject to NCAA rules
- Temporary or permanent playing surface logo opportunities
- Shot clock sponsor panels subject to NCAA rules
- Static signage opportunities that either currently exist or which Learfield may elect to sell in and around concession areas, facility entries/exits, restrooms, concourses, portal entries/exits into seating areas
- Concourse and lobby displays
- Temporary or permanent and displays for special events
- Plastic souvenir cups and concession (food) containers (conforming to existing agreements, rules, standards, and regulations of the University)
- LED and LDP displays
- The University, opposing team and scorer's table Chairback sponsor
- Press Backdrop
- Team entry cover signage
- Blimp signage
- Temporary logo rights on the court if they are approved by the MWC and the University. Learfield shall be responsible for all expenses relative to said logo rights on the court.
- Other opportunities as reasonably approved by the University

#### **5.8.1.3 Other Athletic Venue Signage Elements:**

- Main scoreboard panel sponsor displays (rotating or static)
- Any sideline and endline sponsor panels
- Message center displays
- Public address announcements
- The University and opposing team bench signage
- Playing surface logo opportunities, as approved by the University
- Static signage opportunities that either currently exist or which Learfield may elect to sell in and around concession areas, facility entries/exits, restrooms, concourses, portal entries/exits into seating areas
- Temporary signage and displays for special events
- Plastic souvenir cups and concession (food) containers
- Field fence panel signage
- Other opportunities as approved by the University

#### **5.9 Existing Message Board, Videoboard Rights, and Public Address**

##### **Announcements.** Learfield shall have the exclusive rights to secure

Sponsorships for announcements, messages and videoboard displays on existing public address, scoreboards or videoboards including out of town scores, trivia, statistics, features, segments, replays, sponsor logo branded messages and contests at all the University campus athletic venues and at the Stadium, and at the Pit as well. University will provide Learfield necessary execution support for message boards, video boards and public address announcements.

##### **5.9.1 Maintenance of Sponsor Signs, Message Boards and Videoboards.**

Learfield shall be responsible for all costs and expenses relative to any copy or art changes or replacement of existing signs, including the identification of new sponsors or the repair or upgrade of existing sponsor signs. The University will remain responsible

for the maintenance and necessary repairs of both the existing and any new permanent signage and equipment, including the videoboards, rotating signage and static signage.

**5.9.2 New Inventory Items.** It is understood and acknowledged that from time to time the University may wish to install new items or upgrade existing items which are capable of adding to the inventory available under this Agreement or enhancing the existing inventory ("New Inventory Items") for Sponsorships. The Sponsorship rights for all New Inventory Items shall belong exclusively to Learfield. The net revenue received by Learfield from any New Inventory Items shall be added to the AGR (as defined in Section 10.1) each year.

**5.9.3 Temporary Signage at Neutral Venues.** The University will cooperate with Learfield to obtain exclusive rights to secure Sponsorships for existing signage or to create temporary signage for Sponsorships at University games or events which occur at a neutral venue. Any temporary signage shall be paid for, erected, maintained and operated at the sole cost and expense of Learfield.

**5.9.4 Relocation of a University Home Game.** If during the Term, one of the University's home football games that has been scheduled to take place in one of University's athletic venues is moved to a neutral location or to the visiting team's location as a result of a Prevention Event or for any other reason beyond the control of Learfield ("Displaced Game"), a fair and equitable reduction in the Guaranteed Licensing and Rights Fee and a corresponding adjustment to the AGR Additional Payment Hurdle amounts shall be negotiated in good faith by the Parties in recognition of the sponsorship revenue affected which results from a Displaced Game; provided, however, if the Displaced Game is replayed in the same season with another home game involving the original team, or if Learfield retains all of its sponsorship benefits under this Agreement at the neutral venue where the Displaced Game is played (each a "Replacement Game"), then there shall not be any reduction in the Guaranteed Licensing and Rights Fee or any adjustment to the AGR Additional Payment Hurdle.

**5.10 Naming Rights.** Notwithstanding anything contained in this Agreement to the contrary, if the University executes a new naming rights agreement or amends any



existing naming rights agreement for the University Stadium, The Pit or any other University Athletic Venue ("New Naming Rights Agreement"), and if as a result of the New Naming Rights Agreement, the inventory that Learfield had available in the renamed athletic venue is diminished, altered or eliminated, the University will either replace inventory to Learfield's reasonable satisfaction, or reduce the Guaranteed Licensing and Rights Fee by a reasonable amount to be mutually agreed upon; and the AGR Threshold Amount shall be adjusted by an amount to be mutually agreed upon, provided, however, that any reduction in the Guaranteed Licensing and Rights Fee shall apply only to reduction in inventory for corporate Sponsorships in the facility to which the naming rights have been licensed and shall not apply to inventory for the University's private donors.

University agrees that with respect to any Learfield sponsors who hold exclusive sponsorship rights within a particular category (i.e., telecom) under their contracts with Learfield ("Exclusivity Sponsor"), University will not enter into any naming rights or similar agreement with a competitor of the Exclusivity Sponsor, but should that occur (a "University Action") and Learfield loses the sponsorship of the Exclusivity Sponsor or is liable to the Exclusivity Sponsor for breach of contract, the Guaranteed Licensing Fee shall be reduced by the total revenue lost by Learfield or owed to the Exclusivity Sponsor as a result of the University Action. In addition, a further reduction in the Guaranteed Licensing Fee will be negotiated in good faith in recognition of the fact that the category affected by the University action is no longer available to Learfield for sponsorship sales.

**5.11 Printed Promotional Items.** Learfield shall have the exclusive right to secure Sponsors for all the University Athletic Department's printed promotional items including team rosters, ticket backs, parking passes, roster cards, media guides, ticket applications and mailer inserts, ticket envelopes, posters, sports calendars, fan guides, trading cards and schedule cards ("Printed Materials"). The University and Learfield will mutually agree on content and amounts of Printed Materials. However, the quantity (numbers produced) and quality will be no less than that which was being produced by or for the University historically. Learfield shall provide all Sponsor logo and materials

to the University in a timely manner in accordance with production schedules provided to Learfield. The University will be responsible for payment of all expenses and costs of Printed Materials at the historical levels, with the following exceptions: Learfield will be responsible for payment of all printing costs related to the printing of all media guides, schedule cards, and posters. The number of media guides provided will be consistent with the number historically printed by the University.

**5.12 Game Sponsorship and Promotional Sponsor Rights.** Learfield will have, at a minimum, the right to secure Sponsors for pre-game, time-out, half-time, and quarter breaks sponsored promotional activities and special game day on-field and on-court promotions or contests as well as official game sponsorships. The University reserves the right to use, at no cost and expense to Learfield, any pre-game, half-time, quarter breaks, game "time-outs," and post-game for the University's need to promote the University fundraising efforts, development projects, sports, the University or the University events or accomplishments, or athletically related activities. However, University agrees that its activities will not abrogate the value of sponsorships obtained by Learfield. Promotional sponsorship activities may include premium item giveaways, fan contests on the field, floor, or in the stands, sponsored entertainment acts, product samplings, inflatables, games, temporary or permanent, couponing and free product distribution and product displays; provided, however, that this is not intended to exclude approved University student organizations' fundraising activities and other similar on-field/on-court recognition. By the 1st day of June each year, Learfield will advise the University of its annual game/event sponsorship plan. Learfield will be responsible for providing either a premium giveaway item or a quality half-time performance for up to four home football games, seven home men's basketball games, five home women's basketball games, and one baseball, softball, men's soccer, women's soccer, and volleyball home game each Athletic Year. The exact total number of games and the number of premium giveaway items per each game will be mutually agreed upon by Learfield and the University and will not be less than the number of games and promotional items offered by the University in the historic past. It is understood that the cost of providing the premium giveaway items or quality half-time performances will be passed on to and paid by corporate sponsors, as in the past.

**5.13 Game Day Hospitality Rights.** Learfield shall have the exclusive rights to manage and secure corporate Sponsorships for the hospitality tents and the field level suites ("Hospitality Rights") and any revenue derived from such Hospitality Rights shall be added to the AGR (as defined in Section 10.1). Learfield will be responsible for payment of costs associated with Hospitality Rights. Nothing in this Section 5.13 allows Learfield to serve alcohol in association with Hospitality Rights, either inside or outside the University Stadium; provided, however, that Learfield and the University will make a good faith effort to negotiate a separate agreement allowing Learfield to serve alcohol in association with Hospitality Rights, which agreement will require that Learfield hold the University harmless from any and all potential liability arising from the serving of alcohol and is consistent with the University policies relating to the serving of alcohol as well as New Mexico law. Notwithstanding the foregoing proviso, the Parties acknowledge that any decision concerning use of alcohol by any person, whether or not a Party to this Agreement, in association with Hospitality Rights is at the discretion of the President of the University of New Mexico ("President") and the President's decision concerning any use of alcohol shall be final and cannot be challenged by the Parties. The Parties shall, however, be entitled to request that the President re-consider his/her decision not to allow the serving of alcohol in association with Hospitality Rights in any Athletic Year following the Athletic Year to which the President's decision applies.

**5.14 Fan Festival Rights.** Learfield shall have the exclusive right to obtain corporate Sponsorships for any historical interactive fan festival or related activities as well as those that Learfield creates in the future for events such as men's and women's basketball. The net sponsorship revenue from such events shall be added to the AGR (as defined in Section 10.1). Learfield will be responsible for payment of costs associated with such fan festivals.

**5.15 Licensing Opportunities & Sponsorship Promotions.**

**5.15.1 Use of Marks.** Learfield agrees that the sale of merchandise bearing the University's logo or the Marks by Learfield is prohibited unless such sales occur through a licensed University provider. The Guaranteed Licensing and Rights Fee is based in

part upon Learfield's ability to continue to obtain specific sponsorships in public places which use the Marks ("Sponsorships Including Logo" or "S.I.L."). Learfield shall have the right to obtain S.I.L. throughout the Term of this Agreement subject only to the University's approval of the context and artwork used in S.I.L. Such approval will not be unreasonably withheld by the University. Notwithstanding the foregoing, Learfield is expressly prohibited from licensing to any Sponsor the right to use the Marks other than for nominative fair use in accordance with 15 U.S.C. § 1115(b)(4) of the Trademark Act (*i.e.*, use of the Marks descriptively and other than in a trademark sense). Learfield acknowledges that: (a) the Marks are valuable intellectual property assets of the University, (b) all permitted use of any of the Marks is a licensed use, and (c) all goodwill arising from such use shall inure exclusively to the University.

**5.15.2 Collegiate Licensing Agreements.** To the extent the University has in existence any collegiate licensing agreement ("Licensing Agreement"), the University shall provide Learfield with a copy of the Licensing Agreement and Learfield shall not exercise any rights under this Agreement which, if exercised, would violate the terms and conditions of the Licensing Agreement. The University agrees not to execute any additional licensing agreements or amend or modify any existing Licensing Agreement if, as a result thereof, Learfield's rights under this Agreement are diminished. If Learfield does not sell S.I.L. at the same or higher than historical level for reasons not attributed to Learfield's efforts, the Parties will agree upon an appropriate offset against the Guaranteed Licensing and Rights Fee.

**5.15.3 Athletic Event Tickets.** Learfield and Sponsors will have the right to use tickets in their corporate promotions and all their projects which are related to Learfield's rights under this Agreement. The University and Learfield will prohibit the use of athletic event tickets for promotional purposes by other parties that compete with Learfield's sponsorship sales efforts ("Restriction") without the approval of both the University and Learfield. The University agrees to place an appropriate notice on all athletic event tickets in order to give effect to the Restriction.

**5.16 Rivalry Series.** The Parties will cooperate in the development of additional Sponsorship opportunities, including the right to market and/or create one or more corporate-sponsored rivalry series for all athletic events. Specific details of any new rivalry series events will require the approval of the University which approval will not be unreasonably withheld. Learfield will have the exclusive right to obtain Sponsorships for any rivalry series which is created by Learfield as well as all neutral site games whose rights belong to the University and not the other team, including Sponsors for the game, printed materials and other promotional items.

**5.17 Prohibited Categories of Sponsorship.** Learfield agrees that it shall not obtain the following categories of sponsors throughout the entire Term of this Agreement, unless otherwise agreed to by the University:

- Gambling (except state authorized lottery and gaming establishments)
- Liquor (Malt beverage or wine is permitted; however, malt beverage and wine signage sponsor is prohibited within the University's athletic venues.)
- Prophylactics
- Erectile dysfunction medication, including Viagra, Cialis, and Levitra
- Feminine hygiene products
- Tobacco products
- Sexually explicit materials.

**5.18 Retained Sponsorship Agreements.** The University will retain those sponsorship agreements which include tickets as the major component of such sponsorship agreements and the Guaranteed Licensing and Rights Fee set forth in Section 9.1.4 will be reduced by the net value of those sponsorship agreements retained by the University. The University agrees that Learfield's exclusive rights to secure Sponsorship under this Agreement contemplate allowing Learfield to substantially expand Sponsorship opportunities to create additional streams of revenue.

The Parties acknowledge and agree that the University is not transferring: 1) any

rights or revenue associated with the University's exclusive clothing uniform, sports equipment, shoe contract with Nike, or any extensions or amendments thereto, or any new contract with Nike; or 2) any portion of the University's pouring rights, although the revenue associated with inventory controlled by Learfield and generated by such pouring rights for the Athletics Department will be transferred.

**5.19 Efficient Operation of Sponsored Events.** Except as otherwise provided in this Agreement, Learfield will furnish all labor, management, supplies, and equipment necessary to fulfill its obligations under this Section 5; provided, however, that the University will provide reasonable and as available non-cash assistance for Sponsorship fulfillment and execution (principally, execution of game-day promotions for Learfield's sponsors) at no expense to Learfield.

**5.20 Tickets, Parking and Other Merchandising/Hospitality.**

**5.20.1 Football and Basketball Game Tickets.** The University shall provide Learfield, at no cost to Learfield, not less than the same historical number of tickets in the same or better historical locations to football and men's and women's basketball games which were provided or allocated to sponsors for the 2012 – 2013 athletic season ("Base Ticket Amount"), a spreadsheet of which is attached to this Agreement as Schedule 5.20.1 and by this reference made a part of this Agreement. Some tickets allocated to certain sponsors listed in Schedule 5.20.1 will be retained by the University; the corresponding value of these tickets to be retained by the University is indicated in Schedule 5.20.1 and will be deducted from the Guaranteed Licensing and Rights Fees in Section 9.1.

**5.20.2 Additional Athletic Event Tickets.** In addition to the Base Ticket Amount, Learfield shall have the right to purchase additional tickets from the University, the quality of which will be based upon availability and the tickets afforded the highest level of donor status by the University ("Additional Tickets"). The price for the Additional Tickets shall be the lowest available price charged by the University for the same quality of ticket.

**5.20.3 Parking Passes.** The University shall also provide Learfield, at no cost to Learfield, the same number of parking passes with comparable or better locations as are provided to Learfield for the 2012 – 2013 Athletic Year (the “Historical Amount”). Learfield will be responsible for reimbursing the University for the cost, if any, of parking passes in excess of the Historical Amount. The University will use reasonable efforts to provide parking passes in desirable locations.

**5.21 Learfield’s Right to Purchase Bowl Game Tickets.** During each year of the Agreement, the University will provide Learfield the right to purchase 60 bowl game tickets, 12 men’s and women’s MWC basketball all session tournament tickets, 48 men’s and women’s MWC basketball championship tickets, 20 men’s and women’s basketball NCAA first- and second-round tickets, 32 NCAA men’s and women’s regional tickets and 50 Men’s and Women’s Final Four tickets (with a minimum of 12 Final Four tickets in the lower arena) contingent upon the University teams advancing to the respective post-season game or level. The quality of the tickets allocated to Learfield will be proportional to the quality of the total tickets made available to the University. If, for example, one-third of the University’s tickets are in the lower level of the MWC Tournament, one-third of Learfield’s allocation of tickets will be in the lower level, as well.

**5.22 Additional Broadcast, Digital, Social Media, Content and Athletic Venue Rights.** Learfield shall also have throughout the Term, exclusive sponsorship rights associated with all digital platforms now existing or which may exist in the future such as Athletics-specific (but not, for example, coach-specific or program-specific) social media, e-mail, and mobile phones and tablets; provided, however, with respect to social media, before Learfield sells any sponsorships into social media, it must first obtain University’s prior approval which approval will not be unreasonably withheld, delayed or conditioned and provided further, nothing in this Section 5.22 shall prevent University from selling into social media so long as Learfield’s sponsorship categories and its sponsors within such categories are protected. For clarification purposes, the sale into social media by University to a third party whose products or services are competitive with a Learfield sponsor, whether or not Learfield’s sponsor is also

advertising on University's social media platforms, would not be allowed. University agrees that none of its coaches may use social media of any kind to promote or sponsor a product or service of a third party or promote the third party itself, it being agreed and understood that such rights belong to Learfield and not to any University coach. The Parties recognize that from time to time forms or methods of distributing broadcasts and/or delivering Content may arise or be created that were not contemplated by the Parties and specifically mentioned in this Agreement ("New Technology"). The rights to distributing and delivering Content by or through any form of existing technology and New Technology shall be included as part of the exclusive rights granted to Learfield (for methods which they produce, i.e., English radio), and the net revenue from such rights shall be added to the AGR. Irrespective of whether any such rights are commercialized by Learfield prior to the MWC obtaining the same or similar rights on a conference-wide basis which includes the University ("Conference Agreement"), if the MWC requests that University be included in the Conference Agreement, University must first obtain Learfield's approval which will not be unreasonable withheld, conditioned or delayed, but if granted shall require all revenue derived from the Conference Agreement attributable to the University be paid by University to Learfield who shall include such revenue in the calculation of AGR. During the Term of this Agreement, other "Platforms" may be installed in University's athletic venues which are capable of providing Sponsorship opportunities, promotional programs, social media content and distribution and video content including, but not limited to, game action, replays and additional cameras (collectively the "Athletic Venue Opportunities"). The Platforms which are capable of producing the Athletic Venue Opportunities include, but are not limited to, IPTV, Closed Circuit Video Systems, WiFi/DAS Splash pages, Interactive and Digital Applications and Screens/Kiosks throughout an athletic venue. Throughout the Term, Learfield shall have the exclusive right to sell sponsorships and promotional programs and make use of the Video Content surrounding the Athletic Venue Opportunities using the Platforms and the net collected revenue shall be included in the calculation of AGR under Section 10.1

**6. OTHER RIGHTS.** Notwithstanding anything contained in this Agreement to the contrary, it is agreed that from time to time forms or methods of media distribution



rights, including, but not limited to digital media rights, may arise or be created that might not have been contemplated or specifically mentioned in this Agreement, and the inclusion of these rights in this Agreement shall be governed in accordance with Section 1.3 and the net revenue from such rights shall be added to the AGR (as defined in Section 10.1).

**6.1 Correspondence Rights.** Throughout the Term of this Agreement, University grants Learfield the exclusive right to sell sponsorships on e-mail newsletters and any other correspondence deemed appropriate mutually by Learfield and Athletics to any and all e-mail addresses in the possession of University's athletic department, including, but not limited to ticket buyers and booster club members; provided, however, before exercising these rights, Learfield shall obtain the consent of University which consent will not be unreasonably withheld, conditioned or delayed. The net sponsorship revenue collected from such sponsorships shall be included in the calculation of AGR.

**6.2 Outbound Ticket Sales.** If University wishes to outsource its outbound ticket sales for football and/or men's basketball games over which it has the right to sell tickets, ("Outbound Ticket Rights"), it shall notify Learfield whereupon Learfield shall have a right of first refusal ("Ticket ROFR") to obtain the Outbound Ticket Rights which it must exercise within forty-five (45) days of University's notification to Learfield. If Learfield exercises its Ticket ROFR, Learfield may enter into a contract on behalf of the University with a third party ("Third Party Contractor") to administer the Ticket Rights ("Ticket Rights Contract") on such terms and conditions as mutually agreed upon between the University and the Third Party Contractor which sets forth the specific services to be performed by the Third Party Contractor, the items to be provided by University at no cost to the Third Party Contractor to facilitate its performance under the Outbound Ticket Rights Contract and the fees and/or commissions to be paid by University. Any and all fees and/or commissions paid by University under the Ticket Rights Contract shall be excluded from the calculation of AGR. If Learfield does not exercise its Ticket ROFR, University may contract with another third party for the Outbound Ticket Rights.

**6.3 Blogs.** University grants Learfield the rights throughout the Term to provide ongoing, regular and real-time commercial coverage of University athletic events which not only includes the game itself but also includes pre-game, half-time, quarter breaks and post-game broadcasts ("Game Coverage") and to provide commercial sponsorship or promotion in such "Game Coverage" on a blog or other similar means which features, describes, includes or discusses any University team in action as it occurs or "Game Coverage" ("Blog Sponsorship"). The Parties anticipate that such blog will be made available on University's OAS. Nothing herein shall prevent University from writing its own blog(s) provided that no University written blog relating primarily to Athletics may contain any commercial underwriting or commercial sponsorship of any kind. If either the University or Learfield becomes aware of any third party commercial blog which includes blog or blog-type Game Coverage or Blog Sponsorship or a blog which violates the MWC Policy the parties will cooperate to take whatever steps they mutually agree are appropriate to respond to the violating Blog. The parties acknowledge that non-commercial student or fan blogs are outside the scope of this paragraph.

**7. SUITE SALES.** LEARFIELD Shall have the exclusive right to the use of, and revenues generated from, nine (9) luxury suites in the University Stadium during each year of the Term as well as the tickets related to each suite in consideration of Learfield's annual payment to the University of \$158,000 ("Suite Fee"). All revenues generated by Learfield from such suites shall be added to AGR. If the University renovates the suites or creates additional suites in the University Stadium during the Term, Learfield will negotiate in good faith with the University to arrive at a mutually agreeable adjustment to the Suite Fee. If the University creates new suites in The Pit ("Pit Suites"), and should the University decide to work with an outside agency to secure sales for Pit Suites, Learfield shall have the first opportunity to negotiate in good faith with the University for a reasonable length of time an exclusive representative agreement for Pit Suites sales. Learfield understands that the University may elect not to enter into a representative agreement with Learfield, or any other outside company, for rights to sell Pit Suites. The Suite Fee shall be due

and payable in semi-annual installments on or before December 31st and June 30th of each athletic year of each year of the Term.

**8. PARKING, TRAVEL, USE OF FACILITIES, STAFFING AND LEARFIELD FUNCTIONS:**

**8.1.1 Parking.** The University will provide Learfield, parking on all business days at or immediately adjacent to the University's athletic facilities. The University will also provide all-access credentials and parking on all game days for Learfield's staff members and its senior executives, in a manner similar to that provided by the University to its staff. Fees for parking will be included in the rental for office space under Section 8.1.3.

**8.1.2 Air Carriage.** The University will provide Learfield with space on chartered aircraft carrying the University's football team to at least four away games per season for up to four people for Learfield's Sponsor development. The University will also make reasonable efforts to provide Learfield with space on chartered aircraft, if available, carrying the University's men's and women's basketball teams for up to four people for Learfield's Sponsor development.

**8.2 Office Space.** The University acknowledges and agrees that Learfield's performance under this Agreement and the resulting benefits to the University will be enhanced if Learfield is provided office space on the campus of the University, preferably near the University's Athletic Department. In addition to the compensation received under the terms of this Agreement, the University will lease office space for the Term of the Agreement ("Leased Premises") for \$20,000.00 per year. Any changes or enhancements relative to the Leased Premises and furniture therein shall be at the sole cost and expense of Learfield, and shall be at the prior written consent of the University. If provided by the University, the Leased Premises shall be of a size and quality to accommodate up to four (4) full-time Learfield employees and one intern. Learfield may, in its sole discretion, hire additional personnel. If the Leased Premises are provided by the University, it will provide Internet hook-up, phone access, and telephone access to Learfield in the Leased Premises with the costs of such services to be tracked

by the University and reimbursed monthly by Learfield. In no event shall Learfield be responsible for paying any other expenses relating to the Leased Premises other than the lease payments specified above, out-of-pocket expenses such as Internet access, phone charges and office supplies. If Learfield needs to expand its staff to carry out its responsibilities under this Agreement, subject to availability, the University shall make a good faith effort to provide Learfield additional office space, to accommodate such need and, at the University's sole and reasonable discretion, in reasonable proximity to Learfield's Leased Premises, or in different space large enough to accommodate all of Learfield's needs. The Parties will mutually agree on the rental for such additional office space.

## **9. FEES AND PAYMENTS.**

**9.1 Guaranteed Licensing and Rights Fee.** As payments for the intellectual property rights licensed to Learfield under this Agreement and fees for other rights licensed under this Agreement, Learfield will pay the University a Guaranteed Licensing and Rights Fee during the Term in the amounts set forth below. Such amounts are non-cumulative.

**9.1.1 Assumption.** The Guaranteed Licensing and Rights Fee described below is based upon the following assumption (the "Assumption"). All of the rights licensed exclusively to Learfield under this Agreement are available to Learfield throughout the Term as set forth herein.

**9.1.2 Revisions of the Guaranteed Licensing and Rights Fee.** If the Assumption does not occur, if it is inaccurate, or it does not remain in effect throughout the Term (each an "Assumption Default") or if the inventory or elements are materially altered or eliminated, the University will, in the case of inventory, either replace inventory or alleviate any problem associated with such inventory to Learfield's reasonable satisfaction. If the inventory cannot be replaced or the problem associated with such inventory cannot be alleviated and in the case of an Assumption Default, the Guaranteed Licensing and Rights Fee shall be reduced accordingly as negotiated by

the Parties as Learfield's sole and exclusive remedy and the University's sole obligation to Learfield under this Section 9.1.2.

**9.1.3 Payment of the Guaranteed Licensing and Rights Fee.** All Guaranteed Licensing and Rights Fees owed by Learfield shall be paid in semi-annual installments on or before December 31st and August 31st of each Athletic Year, with a final distribution of any income derived through the agreed revenue sharing formula or other adjustments made on or before August 31st of the following Athletic Year.

**9.1.4 Amounts of yearly Guaranteed Licensing and Rights Fee**

<b><u>Athletic Year</u></b>	<b><u>Guaranteed Licensing and Rights Fee</u></b>
2012 – 2013	\$4,740,000
2013 – 2014	\$4,668,000
2014 – 2015	\$4,668,000
2015 – 2016	\$4,668,000
2016 – 2017	\$4,768,000
2017 – 2018	\$4,868,000
2018 – 2019	\$4,968,000
2019 – 2020	\$5,068,000

**9.1.5 Bonus Payment.** In addition to the Guaranteed Licensing and Rights Fees payable under this Agreement, Learfield will make a one-time payment to the University in the amount of \$500,000.00 to be paid in two equal installments (\$250,000 each) on August 30, 2016 and August 30, 2017.

**9.1.6 Credits for Certain Sponsor Payments.** If the University receives revenue payments directly from a Sponsor, Learfield may subtract such revenue from the Guaranteed Licensing and Rights Fee. However, this provision does not apply to

those revenues received by the University from the retained Sponsorship Agreements specified in Section 5.18.

**9.2 Trade Income.** The amount of in-kind, trade benefits for the Athletic Year ending June 30, 2013 shall be \$160,000.00. For each Athletic Year thereafter throughout the remainder of the Term, Learfield will secure a total of \$200,000 of in-kind trade. Media trades included in kind trade amounts may be handled by the University upon mutual agreement of both Parties. Learfield will receive a rights fee credit against then current cash fair market value of the trade of 60% of the fair market value of any additional trade benefits above the \$200,000 which are provided to the University by Learfield in the year in which such additional trade benefits are realized.

**9.3 Events Causing Reduction to Guaranteed Licensing and Rights Fee.** Notwithstanding anything contained in this Agreement to the contrary, a fair and equitable reduction in the Guaranteed Licensing and Rights Fee will be agreed upon by Learfield and the University as Learfield's sole and exclusive remedy and the University's sole obligation to Learfield if any one or all of the following events occur and thereby reduce Learfield's revenue during the Term of this Agreement, which reduction will be negotiated in good faith by the Parties unless another manner of reduction is otherwise provided in this Agreement.

**9.3.1 Sanctions.** The University's football or men's or women's basketball team incurs sanctions which prevent either of them from appearing in conference championship games or post season conference, NCAA, or NIT tournaments (basketball) or playoff/bowl games (football) or reduce the number of scholarships which can be offered; or

**9.3.2 No Conference Membership.** The football, men's basketball or women's basketball programs are no longer a member of the MWC (or any other comparable athletic conference); or

**9.3.3 Level of Athletic Activities.** One or more of the University's major athletic programs (i.e., football, men's basketball or women's basketball) is eliminated or substantially curtailed; or

**9.3.4 Prevention Events.** Should any acts of terrorism, acts of state or the United States in their respective sovereign capacities, strikes, labor shortages, epidemics or any natural disaster, including flood, fire, earthquake, tornado, hurricane or extremely severe weather condition, drought, loss of power, whether or not resulting from a natural disaster (collectively a "Prevention Event"), prevent a University home or neutral site game at which University holds the Sponsorship rights being played at its originally scheduled athletic venue at its originally scheduled time; (provided, however, the Parties recognize that it is preferred that the University reschedule a game at a different date or time in an effort to keep the game as a home game instead of moving the location of the game to the visiting team's home venue or to another neutral venue, and that rescheduling a home game due to a Prevention Event will not result in any reduction in the Guaranteed Licensing and Rights Fee payment unless Learfield is contractually required to refund or credit one or more of its Sponsors as a result of such Prevention Event); or

**9.3.5 Reduction of Opportunities.** If any existing inventory, category or sponsor that Learfield obtains or takes over from the University is later eliminated through no fault of Learfield such as the NCAA eliminating all malt beverage sponsors; or

**9.3.6 Prohibited Sponsors; Contract Categories.** If Learfield is not permitted to solicit support from any category of sponsor not specifically prohibited herein or to continue to sell all inventory managed or sold by Learfield at any time during the Term of this Agreement (collectively the "Contract Categories") for any reason through no fault of Learfield, a dollar-for-dollar credit and reduction in the amount of revenue lost from any such Contract or revenue received within the Contract Categories as Learfield's sole and exclusive remedy and the University's sole obligation to Learfield

shall be made from the Guaranteed Licensing and Rights Fee in recognition of Learfield's loss of revenue; or

**9.3.7 Change in Sponsorship Rules.** If Learfield is prevented by the University from soliciting sponsorships (including permitting the usage of the Marks) in the same manner in which it has historically been provided; or

**9.3.8 Changes in Rules and Regulations; Conference Action or Conference Change.** If after the execution of this Agreement, the MWC or the then athletic conference to which University belongs, by agreement(s) with or on behalf of its member institutions including University and one or more third Parties, eliminates or diminishes any rights which Learfield otherwise holds under this Agreement ("Conference Action"), and if as a result of any Conference Action, Learfield loses part or all of a source of revenue, or, if there is a Material Rule Change or a Conference Change that materially diminishes or restricts Learfield's ability to obtain and/or renew sponsorship agreements or to otherwise exercise its licensed rights under this Agreement, then the Guaranteed Licensing and Rights Fee shall be reduced on a dollar-for-dollar basis by the amount of revenue Learfield loses as a result of the Conference Action or Material Rule Change beginning with the Athletic Year in which the Conference Action or Material Rule Change occurs ("Initial Rights Fee Reduction Amount") and continuing thereafter for the remainder of the Term; provided, however, the Initial Rights Fee Reduction Amount shall increase by five percent (5%) in each Athletic Year beginning with the second Athletic Year in which the Conference Action or Material Rule Change occurs and continue increasing by that same percentage thereafter for the remainder of the Term.

The Parties agree that they will negotiate in good faith for a period of sixty (60) days regarding such equitable adjustment of the Guaranteed Licensing and Rights Fees payable in the affected Athletic Year(s). Learfield agrees that it will provide University with written documentation and statements to describe the impact of the Material Rule Change or Conference Change on Learfield's ability to exercise the licensed rights.

For purposes of this section, a "Material Rule Change" means (a) any change in the Rules, (b) any change in applicable constitution, bylaws, regulations or policies of



the NCAA or any Athletic Conference in which University is a member, (c) any change in any NCAA and Athletic Conference policies and agreements, (d) any change in policy or practices of University or its athletics department related to the licensed rights, including, without limitation, any restrictions or limitations on the nature of permissible categories for which Learfield may sell sponsorships, or (e) any other change in restrictions or impairments upon Learfield's exercise of its sponsorship or related rights with respect to the licensed rights caused by actions of University, its employees, agents or anyone affiliated with University (which action is not previously approved by University).

For purposes of this section, a "Conference Change" means a change in University's athletic conference affiliation or a material change in the nature of the Athletic Conference, whether because of (a) University's withdrawal or departure from a Conference with which it is a member (b) the Athletic Conference disbands or merges with another conference, or (c) there are more than two member changes in the Athletic Conference's membership within any 24-month period (whether voluntary or involuntary departures or whether additions or contractions); or

**9.3.9 Material Adverse Publicity** If, during the Term of this Agreement, University and/or its athletics program is the subject of Material Adverse Publicity, whether due to sanctions by the NCAA for major violations in its athletic programs, or otherwise, which Material Adverse Publicity materially diminishes or restricts Learfield's ability to obtain sponsorship agreements or to otherwise exercise the licensed rights, then there shall be an equitable adjustment in the Guaranteed Licensing and Rights Fees payable in the affected Athletic Year(s) to reflect the impact of the Material Adverse Publicity.

The Parties agree that they will negotiate in good faith for a period of sixty (60) days regarding such equitable adjustment of the Guaranteed Licensing and Rights Fees payable in the affected Athletic Year(s). Learfield agrees that it will provide University with written documentation and statements to describe the impact of the Material Adverse Publicity on Learfield's ability to exercise the licensed rights.

For purposes of this section, "Material Adverse Publicity" means public attention or scandal in the form of television, print media, internet news reports, or other public news reporting, after the date hereof, that arises from and relates to activities, conduct, investigations or situations on campus at University or affecting or relating to University's athletic programs and which public attention or scandal is of such a negative or adverse nature that sponsors or potential sponsors considering sponsoring University athletics are prompted to discontinue sponsorships or the pursuit of new or replacement sponsorships as a result of not wanting to be associated with the negative image or scandal; provided, however, that such Material Adverse Publicity must not have been directly caused by any act or omission of Learfield or its employees or subcontractors.

If, during the term of this Agreement, Learfield is the subject of Material Adverse Publicity, the University shall have the right to terminate this Agreement in accordance with Section 14.

**9.3.10 Events Causing Increase.** If, during the Term of this Agreement, there is a Conference Change, or realignment of the MWC or the conference to which the University then belongs, or any other event that University believes has the effect of increasing the value of Learfield's rights under this Agreement, then the Parties will negotiate in good faith to determine the effect, if any, on the Guaranteed Licensing and Rights Fee. University agrees that it will provide to Learfield written documentation to substantiate such increased value of Learfield's rights.

**9.4 Payments Received by the University.** All payments made to the University under this Section 9 and otherwise made by Learfield under and in connection with this Agreement are nonrefundable to Learfield or to any other third party; provided, however, if a reduction in the payments to the University is agreed upon by University and Learfield or provided for under the provisions of Section 9.3, but Learfield has already made a payment for the period covered by the agreed upon or applicable reduction, then Learfield may reduce the amount of the next required payment to University by the amount of the applicable reduction; provided, however, if the event giving rise to the reduction in the payments to the University occurs during the

last year of the Term, then Learfield may withhold from its payments in the last year of the Term the applicable reduction amount. Learfield acknowledges that all payments made by or on behalf of Learfield to the University are for valuable, sufficient, and adequate consideration received by Learfield for the licenses and performances of the University bargained for under the terms of this Agreement and, consequently, are absolute and nonrefundable.

**9.5 Loss of Exclusivity.** Learfield's failure to pay the University the pertinent Guaranteed Licensing and Rights Fee, as adjusted to reflect any of the Events stated in 9.3, provides the University the right, at its option, to convert Learfield's exclusive licenses and rights under this Agreement to non-exclusive licenses and rights for the next succeeding year during the Term; provided, however, that Learfield's exclusive rights will not be converted to non-exclusive rights if Learfield has justification in failing to pay the University as a consequence of a bona fide payment dispute between the Parties which is then subject to dispute resolution under the terms of this Agreement. The Parties acknowledge that exclusivity restricts the University's right to seek licensing opportunities and Sponsors for its athletic programs and that such University athletic programs are dependent on such licensing and sponsorship revenues for their continued existence and expansion.

**9.6 Vendor Contracts** Should a University vendor who also has a sponsorship agreement with Learfield terminate its Learfield sponsorship contract as a result of the University replacing that vendor ("Replaced Vendor"), the revenue that Learfield would have received from the Replaced Vendor shall decrease on a dollar-for-dollar basis the Guaranteed Licensing and Rights Fee under Section 9.1.4. For the avoidance of doubt, the following example describes the situation when a Replaced Vendor arises: University uses XYZ Cable Company as the cable company in its dormitories and XYZ Cable Company is also a Learfield sponsor. University's contract with XYZ Cable Company terminates and a new cable company provider is retained by University. As a result of XYZ Cable Company's contract with the University terminating, XYZ Cable Company then terminates or does not renew its sponsorship agreement with Learfield. Notwithstanding anything contained in this Section 9.6 to the contrary, if the University

is able to replace the sponsorship lost by Learfield from the Replaced Vendor with a sponsorship of equal or greater value in a similar category as the Replaced Vendor ("Replacement Vendor"), then there shall be no reduction in the Guaranteed Licensing and Rights Fee. If, however, the Replacement Vendor's sponsorship fee is less than the amount of the sponsorship fee paid by the Replacement Vendor, then the reduction in the Guaranteed Licensing and Rights Fee shall be limited to the difference between the sponsorship fee paid by the Replacement Vendor and the sponsorship fee paid by the Replacement Vendor.

Should any contract between the University and a vendor be revised or amended in such a manner so as to reduce, infringe upon or eliminate any of the rights granted to Learfield under this Agreement or make it difficult for Learfield to make use of its rights in the University's sole but reasonable discretion the Parties will negotiate in good faith to arrive at an appropriate reduction in the Guaranteed Licensing and Rights Fee.

## **10. ADJUSTED GROSS REVENUE ("AGR")**

**10.1 Supplemental Compensation Plan.** In addition to the annual Guaranteed Licensing and Rights Fee, Learfield will pay the University as royalties for the license of intellectual property rights and fees for other rights, 50% of collected AGR that exceeds the Additional Payment Hurdles set forth below. AGR is defined as Collected Gross Revenue less agency commissions paid to non-related third party advertising agencies representing sponsors (but does not include any commissions paid to Learfield or an affiliate), required third-party rights fees (such as NCAA or NIT related sponsorship fees) as well as ticket costs, directly incurred fulfillment expenses, refunds made by Learfield, and the amount of any sales, luxury, use or excise tax on sponsorships. Except as otherwise expressly provided in this Agreement, all revenue collected by Learfield in connection with the exercise of its rights and responsibilities under this Agreement shall be included in AGR.

## **10.2 Additional Payment Hurdles during the Term.**

<u>Athletic Year</u>	<u>Additional Payment Hurdle</u>
2012 – 2013	\$7,260,000
2013 – 2014	\$7,188,000
2014 – 2015	\$7,188,000
2015 – 2016	\$7,188,000
2016 – 2017	\$7,388,000
2017 – 2018	\$7,588,000
2018 – 2019	\$7,888,000
2019 – 2020	\$7,988,000

**10.3 Vendor Supplier Program.** Subject to the conditions described below ("Conditions"), all of which must be satisfied, Learfield will pay University a 25% fee based upon the collected revenue received from a sponsor who is also providing goods or services to the University, who is then strongly encouraged, but in no event required by the University, to purchase a sponsorship from Learfield ("Additional Fee"). The Conditions which must be satisfied before University is entitled to receive an Additional Fee are as follows: (a) the sponsor must not have been doing business with Learfield prior to the University's introduction of the sponsor to Learfield; or (b) if the Sponsor was already doing business with Learfield, the sponsor increases the amount of sponsorship dollars it spends with Learfield as a direct result of University's encouragement and in such case only the increase in the sponsorship dollars shall be subject to the calculation of the Additional Fee; and (c) event if the sponsor was not then doing business with Learfield, neither Learfield nor any member of its affiliated company's national sales force were in negotiations or discussions with the sponsor for obtaining a sponsorship within six (6) months prior to the University's referral of the sponsor to Learfield. Any Additional Fee earned by University shall

be paid by Learfield to University with the second installment of the Guaranteed Licensing and Rights Fee. In consideration of the payment to University of any Additional Fee, none of the revenue from the sponsor referred to Learfield by University shall be included in the AGR. Any Additional Fee earned by University shall be payable in each year in which the Sponsorship Agreement giving rise to the Additional Fee is in effect.

## **11. ACCOUNTINGS; AUDIT RIGHTS.**

**11.1 Accounting.** Learfield will render, or cause to be rendered to the University and its attorney(s), annual statements will be made within forty-five (45) days after the last day of Learfield's then-current fiscal accounting period (each a "University Report"). Statements and payments shall be sent to the University at the address for the University provided in Section 14.11 of this Agreement.

**11.1.1 University Consent.** The University will be deemed to have consented to all accountings rendered by Learfield or its assignees, or successors and all such statements will be binding upon the University unless specific objections in writing, stating the basis thereof, are given by the University within six (6) months of the University's receipt of each the University Report.

**11.1.2 Records.** Learfield shall keep and maintain at its Jefferson City, Missouri offices ("Headquarters"), until expiration of the Term and for a period of three (3) years thereafter, complete detailed, permanent, true and accurate books of account, records and documents (in whatever medium they exist) (collectively, the "Records") relating to the AGR and to any revenues collected under this Agreement relating to any amounts offset by Learfield against any Trade Income or any Guaranteed Licensing and Rights Fee (collectively, the "Income") in sufficient detail to permit the University to verify the accuracy of any University Report excluding, in all events however, and notwithstanding the fact that Learfield is an limited agent of University under Section 5.4, copies of Learfield's sponsorship agreements which University acknowledges are proprietary to both Learfield and its sponsors and shall not therefore be copied or delivered to University. Such Records shall be kept in accordance with Generally Accepted

Accounting Principles (GAAP). The University shall be entitled to inspect such Records upon reasonable notice to Learfield during regular business hours no more frequently than yearly except upon a showing of cause. Notwithstanding any retention period stated in this Agreement, any Records and other tangible materials relating to a claim arising out of the performance of this Agreement will be retained by Learfield, its agents and subcontractors, if any, until the claim has been resolved. Records that are exempted from copying by this paragraph may need to be produced by Learfield in the event of a dispute over payment.

**11.1.3 Audit Rights.** The University shall be entitled to audit such Records at Learfield's Headquarters relating to the Income upon ten (10) business days' written notice to Learfield and provided that not more than one audit is conducted every twelve (12) months during each calendar year for other than cause and further provided that such audit shall last not more than ten (10) consecutive business days once begun and does not interfere with Learfield's normal operations. Within thirty (30) days of the completion of the audit, the University will furnish Learfield with a copy of said audit. In the event that the audit discloses that the University has been underpaid \$50,000 or more, Learfield shall reimburse the University for all audit costs. Otherwise, all audit expenses shall be borne by the University. Any dispute regarding such underpayment shall be determined in accordance with the dispute resolution provisions of this Agreement.

## **12. REPRESENTATIONS AND WARRANTIES.**

**12.1 By Learfield.** Learfield warrants that (a) it possesses or shall obtain all rights necessary to fulfill its obligations under the terms of this Agreement including obtaining any necessary clearances needed for any marketing materials created to promote the Multi-Media and Sponsorship Rights licensed to Learfield by the University under this Agreement, and will employ artists and designers on a work-for-hire basis pursuant to a written contract, signed before the material is created, which states the work is a work-for-hire with the University designated as the "Employer" and the sole owner of the copyrights in such materials, and includes an assignment of all rights in such material to the University, (b) there are and, to the best of Learfield's knowledge and belief, will be,

no claims, actions, suits, arbitrations or other proceedings or investigations pending or threatened against or affecting Learfield's ability to fulfill its obligations as licensee or otherwise under this Agreement, at law or in equity, or before any federal, state, country, municipal or other governmental instrumentality or authority, domestic or foreign, (c) Learfield will use its commercially reasonable efforts to diligently promote the Multi-Media and Sponsorship Rights licensed to Learfield by the University under this Agreement, and (d) Learfield shall use the Multi-Media and Sponsorship Rights licensed by the University in compliance with the Communications Act of 1934, as amended, all applicable rules and regulations of the Federal Communications Commission and all other state and federal laws pertaining to the production, duplication, distribution and broadcast of program material and shall refrain from accepting any compensation, gift or gratuity whatsoever (regardless of value or form) if such compensation, gift or gratuity is received directly or indirectly, under any express or implied agreement, understanding or authorization, affecting in any way the programming content in a manner contrary to Sections 317 and 507 of the Communications Act of 1934, as amended, or Sections 73. 1212 and 4180 of the rules and regulations of the Federal Communications Commission.

**12.2 By the University.** The University represents that (a) all content furnished under this Agreement is either original material or, in the event the University furnishes content that is not an original work of authorship, including works by third parties, the University shall obtain or has all rights to such non-original material, (b) it has the right to license Learfield the Licensed Rights, (c) it shall be responsible for all payments required to be paid to third parties for the exploitation of the Licensed Rights in the form as licensed to Learfield by the University under this Agreement; (d) University will not directly or indirectly license in whole or in part the Licensed Rights to a third party or make use of the Licensed Rights for itself; (e) University is authorized to timely carry out and/or fulfill any obligation of University to Learfield under this Agreement; and (f) except for any existing agreements with the MWC or the NCAA which were in effect on the date of this Agreement and stated herein, University has not entered into any agreements with any third party which grants exclusive or non-exclusive intercollegiate



athletic sponsorship or broadcast rights to any third party. University will use reasonable efforts to assist Learfield in protecting the Licensed Rights.

Each Party represents to the other that:

**12.3.1** It is qualified to do business in the State of New Mexico and that it shall take such action as, from time to time hereafter may be necessary to remain so qualified.

**12.3.2** It is not in arrears with respect to the payment of any monies due and owing the State of New Mexico, or any department or unit thereof including the payment of taxes and employee benefits, and that it shall not become so in arrears during the Term of this Agreement.

**12.3.3** It shall comply with all federal, State and local laws applicable to its activities and obligations under this Agreement.

### **13. PROPRIETARY RIGHTS; RESPONSIBILITIES.**

**13.1 Proprietary Rights.** It is understood, acknowledged and agreed by Learfield that the athletic programs and the Multi-Media and Sponsorship Rights licensed to Learfield under this Agreement (the "Property") are the sole and exclusive property of the University and that the University owns all right, title and interest including all intellectual property rights in and to the Property and any broadcast programs and other forms of exploitation of such Rights whether as original or derivative works within the meaning of the Copyright Act, the copyright(s), inventions (whether or not patentable), and other proprietary rights in such Property, or otherwise (the "Rights"). The University shall exclusively own all the Rights in and to the video, print and other materials, trademarks and copyrights worldwide in and to the Property produced by Learfield except for such limited rights expressly granted to Learfield under the terms of this Agreement. Notwithstanding the foregoing, all transmission and other media rights in the Property and its embodiments, now known or developed or available in the future, in all formats or presentations, including the Internet and any translations shall be owned by the University. Learfield acknowledges and agrees that no Reserved Rights or other

rights not specifically granted herein in the Property are granted to Learfield either under this Agreement or otherwise, express or implied or by estoppel. Notwithstanding anything in this Agreement to the contrary, all creative and/or final production decisions pertaining to the Property including moral rights, rights of attribution or integrity and publicity, remain and are exclusively within the sole discretion of the University to assure the consistency of the Property's style, presentation, overall impression, and content. To the extent permitted under the United States Copyright Act (17 U.S.C. 101), all materials and Rights created or developed by or on behalf of Learfield under this Agreement relating to or comprising the Property (the "Work") shall be deemed "works made for hire" with the University's being entitled to assign freely any copyrights therein. The term "Work" does not include any intellectual property licensed to or provided to Learfield by the University for use in accordance with the requirements of this Agreement.

**13.2 Learfield's Responsibilities.** The University shall have the right, at its own expense, to obtain and to hold in its own name copyrights, registrations or such other protection for inventions, whether or not patentable, as may be appropriate to said Rights and Property, and to any extensions or renewals thereof, and Learfield shall give the University or any person designated by the University, without additional charge, all such information and shall execute all such additional documents as may be reasonably required to perfect the Rights referred to herein. In the event any Work shall not qualify as "works made for hire" within the meaning of the Copyright Act and with respect to any inventions and/or trade secrets, whether or not patentable, Learfield agrees to assign and does hereby irrevocably assign Learfield's copyrights and other invention and proprietary rights and shall require that any third parties used on its behalf under this Agreement, agree to assign and do assign any of their copyrights and other invention and proprietary rights in such Work, and shall, without additional charge to the University and at the University's request, give the University such information and execute any documents either required to vest all such copyrights and invention rights of Learfield's or a third party in the University or to evidence such assignment thereof to the University. As a consequence of the University's ownership of copyrights or other Rights, Learfield shall insert a proper statutory copyright notice at an appropriate

location on all Work, and on all portions thereof and on all related items which may be subject to copyright protection, which copyright notice shall specify the University as the sole copyright owner. In the event Learfield either is unable or unwilling to execute such additional undertakings, instruments or documents required to evidence and/or perfect the University's ownership rights provided under this Agreement, Learfield hereby irrevocably appoints the University and its designees Learfield's special attorney-in-fact, coupled with an interest, to execute and deliver any such additional undertakings, instruments and documents solely for the purposes set forth herein.

**13.2.1** Subject to the licenses granted to Learfield under this Agreement, the University and its assigns and its representatives shall have the full, sole and continuing right (without any payments or liabilities to any person) to the use, publish, perform, reproduce and distribute throughout the world any or all portions of the Work, either as a complete unit or in segments in any way the University sees fit and for any purpose whatsoever.

**13.2.2** Learfield agrees that the Work and any use thereof and any statements made within the Work or during any promotional event (other than those specifically provided by or made at the direction of the University) will not infringe or violate any third party proprietary rights including copyrights, patents and trade secrets of third parties (and if such Work should result in any infringement therefrom, Learfield agrees to indemnify, defend and hold the University harmless from all liabilities, damages, claims, costs and expenses, including any attorneys' fees, arising from any such infringement).

**13.2.3** The University neither represents nor warrants that Learfield's use of the Property or any Rights, the provision of any idea, information, materials or facilities, or the making, use, lease or sale of any item furnished by Learfield or provided Learfield by the University will be free from any third party claim(s) of infringement of any third party proprietary rights.

**13.2.4** Except as expressly provided in this Agreement, nothing in this Agreement shall, now or in the future, impair or restrict the right of the University

to procure products or services which may be competitive with those Learfield offers and provides or performs for the University under this Agreement. Moreover, neither of the Parties is obligated to obtain any products or services which may currently or subsequently be offered by either of the Parties except to the extent expressly provided in this Agreement. If, however, University wishes to offer to any third party rights which are similar to the Multi-Media rights under this Agreement but not specifically granted to Learfield under this Agreement ("Other Rights"), University agrees that Learfield shall have a right of first refusal ("ROFR") to obtain the Other Rights from University. The University shall advise Learfield in writing of the Other Rights and what license fees or other fees University expects to receive from the Other Rights ("University Notice") and thereafter Learfield shall have thirty (30) days to exercise its ROFR with respect to the Other Rights. If Learfield exercises its ROFR, the University and Learfield will execute an amendment to this Agreement which incorporates the Other Rights into the Agreement. If Learfield does not exercise its ROFR, University may license the Other Rights to any other third party provided that the license fee to be paid by the third party does not exceed the amount set forth in the University Notice.

**13.3 Cautionary Announcements.** Learfield shall cause the following statement to be used in connection with all of its broadcast and other licensed programming: "This production is copyrighted and all rights in it are reserved by the University of New Mexico and is intended solely for the private use of its listening and/or viewing audiences; all other uses are strictly prohibited."

**13.4 Athletic Event Content Following Termination of Agreement.** University acknowledges that following the expiration of the Term, there will exist opportunities to monetize content relating to the University Athletic Department which are owned by the University ("Athletic Event Content"). During the Term of this Agreement, Learfield will use commercially reasonable efforts to develop ideas with the goal of monetizing the University's Athletic Event Content ("Monetized Content Ideas") following the expiration of the Term. Should Learfield develop one or more Monetized Content Ideas, it shall

belong exclusively to Learfield notwithstanding the fact that from and after the expiration of the Term Learfield may not implement, use or sell any of the Monetized Content Ideas without the express written consent of University.

Upon Learfield's development of a Monetized Content Idea, the Parties will negotiate in good faith to determine the details of implementing the Monetized Content Idea, including the basis upon which net collected revenue from the Monetized Content Idea will be shared between University and Learfield. If after negotiating in good faith the Parties are unable to come to an agreement with respect to the terms surrounding the implementation of the Monetized Content Idea, then neither University nor Learfield may use the Monetized Content Idea for any commercial purpose without the written consent of the other party. Nothing in this paragraph shall prevent University from exploiting any independently developed ideas for monetizing University's Athletic Content.

#### **14. GENERAL TERMS AND CONDITIONS.**

**14.1 Order of Precedence.** The terms and conditions contained in this Agreement, the Request for Proposal ("RFP"), and Purchase Order will govern and will take precedence over any different or additional terms and conditions which Learfield may have included in any documents attached to or accompanying this Agreement. Any handwritten changes on the face of this document will be ignored and have no legal effect unless initialed by both Parties.

#### **14.2 Choice of Law, Forum Selection, Entire Agreement and Amendment.**

This Agreement will be construed under New Mexico law (without regard for choice of law considerations). This Agreement constitutes the entire agreement and understanding of the Parties and replaces any prior and contemporaneous agreements, whether written or oral, relating to its subject matter. If there are any inconsistencies between this Agreement and the RFP, the provisions of this Agreement shall control, unless a provision of the RFP is required by New Mexico law. No amendments to this Agreement will be effective unless in writing and signed by Learfield and by the University. Courts located in Albuquerque, New Mexico shall have exclusive jurisdiction

over any disputes relative to this Agreement and the Parties irrevocably consent to the personal jurisdiction of such courts and waive any objections thereto.

**14.3 Assignment.** Learfield may not assign, whether voluntarily or by operation of law, any rights or obligations of this Agreement without the prior approval of the University. This Agreement will be binding upon Learfield, or its permitted successors and assigns, if any. Any assignment attempted to be made in violation of this Agreement will be void. Notwithstanding anything contained in this Section 14.3 to the contrary, Learfield will have the right to assign this Agreement and its rights and obligations hereunder to an entity it either controls (owns more than 50%) or manages provided notice is provided to the University prior to such assignment's effective date and provided that Learfield remains responsible for the assignee's performance of and compliance with the terms and conditions of this Agreement.

**14.4 Termination.** The University reserves the right to cancel this Agreement without penalty only for the unavailability of funds appropriated by the New Mexico legislature to meet its obligations to Learfield under this Agreement ("Termination Event").

Notwithstanding anything contained in this Section 14.4 or elsewhere in this Agreement to the contrary, a Termination Event will not be effective until the end of the Athletic Year in which the University gives Learfield notice of University's intent to terminate the Agreement. For example, if University gives Learfield notice of termination for a Termination Event on August 1, 2013, the Agreement would not terminate as a result of the Termination Event until June 30, 2014. If a Termination Event occurs and University terminates this Agreement under this Section 14, Learfield may deduct from Licensing and Rights Fees any out-of-pocket expenses incurred by Learfield in connection with fulfilling its obligations under this Agreement which Learfield is contractually obligated to pay as of the effective date of the Termination Event which cannot be mitigated or extinguished by Learfield (collectively "Learfield Expenses"). Learfield will provide University with substantiation for its Expenses and Losses.

**14.4.1** Either the University or Learfield may terminate this Agreement for nonperformance. In the event of termination for nonperformance, the terminating Party must state with particularity the specific matters of the other Party's non-compliance, whereupon the other Party shall have ninety (90) days to cure such matters, or such longer period if said other Party is diligently pursuing a cure. The foregoing notice and cure period shall not apply to any violation by Learfield of the University's trademark or other intellectual property rights. In such cases, Learfield shall immediately cease all activities and conduct which could result in the violation continuing and take such other action as may reasonably be required to prevent the violation from continuing or reoccurring. In addition, the University shall have the right to seek immediate injunctive relief, and, in the event the violation continues, to terminate Learfield's rights under this Agreement.

**14.4.2** In the event of any use and/or license of Marks by Learfield's Sponsors or by anyone on Learfield's behalf or under its authorization in any manner not approved by the University in accordance with Section 1.6 of this Agreement and/or in violation of prohibition in Section 5.15.1, Learfield shall 1) give the University prompt notice of such misuse to permit it to seek an injunction, and 2) immediately suspend such Sponsor's rights upon no less than three (3) business days' prior written notice specifying with particularity the nature of such breach, and 3) if the misuse of the University's Marks is not remedied, Learfield shall terminate the Sponsorship Agreement. The terms of this Section 14.4.2 shall apply to any Learfield Sponsor that is the subject of Material Adverse Publicity under Section 9.3.9. Learfield shall cooperate with and assist University in any subsequent enforcement action University may take against a terminated sponsor.

**14.4.3** In the event of any termination of the Agreement by University, other than as a result of a Termination Event, Learfield shall continue to pay its Guaranteed Licensing and Rights Fee under this Agreement unless Learfield's non-compliance is a result, in whole or in part, by the actions or inactions of the University; provided, however, that any rights fee, or similar fee collected by the University for the same period covered by this Agreement from any third party for the rights herein or if the

University elects to administer the rights herein itself, shall offset Learfield's obligation to pay the Guaranteed Licensing and Rights Fee by any such amounts received by the University.

**14.4.4 Obligations upon Termination.** Upon expiration or other termination of this Agreement, each Party shall promptly return to the other Party its Confidential Information within its possession or certify its destruction and that such Party retains no Confidential Information of the other Party. All conditions of ownership and Rights, all obligations of confidentiality or non-disclosure and all warranties in this Agreement shall survive its expiration or termination for any reason.

**14.5 Independent Contractor.** Learfield will perform its duties hereunder as an independent contractor and not as an employee of the University. Neither Learfield nor any agent or employee of Learfield will be or will be deemed to be an agent (except as provided in Section 5.4) or employee of the University. Learfield will pay when due all required employment taxes and income tax withholding, including all federal and state income tax and any monies paid pursuant to this Agreement. Learfield and its employees are not entitled to tax withholding, worker's compensation, unemployment compensation, or any employee benefits, statutory or otherwise from the University. Learfield will be solely responsible for the acts of Learfield, its employees and agents. Learfield shall provide worker's compensation for all its employees and indemnify and hold the University harmless therefrom.

**14.6 Non-Waiver.** No waiver by either Party of any default or nonperformance will be deemed a waiver of any other default or nonperformance.

**14.7 University Information; Learfield Information.** Learfield agrees that any information it receives during the course of its performance, which concerns the personal, financial, or other affairs of the University, its regents, officers, employees or students will be kept confidential by Learfield using the same standard of care Learfield uses with respect to its own information but no less than reasonable care and in conformance with all state and federal laws relating to privacy. The University agrees that any information it receives from Learfield under this Agreement which concerns the



personal, financial or other affairs of Learfield, its members, stockholders, officers, directors, employees and sponsors including sales summaries, revenue sharing reports, settle-up documents and any other documents relating to the reporting of financial and sales information by Learfield to the University (collectively "Learfield Financial Records") will be kept confidential by the University using the same standard of care the University uses with respect to its own information but no less than reasonable care and in conformance with all state and federal laws relating to privacy, except if considered a legal request under New Mexico law. Other than as reasonably required for the performance of its obligations hereunder, or pursuant to an attempt to enforce its rights hereunder or if required by law or any lawful compulsory order (provided that, in the latter case, such Party notify the other Party in advance to afford such other Party the opportunity to limit the scope of any such requisite disclosure and if such Party is unsuccessful the compelled Party shall disclose only such Confidential Information as is responsive, shall seek reliable assurances of confidential treatment of the Confidential Information so disclosed, and shall provide copies of all such disclosures to the objecting Party), each Party and its agents agree to refrain from disclosing any Confidential Information to third parties (except as otherwise permitted herein) or using Confidential Information for its own economic benefit or that of another third party, which such Party has acquired from the other Party by reason of this Agreement; provided that "Confidential Information" shall not include: (i) information that is at the time of disclosure public knowledge or generally known within the industry, (ii) information that is disclosed by a third party having possession thereof and the right to make such disclosure; (iii) information that is known by the Party to whom it is disclosed prior to disclosure; (iv) information that is independently developed by a Party who did not have access to the confidential information in question. University acknowledges and agrees that all of the financial terms and conditions contained in this Agreement are considered part of the Learfield Financial Records, deemed by Learfield to be proprietary and confidential to Learfield, and shall remain as such absent written waiver by Learfield. University personnel may review Learfield Financial Records at the Headquarters but in no event may University make copies of any Learfield Financial Records or make any notes relating to the Financial Records and, if despite such prohibition, University

personnel make any copies or notes, such copies and notes shall be deemed the property of Learfield.

Notwithstanding anything contained in this Section 14.7, University may disclose Learfield Financial Records when required by law or court order. Before responding to a request for disclosure pursuant to law or court order, University shall provide Learfield with notice so that Learfield may take measures permissible by law or court order to protect its Financial Records (including but not limited to, the redaction of all Financial Records described in this Agreement).

**14.8 Insurance.** At all times during its performance under this Agreement, Learfield will obtain and keep in force comprehensive general and professional liability and general liability insurance, including errors and omissions, coverage for death, bodily or personal injury, property damage or host liquor liability, including products liability, libel and slander, and automobile coverages, with limits of not less than \$1,000,000 each claim and \$1,000,000 each occurrence (\$2,000,000 for property damage). All certificates evidencing such insurance, will be provided to the University upon its request, will name the University, its governing board, its officers and employees and the State of New Mexico as additional insureds, and, to the extent Learfield is given notice, will provide for notification to the University within at least thirty (30) days prior to expiration or cancellation of such insurance. Learfield represents that it will maintain worker's compensation insurance to the extent required by New Mexico law. The University represents that it is an institution of the State of New Mexico and is therefore insured by the State of New Mexico Risk Management Fund pursuant to Section 15-7-1 et seq. NMSA 1978 as amended.

**14.9 Indemnification.** Learfield agrees to defend, indemnify and hold harmless the State of New Mexico, the University, its governing board, officers, faculty, students, employees, students and agents, from all liability, injuries, claims or damages (including claims of bodily injury or property damage) and loss, including costs, expenses, judgments, and attorneys' fees, which arise out of or from (i) either Learfield's breach of this Agreement or any of its representations or warranties, (ii) the acts and omissions of

Learfield, its employees, officers and agents under this Agreement, and (iii) the development, production, use or other exploitation by Learfield of the Multi-Media and Sponsorship Rights licensed by the University hereunder. Notwithstanding anything in this Agreement to the contrary, the University, and not Learfield, shall be solely responsible for any liability, damages, and expenses arising out of any claim that Learfield's use of the Marks in accordance with the terms of this Agreement infringes any third party proprietary rights. The liability of the University will be subject in all cases to the immunities and liabilities in the New Mexico Tort Claim Act, Sections 41-4-1 et. seq. NMSA as amended. In the event of litigation by either Party to enforce the terms and conditions of this Agreement, the prevailing Party will be awarded costs and reasonable attorneys' fees.

**14.9.1** The University agrees to notify Learfield in writing of any and all claims to which Learfield's indemnity applies, and to afford Learfield the opportunity to undertake the defense of such claim(s) with counsel approved by the University (which approval will not be unreasonably withheld, conditioned or delayed), subject to the right of the University to participate in such defense at its cost. In no event shall any such claim be settled in such a way as which would adversely affect the rights of the University in the Multi-Media and Sponsorship Rights licensed under this Agreement without the University's prior written consent; provided, however, that the University hereby consents to any settlement for not more than \$10,000. Except as expressly stated otherwise in this Agreement providing for exclusive remedies, all rights and remedies of the Parties hereunder will be cumulative and will not interfere with or prevent the exercise of any other right or remedy which may be available to the respective Party.

**14.10 Notices/Administration.** Except as otherwise provided in this Agreement, all notices, requests and other communications that a Party is required or elects to deliver will be in writing and delivered personally, or by facsimile or electronic mail (provided such delivery is confirmed), or by a recognized overnight courier service or by United States mail, first-class, certified or registered, postage prepaid, return receipt

requested, to the other Party at its address set forth below or to such other addresses as such Party may designate by notice given pursuant to this section:

**IF TO THE UNIVERSITY:**

THE UNIVERSITY OF NEW MEXICO  
Attention: Paul Krebs, Director of Athletics  
1 University of New Mexico  
MSC04 2680  
Albuquerque, NM 87131  
Facsimile No: 505-925-5534  
E-mail Address: pkrebs@unm.edu

With a copy to:

Bruce Cherrin, Director: Purchasing and the University Services  
1 University of New Mexico  
MSC01 1240  
Albuquerque, NM 87131  
Facsimile No:  
E-mail Address: cherrin@unm.edu

**IF TO LEARFIELD:**

LOBO SPORTS PROPERTIES, LLC  
c/o Learfield Communications, Inc.  
Attention: David A. Rawlings  
2400 Dallas Parkway, Suite 400  
Plano, TX 75093  
Facsimile No: (469) 241-0110  
E-mail Address: arawlings@learfieldsports.com

With a copy to:

Philip A. Kaiser  
The Kaiser Law Firm, P.C.  
12231 Manchester Road, First Floor  
St. Louis, MO 63131  
Facsimile No: 314-966-7744  
E-mail Address: phil@kaiserlawfirm.com

**14.11 Severability.** If any provision of this Agreement is invalid or unenforceable with respect to any Party, the remainder of the Agreement, or the application of such provision to persons other than those as to which it is held invalid or unenforceable, will not be affected and each provision of the remainder of the Agreement will be valid and be enforceable to the fullest extent permitted by law.

**14.12 Survivability.** The terms, provisions, representations, and warranties contained in this Agreement that by their sense and context are intended to survive the performance thereof by any of the Parties hereunder will so survive the completion of performance and termination of this Agreement, including the making of any and all payments hereunder.

**14.13 Force Majeure.** Neither Party will be considered to be in default of its delay or failure to perform its obligations herein when such delay or failure arises out of causes beyond the reasonable control of the Party. Such causes may include acts of God or the public enemy, including but not limited to acts of terrorism, acts of state or the United States in either its sovereign or contractual capacity, fires, floods, epidemics, strikes and unusually severe weather; but in every case, delay or failure to perform must be beyond the reasonable control of and without the fault or negligence of the Party. Notwithstanding anything contained in this Section 14.13 to the contrary, the provisions of this Section 14.13 shall not override the provisions of Section 9.3.4 relating to a Prevention Event which provisions shall continue to apply notwithstanding the provisions of this Section 14.3. Upon learning of an occurrence of such an event, the delayed Party shall give the other Party prompt written notice within ten (10) business days thereafter. If such an event continues for more than thirty (30) days without reasonable probability of its removal after the Parties have reasonably conferred regarding such probability of its removal ("Extended Date"), the other Party has a right to terminate this Agreement without further obligation to the delayed Party except for any payments then due and owing and for such obligations as survive termination under this Agreement; provided, however, if the Agreement is terminated with less than half of the University football or basketball games remaining in any Athletic Year, the Parties shall negotiate in good faith an equitable adjustment to the Guaranteed Licensing and

Rights Fee for that Athletic Year based upon any sponsorship revenue which Learfield cannot collect because of the Event giving rise to the termination of this Agreement. For the avoidance of doubt and clarification, the Parties agree that it is their intention not to terminate this Agreement due to a Force Majeure event which continues or is expected to continue beyond the Extended Date but instead, to negotiate in good faith an amendment to this Agreement which is consistent with the rights and benefits which were made unavailable as a result of the Force Majeure event as well as the rights and benefits then available for Learfield to make use of after the Force Majeure event ("Remaining Rights") and the value attributable to the Remaining Rights.

**14.14 Counterparts.** This Agreement may be executed in two counterparts, each of which shall be deemed an original, and both of which will constitute one Agreement.

**14.15 Non-Solicitation by the University.** The University agrees that during the Term of this Agreement, including any extension of the Term, and for a period of twenty-four (24) months, after its termination, irrespective of the reason for its termination, the University shall not directly or indirectly, solicit and hire any employee of Learfield or encourage any such person to terminate its relationship with Learfield unless Learfield grants the University permission to do so. The University acknowledges that its breach of this Section shall entitle Learfield to injunctive relief.

**14.16 Headings.** The headings of the sections of this Agreement are used for convenience only and do not form a substantive part of the Agreement. The portion of this Agreement entitled "Background to Agreement" shall be a part of this Agreement.

**14.17 Injunctions.** In addition to any other remedies permitted by, but subject to applicable, law, should either Party violate the terms set forth herein, the violating Party shall be entitled to injunctive relief against the other without having to post any bond to restrain any further violation of these provisions. Should either Party be successful in this endeavor, the other Party shall pay all costs and expenses associated therewith, including reasonable attorney's fees.

**15. MISCELLANEOUS**

**15.1** "Historical Levels" and "in the past," whether or not such terms are capitalized, shall mean levels existing for the 2006 – 2007 Athletic Year, including levels from the University and levels from vendors with whom the University presently contracts.

**15.2** With respect to all terms used in this Agreement, words used in the singular include the plural and words used in the plural include the singular. The word "including" means "including, without limitation," and the words "herein", "hereby", "hereto" and "hereunder" refer to this Agreement as a whole.

**16. DISPUTE RESOLUTION**

Learfield and University agree that they will seek to resolve any disputes over the interpretation or future modification of this Agreement through mediation and that neither party may seek a judicial resolution of such disputes except after a good faith effort at mediation has failed to resolve all matters. Mediation may be requested by either party in writing. Within thirty days of the receipt of such a request, the Parties will identify the members of the mediation team and schedule a mediation meeting. The mediation team shall be composed of the President of the University or his or her designee, the Chief Executive Officer of Learfield or his or her designee and a third party mutually acceptable to both. Any costs of the mediation shall be shared equally between the Parties. The failure of the mediation shall be declared by the third party member of the mediation team. Any resolution of the mediation shall be expressed in writing and signed by both Learfield and the University.


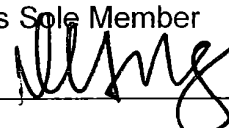
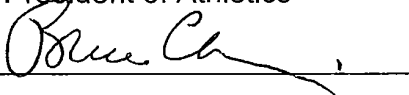
*The Remainder of this Page Intentionally Blank.*

*Signature Page Follows*

**Signature Page**

**IN WITNESS WHEREOF**, Learfield and the University have entered into this Agreement as of the date specified above.

**THE REGENTS OF THE UNIVERSITY OF NEW MEXICO**    **LOBO SPORTS PROPERTIES, LLC**

By:  _____ PAUL KREBS Vice President of Athletics	By: Learfield Communications, Inc., its Sole Member  _____ David A. Rawlings Executive Vice President and COO
By:  _____ BRUCE CHERRIN Director: Purchasing & the University Services	



## EXHIBIT 1

*TO BE PLACED ON  
LOBO SPORTS PROPERTIES, LLC  
LETTERHEAD*

### MARKETING & SPONSORSHIP AGREEMENT

THIS MARKETING AND SPONSORSHIP AGREEMENT ("Agreement") is made and entered as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ between [INSERT NAME OF SPONSOR] ("Sponsor") and LOBO SPORTS PROPERTIES, LLC, a Missouri limited liability company qualified to do business in the State of New Mexico ("Provider").

#### BACKGROUND

- A. Provider holds the exclusive marketing and sponsorship rights for University of New Mexico athletics ("University").
- B. Sponsor wishes to further its exposure of its products and/or services through its association with University and by sponsoring University athletics.

NOW, THEREFORE, in consideration of the foregoing Background and other valuable consideration, Sponsor and Provider (the "Parties") agree as follows:

- 1. Term of Agreement. This Agreement shall cover the following athletic year(s) which are measured from July 1 to June 30 (the "Term") and includes performance commenced prior to the execution of this Agreement:

Neither Party shall have any of the rights set forth in this Agreement after its expiration except for obligations which by their nature shall survive termination including Sponsor's payment obligations to Provider under Paragraph 3 below.

- 2. Sponsorship Benefits. During the Term, provided that Sponsor fulfills all of its payment obligations to Provider, Sponsor will receive the benefits described on Exhibit A attached to this Agreement and made a part hereof and no others (the "Benefits"). Unless otherwise specifically stated in Exhibit A or elsewhere in this Agreement, all Benefits are for the regular season only. Sponsor agrees that any Benefits provided to or used by Sponsor under this Agreement will adhere to the limitations appertaining to "qualified sponsorships" as defined in Internal Revenue Code section 513(i) and Treasury Regulation 1.513-4. For purposes of this definition, qualified sponsorships are limited to those instances when the Sponsor receives no substantial return benefit from the arrangement other than the use or acknowledgement of the name or logo (or product lines) of the Sponsor. Use or acknowledgement in a qualified sponsorship may include:
  - a) logos and slogans that do not contain qualitative or comparative descriptions of the Sponsor's products, services, facilities or name;
  - b) list of Sponsor's locations, telephone

numbers, or internet address; and c) logos or slogans that contain qualitative or comparative language that are an established part of the Sponsor's identity. Advertising containing qualitative or comparative language, calls to action, or otherwise an endorsement of the Sponsor's products is not included in this definition of a qualified sponsorship

3. Payment Obligations of Sponsor. In consideration of the Benefits to be provided to Sponsor by Provider, Sponsor will pay Provider the amounts set forth below at the times set forth below:

Athletic Year                      \$\_\_\_\_ Total Payment Paid as Follows: [*insert amounts and dates*]

20\_\_\_\_ to 20\_\_\_\_

[*Insert additional years and payments if it is a multi-year deal*]

Please make all checks payable to LOBO SPORTS PROPERTIES, LLC. All late payments are subject to a late payment fee of 2% per month (24% APR) or the highest rate allowed by law together with all costs and expenses of collection including attorneys' fees and court costs.

If Sponsor does not pay when due any amount payable Provider, then Provider may give notice of such breach and, if such amount is not paid within ten (10) days after such notice is given, then Provider may terminate this Agreement by giving notice of termination within thirty (30) days after such ten (10) day period. If Provider terminates this Agreement under this Paragraph 3, then Provider will have no further obligations under this Agreement to Sponsor and Sponsor will continue to be liable to Provider for such amount and for all other damages arising out of or resulting from Sponsor's breach including the payment of all remaining sponsorship fees under this Paragraph 3.

4. Extended-Season Radio. If any of the Benefits described on Exhibit A include radio broadcasting sponsorships, then the Benefits relating to such sponsorships shall only include 12 regular season football broadcasts and 29 Regular Season Men's Basketball Broadcasts. If Provider's network broadcasts additional games (beyond 12 for football and 29 for basketball), the sponsorship will continue for those game at the regular season rate outlined in Exhibit A . Additional games/broadcasts will be invoiced at the conclusion of the football and basketball season respectively.
5. Force Majeure. Neither party shall be deemed in default of this Agreement to the extent that any delay or failure in the performance of its obligations results from any cause beyond the non-performing party's control and without such party's fault or negligence, such as acts of God, acts of civil or military authority, embargoes, epidemics, war, acts of terrorism, riots, insurrections, fires, explosions, earthquakes, floods, loss of power, strikes or lockouts ("Force Majeure"). If any Force Majeure condition affects Provider's ability

to perform its obligations set forth hereunder, Provider shall give written notice to Sponsor, and Provider will offer mutually agreeable make-good benefits to Sponsor in direct and fair proportion to the benefits not received by Sponsor due to the Force Majeure condition ("Make-Good Benefits"). The Make-Good Benefits shall be subject to Sponsor's approval which approval will not be unreasonably withheld or delayed. Until such time as the Make-Good Benefits are agreed upon, Sponsor will continue to pay the full sponsorship fee to Provider as set forth above.

6. University Marks. To the extent that any of the Sponsor's Benefits described in Exhibit A hereto include the right to make use of University's athletic logos or trademarks ("School Marks"), Sponsor agrees that its use of School Marks is non-exclusive, limited and non-transferable and must be approved by the Provider and/or the University prior to its use. Sponsor further agrees that it may not make use of School Marks in any retail promotion or sale of a product without the approval of the University or its authorized agent and the payment of any required license fee. All right, title and interest in and to the School Marks is and shall remain the sole and exclusive property of Provider.
7. Indemnification. To the fullest extent permitted by law, each Party agrees to indemnify, defend and hold the other party, including its members, officers, directors, employees, and other agents, harmless from any and all liability (including, without limitation, reasonable attorney's fees, costs and expenses) resulting from or related to any claim, complaint and/or judgment for any negligent act or acts of intentional misconduct arising under this Agreement or any breach of this Agreement.
8. Miscellaneous. Sponsor and Provider will comply with all federal, state and local laws as well as all Conference rules to which the University belongs and NCAA rules and regulations in connection with their respective performance under this Agreement. To that end, Sponsor shall not make use of any student-athlete's name or likeness (as defined by the NCAA) without advance written approval of University's compliance officer. All notices hereunder must be in writing and shall be deemed to have been given when (a) delivered by hand (with written confirmation of receipt), (b) sent by facsimile (with written confirmation of receipt) (c) sent by certified mail, return receipt requested when received by the addressee; (d) sent by a nationally recognized overnight delivery service (receipt requested), in each case to the appropriate addresses set forth on the signature page below (or to such other addresses as a signatory may designate by notice to the other signatories) or (e) when received by the addressee, if sent by e-mail to the appropriate e-mail address of the addressee. Sponsor shall not have the right to transfer or assign its rights or obligations under this Agreement without the express prior written consent of Provider. In the event that either Party shall cease conducting business in the normal course, become insolvent, admit in writing its inability to meet its debts as they mature, make a general assignment for the benefit of creditors, or is the subject of a petition in bankruptcy and such petition is not dismissed within sixty (60) days from its filing, then at the option of the other Party, this Agreement shall terminate immediately and be of no further force and effect. This Agreement constitutes and contains the entire Agreement of the Parties relating to the subject matter hereof and supersedes any and all prior or contemporaneous written or oral understandings or agreements with respect thereto. No amendment to this Agreement shall be valid unless in writing signed by each of the

Parties hereto. The failure of any Party to exercise any of its rights under this Agreement shall not be deemed a waiver of such right or any other rights. This Agreement shall be binding on and inure to the benefit of the Parties and their respective successors and permitted assigns. This Agreement shall be construed, interpreted and enforced under the laws of the State of Missouri without regard to its principles of conflict or choice of law. Sponsor and Provider are independent contracting parties and nothing in this Agreement shall be deemed to create a partnership, joint venture or agency relationship between them nor does it grant either Party any authority to assume or create any obligation on behalf of or in the name of the other Party. This Agreement may be executed in counterparts by facsimile or electronic signature, each of which shall be deemed an original and each counterpart together shall constitute one document.

Sponsor represents and warrants that the person whose signature appears below for Sponsor is duly authorized to execute this Agreement and legally bind Sponsor under this Agreement. This Agreement shall not be binding upon Provider until and unless it is executed by Provider's General Manager irrespective of whether Provider's Account Executive has signed the Agreement.

**ACCEPTED AND AGREED AS OF THE ABOVE DATE AND IF NO DATE IS  
INSERTED, THEN THE FIRST DAY OF THE ATHLETIC YEAR OF THE TERM  
SHALL BE THE DATE OF THIS AGREEMENT:**

**INSERT SPONSOR'S FULL NAME AND ADDRESS      LOBO SPORTS PROPERTIES, LLC**

By: \_\_\_\_\_  
Signature of General Manager

By: \_\_\_\_\_  
[Print name of General Manager]

BY: \_\_\_\_\_ Title: General Manager

By: \_\_\_\_\_  
Signature of Account Executive

By: \_\_\_\_\_  
[Print Name of Account Executive]

Title: Account Executive