

## Board of Trustees of the University of Oregon

### Seconded Motion: Approval of E-Commerce Agreement for Oregon Athletics

Whereas, the University of Oregon Department of Intercollegiate Athletics ("Oregon Athletics") wishes to enter into an e-commerce agreement with Fanatics Retail Group ("Fanatics") for purposes of exclusive management of the official online team store;

Whereas, the proposed agreement (attached hereto as Exhibit A) is for a duration of ten (10) years and stipulates certain financial terms such as a minimum revenue share (\$5.2 million) and set percentages for Revenue Share Payments and Marketing Payments from Fanatics to Oregon Athletics;

Whereas ORS 352.107(c) authorizes the Board of Trustees of the University of Oregon ("the Board") to make any and all contracts and agreements that it deems necessary or appropriate;

Whereas, section 1.7.8 the Policy on the Retention and Delegation of Authority requires the Board to approve the execution of an instrument where anticipated value to the University of Oregon exceeds \$5,000,000;

Whereas, the Finance and Facilities Committee has referred this matter to the full Board as a seconded motion;

Now, therefore, the Board of Trustees of the University of Oregon hereby:

- 1) AUTHORIZES the President, or his designee, to enter into the e-commerce agreement between Oregon Athletics and Fanatics Retail Group attached hereto as Exhibit A; and
- 2) RATIFIES all prior actions taken on behalf of the University related to the aforementioned e-commerce agreement.

VOTE: Voice Vote Recorded – Ayes carried (no dissention)

DATE: September 11, 2015

Recorded by the University Secretary: 



### E-Commerce Agreement

This E-Commerce Agreement, dated as of the last date of execution by a Party hereto, is made and entered into by and between the Fanatics Retail Group entity in the signature block below (“**Operator**”) and the college, university or other entity in the signature block below (“**Institution**”). Each of Operator and Institution are hereinafter sometimes referred to as a “**Party**” and collectively as the “**Parties**”. In consideration of the agreements herein, Operator and Institution, intending to be legally bound, hereby agree as follows and, commencing on the Launch Date, as set forth in the attached General Provisions, which are incorporated herein by reference (collectively, the “**Agreement**”):

**1. Definitions.** Capitalized terms will have the meanings set forth herein or in the General Provisions.

**2. Term.** The term of this Agreement (“**Term**”) will commence on August 1, 2015 (the “**Effective Date**”) and, unless earlier terminated in accordance herewith, will end on July 31, 2025. “**Launch Date**” means August 1, 2015. Notwithstanding the foregoing, if the Aggregate Payments to Institution (which, for sake of clarity, exclude any payments for the Licensing Rights) do not equal or exceed Three Million Dollars (\$3,000,000) prior to August 1, 2020, then Institution may terminate this Agreement effective July 31, 2021 if Institution notifies Operator in writing on or before August 31, 2020 of its intent to terminate. In the event of such a termination, notwithstanding anything to the contrary in this Agreement, no Minimum Guarantee Benchmark amount shall apply for the sixth Contract Year.

**3. Sites.** The Online Store shall be delivered through the shop.goducks.com URL (or any successor or replacement URL) (“**Designated URL**”) and shall be accessible via a URL link on the Institution Sites including, without limitation, goducks.com.

**4. Revenue Share and Marketing Payments.** Commencing on the Launch Date, subject to Institution complying with its obligations under this Agreement, Operator shall pay Institution, on a calendar quarterly (“**Payment Period**”) basis during the Term:

(a) five percent (5%) of the Net Merchandise Revenue received by Operator for Orders of Licensed Merchandise sold by Operator to a Customer and placed through the Online Store or other E-Commerce Site within the Fanatics Network, other than Orders for Game Used or Team Issued Items (“**Revenue Share Payments**”);

(b) for Game Used or Team Issued Items, (i) fifty percent (50%) of the Net Merchandise Revenue received by Operator for Orders of Game Used or Team Issued Items that Institution has provided to Operator at no cost to Operator, less (ii) Operator’s costs associated with manufacturing any Game Used or Team Issued Items, if applicable (“**Game Used or Team Issued Payments**”); and

(c) subject to Institution complying with its marketing and promotional obligations as set forth in this Agreement (including, without limitation, those set forth in Section 2 of the General Provisions and Exhibit A), [REDACTED] percent [REDACTED] of the Net Merchandise Revenue received by Operator for Orders of Licensed Merchandise sold by Operator to a Customer and placed through the Online Store or other E-Commerce Site within the Fanatics Network, other than Orders for Game Used or Team Issued Items (“**Marketing Payments**” and, collectively with the Revenue Share Payments and Game Used or Team Issued Payments, the “**Total Payments**”), in each case to the extent received by Operator for Orders during the immediately preceding calendar quarter. All payments due to Institution pursuant to this Agreement shall be made by check payable to Institution and remitted to Institution’s address set forth below and be accompanied by a report that shows, in reasonable detail, Operator’s calculation of such payment amount. Except as expressly otherwise set forth in this Agreement, each Party will be responsible for all costs and expenses incurred by such Party in performing its obligations under this Agreement.

**5. Game Used or Team Issued Items.** During the Term, Institution will provide to Operator no fewer than three hundred (300) Game Used or Team Issued Items per Contract Year (with “**Game Used Items**” to be defined as and consist solely of shoes, football gloves, uniforms, footballs, and basketballs that are worn or used by Institution players or coaches during a game and “**Team Issued Items**” to be defined as and consisting solely of shoes, football gloves, uniforms, footballs, and basketballs that are issued but not used in competition by Institution players or coaches during a game), for sale by Operator throughout the Fanatics Network. Commencing on the Launch Date and continuing throughout the Term, the Institution will not, directly or indirectly, sell, transfer, assign or dispose of any Game Used or Team Issued Items other than to Operator pursuant to this Agreement; provided that, Institution may directly (but not through any third party) sell or auction Game Used or Team Issued Items for charitable or other similar purposes (including, without limitation, donor gifts, fundraising events, its “surplus sale”, etc.) or, upon Operator’s written consent, other purposes. Operator further acknowledges and agrees that Institution may provide its trading card licensee(s) with Game Used or Team Issued Items and similar items so they can be inserted in certain licensed trading cards. Institution shall cooperate with Operator to authenticate all Game Used or Team Issued Items for which Operator requests authentication pursuant to a reasonable tagging and coding procedure established by Operator from time to time. Institution may provide Operator with on-field and locker room access to collect and authenticate Game Used or Team Issued Items when

such access does not interfere with Institution’s operations. Institution authorizes Operator to affix a tamper-proof, serial-numbered hologram or similar tag on any Game Used or Team Issued Items, as deemed appropriate by Operator.

**6. Licensing Rights.** Upon Operator’s request, Institution shall grant or extend, or cause its licensing agent to grant or extend, Box Seat, Inc. and/or Fanatics Mounted Memories, Inc., a non-exclusive license to use certain Institution Trademarks (upon prior approval from Institution’s licensing agent or Institution) in connection with the design, manufacture, production, marketing, promotion, distribution, offering for sale, sale and other exploitation of approved merchandise in mutually-agreed product categories on commercially reasonable terms and conditions, which shall include, at a minimum, a license term at least coterminous with the Term of this Agreement (collectively, the “**Licensing Rights**”). Nothing in this section is intended to grant Operator any licensing rights that would cause a conflict with those previously conveyed (prior to the Effective Date) to a different party. Operator’s use of Institution’s marks must be approved by Institution, and such approval shall not be unreasonably withheld.

**7. Minimum Guarantee.** Within sixty (60) days after the end of each Contract Year, Operator will calculate the actual aggregate Total Payments paid or then payable to Institution hereunder for the preceding Contract Years on a cumulative basis (collectively, the “**Aggregate Payments**”). Subject to Section 2, in the event that the Aggregate Payments are less than the Minimum Guarantee Benchmark (as such amount may be adjusted hereunder), then Operator will pay to Institution the difference between the Aggregate Payments and the Minimum Guarantee Benchmark amount within thirty (30) Business Days thereafter. For the sake of clarity, in the event that the Aggregate Payments are equal to or exceed the Minimum Guarantee Benchmark for the applicable Contract Year, no additional payment will be due to meet the applicable Minimum Guarantee Benchmark. “**Contract Year**” means each twelve (12) month period during the Term beginning on August 1<sup>st</sup> and ending on July 31<sup>st</sup> of the following year. “**Minimum Guarantee Benchmark**” means:

<b>Contract Year</b>	<b>Minimum Guarantee Benchmark</b>
Contract Year ending July 31, 2016	\$520,000
Contract Year ending July 31, 2017	\$1,040,000
Contract Year ending July 31, 2018	\$1,560,000
Contract Year ending July 31, 2019	\$2,080,000
Contract Year ending July 31, 2020	\$2,600,000
Contract Year ending July 31, 2021	\$3,120,000
Contract Year ending July 31, 2022	\$3,640,000
Contract Year ending July 31, 2023	\$4,160,000
Contract Year ending July 31, 2024	\$4,680,000
Contract Year ending July 31, 2025	\$5,200,000

Notwithstanding anything to the contrary in this Agreement, (a) in the event of any material breach of this Agreement by Institution, on one hand, and Operator or any of its Affiliates, on the other hand, in any calendar year during the Term, (b) if, with respect to any of Institution’s football or basketball athletic teams, such athletic team plays in fewer than the regularly scheduled number of season games, (c) in the event that Institution or any of its Affiliates (including any division or department thereof) is sanctioned, fined or penalized for a major infraction, loses accreditation or status as a member of any league or conference, or becomes ineligible to participate in post-season games, (d) in the event that Box Seat, Inc. or Fanatics Mounted Memories, Inc. (or their successors) do not possess Licensing Rights as set forth in Section 6 (except if such event occurs as a result of the termination of such rights due to default by one or both of those entities), or (e) if Institution’s sideline provider decides to cease providing Institution product to Operator for sale through the Fanatics Network, then the Parties will agree upon an equitable reduction to the Minimum Guarantee Benchmark amounts, taking into consideration the impact of such event(s). In addition, if there is any “death penalty” sanction imposed by the NCAA or any similar or successor organization, or if Institution’s football team or men’s basketball team no longer plays at a Division I level for any reason, then the Parties will agree upon an equitable reduction to the Minimum Guarantee Benchmark amounts. Further, in the event that this Agreement is terminated due to Institution’s default, the Minimum Guarantee Benchmark amounts shall not apply to any amounts not yet earned.

**8. Yearly Credit.** For each Contract Year, Operator shall provide to Institution a credit of Ten Thousand Dollars (\$10,000) (the “**Yearly Credit**”), to be used toward the purchase by Institution of Licensed Merchandise through the Online Store. Any unused Yearly Credit for will expire at the end of such Contract Year. Notwithstanding anything in this Agreement to the contrary, Orders placed using the Yearly Credit shall be excluded from the definition of Net Merchandise Revenue and from the calculation of Revenue Share Payments and the amount of any redeemed Yearly Credit shall be included when determining whether the Minimum Guarantee Benchmark has been met.

IN WITNESS WHEREOF, intending to be legally bound, the Parties hereby execute this Agreement on the date(s) set forth below.

**OPERATOR**  
**FANATICS RETAIL GROUP FULFILLMENT, INC.**

**INSTITUTION**  
**THE UNIVERSITY OF OREGON ATHLETIC DEPARTMENT**

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

**Name:** Brian Swallow

**Title:** Senior Vice President

**Address:** 5245 Commonwealth Avenue  
Jacksonville, Florida 32254

**Date:** \_\_\_\_\_

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

**Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Address:** \_\_\_\_\_

\_\_\_\_\_

**Date:** \_\_\_\_\_



## GENERAL PROVISIONS

**1. Online Store.** Operator shall create and establish the Online Store. The Online Store shall have a “look and feel” substantially consistent in all material respects with that of the Institution Sites. The Online Store shall include Institution Trademarks and Operator-related branding as the Parties may mutually agree. Operator will operate and maintain the Online Store in a professional manner and will be responsible for providing and obtaining all required technology (other than the Designated URL and any Secondary URLs, which will be registered by Institution), order processing, fulfillment, customer service (which shall be branded to the Online Store) and related services necessary for the Online Store to be and perform, at a minimum materially comparable, when taken as a whole, with then-prevailing industry standards for other e-commerce operations of similar size and that sell similar merchandise. Operator may, from time to time, make such changes and alterations to the Online Store as may be reasonably necessary for Operator to comply with applicable laws, rules, regulations and policies of any governmental authority, licensor or other third party or any contractual obligation. Operator will be the seller of record for all goods and services sold through the Online Store, and, as such, Operator will be solely responsible for establishing the selling price and for determining, reporting, remitting and paying all sales and similar taxes on such goods and services. Operator will have the exclusive right to create, offer, distribute, and redeem stored payment tender methods issued solely for use at the Online Store (e.g., Online Store e-gift certificates). Operator will provide Institution with access to the online reporting portal(s) for the Online Store that generally are made available by Operator to its other similarly situated clients.

### **2. Marketing; Promotions.**

(a) Except with respect to Institution’s obligations hereunder, Operator shall be responsible for and coordinate marketing and promotions with respect to the Online Store. Operator will use commercially reasonable efforts to actively promote the sale of Licensed Merchandise through the Fanatics Network. Commencing on the Launch Date and continuing throughout the Term, Institution shall establish and maintain on the Institution Sites a navigation “shop” tab (which shall be at least an above-the-fold tab/link in such site’s global navigation displayed no less prominently than any other tab/link then included in such global navigation) and other applicable promotional links that, in each case, link directly to the Online Store. Institution shall not use a “no follow” attribute tag or any re-directs on any outbound links to the Online Store without Operator’s prior written consent. Throughout the Term, no other online “shop”, “store” or similar tabs or links shall be included on the Institution Sites.

(b) In addition to its other obligations hereunder, throughout the Term, Institution will cooperate with Operator with respect to marketing and promoting the Online Store and will engage in such marketing and promotional activities as Operator may reasonably request from time to time. Without limiting the foregoing, (i) Institution will continue to market and promote the Online Store, and the sale of Licensed Merchandise through the Fanatics Network, in no less than the same manner (in quality and quantity) as marketed and promoted during the two (2) year period prior to the Effective Date, (ii) Institution will provide to Operator the marketing assets set forth in Exhibit A, and (iii) Institution shall integrate Institution owned and/or controlled assets with the Online Store, including at a minimum implementing the reasonable Institution Site integration, e-mail integration, mobile integration, social media integration, video/print/radio integration and stadium integration activities requested by Operator from time to time during the Term (such

integration requests to be set forth in an Institution Asset Integration plan prepared by Operator and presented to Institution periodically throughout the Term). Institution will provide and make available to Operator such Institution Furnished IP as Operator may reasonably request in connection with marketing and promotion of the Fanatics Network, including the Online Store. Throughout the Term, Institution’s obligations under this Section 2 shall be deemed to apply to the Online Store, and all method(s) of E-Commerce or Methods of Access then provided by Operator with respect thereto. To the extent an obligation references a Web Site or Methods of Access currently applicable to a Web Site, Institution’s obligations shall be comparable with respect to other forms of E-Commerce and Methods of Access commonly used by Institution. Upon the reasonable request of Operator from time to time during the Term, Institution will provide Operator with information regarding Institution’s activities pursuant to this Section 2.

(c) Throughout the Term, as reasonably requested by Operator from time to time, and consistent with the marketing assets detailed in Exhibit A, Institution will provide Operator with access to such Institution owned and/or controlled customer lists and data as the Parties shall mutually agree, including the name, email address, social media data, and telephone/cell numbers, for purposes of permitting Operator the ability to contact and otherwise market to such customers to promote the sale of Licensed Merchandise. Institution shall be responsible for confirming and verifying any such customer lists and obtaining any necessary consents or approvals in order to provide such customer lists to Operator for the intended purpose. Nothing in this Agreement is intended to require Institution to provide any information that is confidential or private and that Institution is prohibited from sharing under applicable state or federal law.

**3. Merchandising.** Operator shall be responsible for obtaining and maintaining a commercially reasonable assortment of Licensed Merchandise for sale on and through the Online Store. Notwithstanding the foregoing, Operator shall not be obligated to offer any Licensed Merchandise to the extent prohibited by applicable law or other restriction (whether imposed by any licensor, manufacturer or any other third party). Institution shall use best efforts to, and shall use best efforts cause all distributors, manufacturers and other licensees of Licensed Merchandise to, (a) make available and sell all Licensed Merchandise to Operator for resale through Operator and its Affiliates, and (b) otherwise assist Operator and its Affiliates, at their reasonable request, in working with such distributors, manufacturers and licensees.

### **4. Ownership; IP License.**

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

other documents) reasonably requested by Operator to effect, perfect or confirm Operator's or its designee's right, title and interest therein. Upon expiration or earlier termination of this Agreement, Institution will return all Operator Furnished IP to Operator and Institution will have no further rights thereto.

(b) **Institution Furnished IP License.** Institution hereby grants to Operator, during the Term, a worldwide, royalty free and fully paid up, sublicensable (but solely in connection with Operator's rights and obligations under this Agreement), non-transferable (except as otherwise set forth herein) license to use the Institution Furnished IP in connection with all of Operator's rights and obligations under this Agreement. The foregoing grant shall include the right of Operator to use the Institution Trademarks and other Institution Furnished IP in connection with marketing, promoting, advertising, selling, offering for sale and/or displaying Licensed Merchandise through the Fanatics Network. Institution will take commercially and legally reasonable and permissible actions, as may be reasonably requested by Operator from time to time, to enforce against or limit the unauthorized and infringing use of Institution Trademarks, including in connection with counterfeit Institution merchandise. Operator shall not use Institution IP in any manner inconsistent with Institution's instructions or in a manner that brings disrepute or negative publicity to Institution.

**5. Customer Information.** As between Institution and Operator, the seller of record hereunder, (a) Operator shall have sole ownership of Customer Information obtained from Customers of the E-Commerce Sites within the Fanatics Network other than the Online Store, (b) the Parties shall have joint ownership of Customer Information obtained from Customers of the Online Store, and (c) subject to applicable laws, rules and regulations, and any applicable restrictions (e.g., contractual restrictions), during the Term, Operator shall provide the Institution with access to Customer Information obtained from Customers of the Fanatics Network during the Term, but only if and to the extent such Customers purchase Licensed Merchandise. By way of example only, if a Customer purchases merchandise other than Licensed Merchandise from an E-Commerce Site within the Fanatics Network, then the Institution shall not be entitled to Customer Information for such Customer. Institution may use Customer Information described in Section 5(c) above, but solely for operation of the Institution's businesses (e.g., ticket sales, fan clubs, etc.), and not, either during or after the Term, in connection with the sale, offer for sale, marketing or promotion of the sale of Licensed Merchandise. In no event shall the Institution sell, rent or license any such Customer Information described in Section 5(c) above, and Institution shall not share such Customer Information with any third party, including, without limitation, any sponsor of the Institution or other seller of Licensed Merchandise. Each Party agrees to treat all Customer Information as Confidential Information. Each Party agrees to use all Customer Information in accordance with the applicable privacy policy and all applicable laws, rules and regulations. Operator shall establish, maintain and update the privacy policy and the terms of use/terms and conditions for the Online Store in a manner designed to reflect the Parties' rights and obligations, be factually accurate and comply with applicable law. Upon request, Operator shall provide Institution with a copy of the privacy policy and terms of use/terms and conditions for the Online Store and shall make modifications to them as may be suggested by Institution and mutually agreed upon by the Parties. Each Party will abide by the privacy policy and terms of use/terms and conditions for the Online Store, as may be amended from time to time.

**6. Audit.** During the Term and for two (2) years thereafter, Operator will keep complete and accurate books and records sufficient to verify the amounts paid or owed under this Agreement. Operator will, upon at least thirty (30) days' prior written request by Institution, allow Institution, or a representative of Institution, to audit such books and records at Operator's premises to the extent necessary to verify the amounts paid or owed pursuant to this Agreement; provided that (a) any

such audit is conducted during normal business hours and in a manner designed to not unreasonably interfere with Operator's ordinary business operations, (b) audits may not occur more frequently than once every twelve (12) months, (c) each such audit may only cover the period commencing after the period covered by the last audit conducted pursuant to this Section 6, if any, (d) audits may not occur during the months of November, December or January of any year. Any information learned or disclosed in connection with any such audit is Confidential Information of Operator.

## **7. Other Rights.**

(a) During the Term, (i) Operator and its Affiliates shall have the exclusive right to act as the official E-Commerce provider for Institution and offer, market and sell Licensed Merchandise by or on behalf of Institution, on or through the Internet or any successor thereto, any other computer networks, including but not limited to proprietary computer networks (such as mobile carrier networks, cable networks, electronic data exchange networks, intranets), non-proprietary networks (such as peer-to-peer network or other public networks), or any other electronic or digital forms of distribution, whether or not such forms now exist, and through any Methods of Access (and any successors or replacements of any such electronic digital forms of distribution and Methods of Access) (collectively, "**E-Commerce**"), (ii) Operator shall have the right, in its sole reasonable discretion, to determine, from time to time, through which forms of E-Commerce it will sell Licensed Merchandise throughout the Term, (iii) such exclusivity shall be worldwide, (iv) subject to the terms of this Section 7, Institution will not directly sell, market, or offer for sale Licensed Merchandise through E-Commerce, other than by Operator, including through the Fanatics Network and the Online Store, (v) the Online Store shall be the official E-Commerce Site of Institution and Operator shall have the exclusive right to operate and brand the Online Store as such, and (vi) Institution shall not expressly authorize any other E-Commerce Site to state or imply that such E-Commerce Site is an official, sponsored, or endorsed E-commerce store or site of Institution. Without limiting the foregoing, from and after the Effective Date, (x) Operator shall have the exclusive right to brand its stores in third party marketplaces (e.g., eBay, Amazon, etc.) ("**Marketplaces**") as the "official" Marketplace store(s) of Institution, (y) Operator may use, and may provide such Marketplace operators and participants with, the Institution Trademarks in connection with such Marketplaces, and (z) all Operator sales of Licensed Merchandise generated through Marketplaces will be deemed Orders for purposes of calculating the Net Merchandise Revenue hereunder and the applicable Revenue Share Payments.

(b) During the Term, Institution will not, (i) license or authorize any Person other than Operator and its Affiliates in offering, marketing or selling Licensed Merchandise to consumers through any E-Commerce Site which states that it is an "official" E-Commerce Site of Institution,; (ii) post or serve, or permit to be posted or served, on any page of any Institution Site, any buttons, banners, links or other promotional or advertising material that (A) offers, promotes, advertises or otherwise references the sale of, through any other Person, the sale of Licensed Merchandise with the exception of institutional sideline provider information deemed necessary to place on Institution site(s) , (B) links directly to any E-Commerce Site (other than a location within the Online Store and/or other E-Commerce Sites within the Fanatics Network) which offers, promotes, advertises or otherwise references the sale of Licensed Merchandise, or (C) links directly to any E-Commerce Site that is primarily in the business of selling Licensed Merchandise; or (iv) engage in any marketing, promotional or advertising activities with respect to sale of Licensed Merchandise through E-Commerce, other than as expressly contemplated by this Agreement, including the purchasing of search terms. (v) With reference to (b)(i), (b) (ii) and b(iii), institution sideline provider shall be permitted where necessary to promote the relationship between institution and sideline provider.

## 8. Termination.

(a) **Termination for Breach.** Without limiting any other rights or remedies (including any right to seek damages and other monetary relief) that either Party may have in law or otherwise, either Party may terminate this Agreement if the other Party fails to perform any obligation hereunder, provided that (i) the non-breaching Party sends written notice to the breaching Party describing in reasonable detail the breach and stating its intention to terminate this Agreement unless such breach is cured, and (ii) the breaching Party does not cure the breach within thirty (30) days following its receipt of such notice; provided that, if the breaching Party has diligently attempted to cure the breach during such thirty (30) day period but has not cured the breach by the end of such thirty (30) day period, the non-breaching Party may not terminate this Agreement so long as the breaching Party continues to diligently attempt to cure the breach. If the breach is not cured by the breaching party within 60 days of receiving notice of such breach, the non-breaching party may terminate this agreement.

(b) **Effect of Termination.** Upon the expiration or earlier termination of this Agreement, each Party in receipt, possession or control of the other Party's intellectual or proprietary property, information and materials or Confidential Information pursuant to this Agreement must return to the other Party (or at the other Party's written request, destroy) such property, information and materials. Sections 6, 8(a)-(b), 9, 10, 11 and 13 (together with all other provisions that reasonably may be interpreted as surviving the expiration or earlier termination of this Agreement) will survive any such expiration or termination. Notwithstanding the foregoing, the expiration or earlier termination of this Agreement will not relieve either Party from its obligation to pay any monies due to the other Party for any period prior to the effective date of such expiration or termination.

### (c) Exclusive Negotiation.

(i) From and after the Effective Date and continuing until the date that is twelve (12) months prior to the end of the Term (the "**Restricted Period**"), Institution shall not, and shall cause its Affiliates not to, directly or indirectly, (A) initiate, solicit, discuss, communicate or negotiate any proposal, offer, or business terms from any third party(ies) ("**Third Party Discussions**") with respect to the E-Commerce business of Institution or any of its Affiliates (an "**E-Commerce Transaction**"), (B) provide any Confidential Information to any third party in connection therewith, or (C) commit any act or omission that is intended or designed to avoid or circumvent Institution's obligations, or cancel, nullify or otherwise adversely affect Operator's rights and privileges, under this Section 8(c). Institution shall not, and shall cause its Affiliates not to, directly or indirectly, enter into any agreement or consummate any E-Commerce Transaction with any Person other than Operator and its Affiliates (a "**Third-party Transaction**"), except in compliance with the terms and conditions of this Section 8(c). From the date that is twelve (12) months prior to the end of the Term and continuing for a period of ninety (90) days (the "**Exclusive Negotiation Period**"), the Parties shall negotiate in good faith regarding a renewal of this Agreement (the "**Proposed Renewal**"). If, at the end of the Exclusive Negotiation Period, the Parties have not reached agreement with respect to a Proposed Renewal, then from and after the end of the Exclusive Negotiation Period and continuing until the end of the Term, Institution shall have the right to enter into a Third-party Transaction..

## 9. Representations; Indemnification.

(a) **Representations.** Each Party represents and warrants to the other that: (i) it has the full right, power and authority to enter into this Agreement and perform its obligations hereunder; (ii) its execution, delivery and performance of this Agreement, and the other Party's exercise of such other Party's rights under this Agreement, will not

conflict with or result in a breach or violation of any of the terms or provisions or constitute a default under any material agreement by which it is bound; and (iii) when executed and delivered, this Agreement will constitute its legal, valid and binding obligation enforceable against it in accordance with the terms of this Agreement.

### (b) Indemnification.

(i) Operator will defend, indemnify and hold harmless Institution and its Affiliates (and their respective employees, officers, directors and representatives) from and against any and all losses, damages, judgments, costs and expenses (including reasonable attorneys' fees) arising out of any third party claim, demand, action, suit or proceeding ("**Claim**"), to the extent based on (A) any breach of this Agreement by Operator or any breach of Operator's representations, warranties or obligations as set forth in this Agreement, (B) infringement, product liability, personal injury or death relating to any Licensed Merchandise (other than (1) Claims related to marketing provided by Institution or its Affiliates, (2) Claims that the Institution Trademarks in or on such Licensed Merchandise infringe upon a third party's Intellectual Property Rights, or (3) Claims related to any Licensed Merchandise purchased from Institution), (C) the Operator Furnished IP, including any infringement of any Intellectual Property Rights with respect thereto, (D) any failure of Operator to comply with any applicable law, rule or regulation, (E) any agreement or purported agreement entered into by Operator to effectuate the terms of this Agreement, (F) Operator's operation of the Online Store or other E-Commerce Site within the Fanatics Network, or (G) any consumer related claims or complaints related to the Online Store or other E-Commerce Site within the Fanatics Network including, but not limited to, claims related to the loss, theft, or exposure (or alleged loss, theft or exposure) of consumer data, in each case other than due to Institution's acts or omissions.

(ii) To the extent permitted by the Oregon Tort Claims Act, Institution will defend, indemnify and hold harmless Operator and its Affiliates (and their respective employees, officers, directors and representatives) from and against any and all losses, damages, judgments, costs and expenses (including reasonable attorneys' fees) arising out of any Claim, to the extent based on (A) the creation, operation or content of any Web Site or E-Commerce Site operated by Institution other than the Online Store, but including any Institution Site, (B) any breach of Institution's representations, warranties or obligations as set forth in this Agreement, (C) the Institution Furnished IP, including any infringement of any Intellectual Property Rights with respect thereto, (or (D) any failure of Institution to comply with any applicable law, rule or regulation, in each case other than due to Operator's acts or omissions.

(c) In case any Claim is at any time brought against a Party or its Affiliates (or any of their respective employees, officers, directors or representatives) (each an "**Indemnified Party**") and such Indemnified Party is entitled to indemnification pursuant to Section 9(b) with respect thereto, the Party obligated to provide such indemnification (the "**Indemnifying Party**") will defend such Claim, at the sole expense of the Indemnifying Party, using counsel selected by the Indemnifying Party but subject to the Indemnified Party's reasonable approval. If the Indemnifying Party fails to take timely action to defend such Claim after having received written notice from the Indemnified Party of such failure, the Indemnified Party may defend such Claim at the Indemnifying Party's expense. The Indemnifying Party will keep the Indemnified Party fully advised with respect to such Claim; provided, however, that the Indemnifying Party shall be under no obligation to advise the Indemnified Party with respect to any Claim to the extent that doing so could, in the Indemnifying Party's reasonable opinion, compromise attorney-client or other privilege or violate any confidentiality obligations of the Indemnifying Party or any of its Affiliates. The Indemnified Party will have the right to participate, at the Indemnified Party's expense, in any Claim instituted against it and to select attorneys to defend it, which attorneys

will be independent of any attorneys chosen by the Indemnifying Party relating to such Claim or any related claim. The Indemnified Party and the Indemnifying Party shall cooperate in all reasonable respects with the investigation, disclosure and defense of any Claim. The Indemnifying Party will not settle, compromise or otherwise enter into any agreement regarding the disposition of any Claim against the Indemnified Party without the prior written consent and approval of the Indemnified Party, unless such settlement, compromise or disposition of any Claim against the Indemnified Party (i) provides for a complete and unconditional release of the Indemnified Party in respect of the Claim, (ii) does not include a statement as to, or an admission of, fault, culpability or failure to act by or on behalf of, the Indemnified Party, and (iii) does not impose any ongoing operational, financial, or other obligation on the Indemnified Party.

**10. DISCLAIMER OF WARRANTIES; LIMITATIONS OF LIABILITY.** EXCEPT AS OTHERWISE PROVIDED IN THIS AGREEMENT, NEITHER PARTY MAKES, AND EACH PARTY HEREBY WAIVES AND DISCLAIMS, ANY REPRESENTATIONS OR WARRANTIES REGARDING THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT OR IMPLIED WARRANTIES ARISING OUT OF COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE. EXCEPT TO THE EXTENT (A) AWARDED TO A THIRD PARTY IN A JUDGMENT AGAINST WHICH A PARTY IS ENTITLED TO INDEMNIFICATION PURSUANT TO SECTION 9(B), OR (B) RESULTING FROM WILLFUL MISCONDUCT OR WRONGFUL TERMINATION: (I) NEITHER PARTY WILL BE LIABLE (WHETHER IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR OTHER THEORY) TO THE OTHER PARTY OR ANY OTHER PERSON OR ENTITY FOR COST OF COVER OR FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES OR DAMAGES FOR LOSS OF PROFIT, REPUTATION, BUSINESS OR DATA ARISING OUT OF THIS AGREEMENT, AND (II) NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY IN CONNECTION WITH ANY OR ALL CLAIMS FOR AN AMOUNT IN EXCESS OF THE AGGREGATE AMOUNTS PAID TO INSTITUTION DURING THE IMMEDIATELY PRECEDING TWELVE (12) MONTH PERIOD.

**11. Account Management; Dispute Resolution.**

(a) **Account Managers.** Each Party will assign an account manager to oversee the performance of its obligations under this Agreement. Each Party's account manager will be the other Party's primary contact with respect to transactions contemplated hereunder. Each Party's account manager may be subject to change from time to time by the assigning Party upon written notice to the other Party. The account managers will meet as frequently as may be necessary during the Term to review the implementation of this Agreement and to address applicable matters related hereto.

(b) **Dispute Resolution.**

(i) If any dispute arises relating to either Party's rights or obligations under this Agreement, and the Parties are unable to resolve the dispute in the ordinary course of business, Institution and Operator will use good-faith efforts to resolve the matter in accordance with this Section 11(b). Within five (5) Business Days following the written request of either Party (which will describe the nature of the dispute and other relevant information), the Parties' account managers will meet or otherwise communicate to resolve the dispute at a mutually convenient time and place. If the account managers are unable to resolve the dispute within three (3) Business Days following their initial meeting/communication, such account managers will refer the matter to the extent unresolved to the Parties' divisional executives ("**Executive Sponsors**") who are responsible for the administration of this Agreement. Within five (5) Business Days following the referral of the matter to the Executive Sponsors, the Executive Sponsors will meet or otherwise

communicate to resolve the dispute at a mutually convenient time and place. Within five (5) Business Days following the initial meeting/communication of the Executive Sponsors, the Parties shall submit any unresolved dispute to non-binding mediation. If the Parties cannot mutually agree upon a mediator within seven (7) days of such notice, then a mediator shall be designated by the American Arbitration Association ("**AAA**") at the request of either Party. The mediation shall be conducted at a mutually convenient location in the State of Oregon or at such other location as the Parties may agree. Each Party will bear its own costs in the mediation, and the fees and expenses of the mediator will be borne equally by the Parties.

(ii) If the Parties do not resolve a dispute within forty-five (45) days following the date of any mediation, the dispute shall be finally resolved by binding arbitration in accordance with the Commercial Arbitration Rules of the AAA, and judgment on the arbitration award may be entered in any court having jurisdiction thereof. The arbitration shall be conducted by a panel of three (3) neutral persons experienced in intellectual property licensing and E-Commerce and shall be held in the State of Oregon, or in a place otherwise mutually agreed by the Parties. Either Party may apply to the arbitrators for interim injunctive relief until the arbitration award is rendered or the controversy is otherwise resolved and may, without waiving any remedy under this Agreement, seek from any court having jurisdiction any injunctive or provisional relief necessary to protect the rights or property of that Party pending the arbitration award. The arbitrators shall have no authority to award damages prohibited hereunder. Unless otherwise awarded by the arbitrators, each Party shall bear its own costs and expenses and an equal share of the arbitrators' and any administrative arbitration fees. Except to the extent necessary to confirm an award or as may be required by applicable laws, rules and regulations (including the State or Oregon's public records laws), neither a Party nor an arbitrator may disclose the existence, content, or results of an arbitration without the prior written consent of the other Party. In no event shall arbitration be initiated after the applicable Oregon statute of limitations. In any action, suit, arbitration or proceeding arising out of or related in any way to this Agreement, each Party, by execution and delivery of this Agreement, expressly and irrevocably consents to the service of any complaint, summons, notice or other process by delivery thereof to it by hand or by any other manner provided for in Section 13(c). IN ADDITION, EACH PARTY HEREBY EXPRESSLY AND IRREVOCABLY WAIVES ANY CLAIM OR DEFENSE IN ANY SUCH ARBITRATION OR PROCEEDING BASED ON ANY ALLEGED LACK OF PERSONAL JURISDICTION, IMPROPER VENUE, FORUM NON CONVENIENS OR ANY SIMILAR DOCTRINE OR THEORY. EACH PARTY HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

**12. Defined Terms**

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

(b) "**Business Day**" means any day which is not a Saturday, Sunday or official federal holiday in the United States.

(c) "**Confidential Information**" means all nonpublic information relating to a Party or its Affiliates that is designated as confidential or that, given the nature of the information or the circumstances surrounding its disclosure, reasonably should be considered as

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

(d) **"Customer"** means a Person who accesses the Online Store or any other E-Commerce Site within the Fanatics Network through any one or more Methods of Access, whether or not a purchase is made.

(e) **"Customer Information"** means name, mailing address, telephone number, e-mail address, and any other personally identifying information obtained through an E-Commerce Site within the Fanatics Network, including the Online Store; provided that, Customer Information does not include any information that either Operator or Institution otherwise owns or to which Operator or Institution has the rights and which is obtained from Customers other than through transactions contemplated under this Agreement.

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

(g) **"Fanatics Network"** means the E-Commerce Sites owned and operated by Operator and its Affiliates from time to time during the Term, but only to the extent that such E-Commerce Sites are then owned or operated by Operator and/or its Affiliates. As of the Effective Date, the Fanatics Network includes the following the Web Sites: *fanatics.com*, *fanaticsoutlet.com*, *fansedge.com*, *nflshop.com*, *yahoosports.teamfanshop.com*, *shop.cbssports.com*, *shop.nbcsports.com* and *shop.foxsports.com*.

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

(i) **"Institution Furnished IP"** means the Designated URLs and all applicable Secondary URLs, and the Institution Content and Institution Trademarks that are furnished by Institution for use in connection with the activities contemplated by this Agreement. As used herein, Institution Furnished IP also includes any adaptation, modification, improvement or derivative work of any Institution Furnished IP that is developed by either Party or jointly by the Parties. Notwithstanding the foregoing, Institution Furnished IP do not include any Operator Furnished IP or any adaptation, modification, improvement or derivative work of any Operator Furnished IP that is developed by either Party or jointly by the Parties (provided that

such does not include the Institution Furnished IP).

(j) **"Institution Sites"** means each Web Site owned, operated or controlled, directly or indirectly, by Institution's Athletic Department (and any successors or replacements thereto) including, without limitation, all social media Web Sites controlled by Institution's Athletic Department.

(k) **"Institution Trademarks"** means all Trademarks owned or controlled by Institution and/or its Affiliates.

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

(m) **"Licensed Merchandise"** means any goods (including photographs and memorabilia) bearing Institution Trademarks and, with respect to the Online Store, services (including auction) bearing the Institution Trademarks.

(n) **"Methods of Access"** means, with respect to any E-Commerce Site, the means through which such E-Commerce Site is accessed by a Customer, including, with respect to a Web Site, a desktop computer, mobile phone, tablet, television, or other portable device.

(o) **"Net Merchandise Revenue"** means the amount equal to all cash consideration from the applicable Orders during the applicable period pursuant to this Agreement, less all taxes, shipping and handling charges, payment tender processing fees, direct out of pocket expenses (e.g., framing, encasing, etc.), wrapping and other value-added service charges and expenses, returns, chargebacks and uncollectable credit card charges. Net Merchandise Revenue shall not include any consideration received from applicable Orders that have been discounted by forty percent (40%) or more. For the sake of clarity, the sale of gift certificates or other stored payment tender will not be included in the calculation of Net Merchandise Revenue hereunder and no revenue share will be payable to Institution hereunder unless or until such gift certificates or other stored payment tender are redeemed through the Online Store.

(p) **"Online Store"** means the official E-Commerce Site of Institution as operated by Operator pursuant to this Agreement. As of the Effective Date, the Online Store is operated as a Web Site on the Internet, the primary home page for which is identified by the applicable Designated URL and the Secondary URLs, if any.

(q) **"Operator Content"** means any and all content or information owned or controlled (e.g., by license or otherwise) by Operator or its Affiliates, including (i) text, graphics, photographs, video and audio, and (ii) data or information collected through or in connection with operating the E-Commerce Sites within the Fanatics Network, including the Online Store (e.g., data regarding page views, patterns, performance, traffic, transactions and usage) except for any personally-identifying Customer Information.

(r) **"Operator Furnished IP"** means any Operator Content, Trademark, or Technology that, as between the Parties, is owned or controlled (e.g., by license or otherwise) by Operator or its Affiliates, as the case may be. As used herein, Operator Furnished IP will also include any adaptation, modification, improvement or derivative work of any

Operator Furnished IP that is developed by either Party or jointly by the Parties. Notwithstanding the foregoing, Operator Furnished IP does not include any Institution Furnished IP or any adaption, modification, improvement or derivative work of any Institution Furnished IP that may be developed by either Party or jointly by the Parties.

(s) **“Order”** means a completed order for (i) Licensed Merchandise or Game Used or Team Issued Items sold by Operator or its Affiliates to a Customer placed through the Online Store, or (b) Licensed Merchandise or Game Used or Team Issued Items sold by Operator or its Affiliates to a Customer and placed through any other E-Commerce Site within the Fanatics Network during the Term.

(t) **“Person”** means, whether or not capitalized, any individual, corporation (including any non-profit corporation), general or limited partnership, limited liability company, joint venture, estate, trust, association, organization, labor union, or other entity or governmental body.

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

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

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

(x) **“URL”** means the uniform resource locator of a Web Site and any similar type of locator of an E-Commerce Site.

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

### 13. Miscellaneous.

(a) **Press Releases; Confidentiality.** Unless required by law, neither Institution nor Operator will make any public announcement or issue any press release concerning the transactions contemplated by this Agreement without the prior written consent of the other Party. Notwithstanding the foregoing, (i) each Party may reference that Institution is an entity with which Operator has an agreement and for which Operator operates an E-commerce business; (ii) Operator may reference Institution in Operator’s marketing materials, (iii) after the initial public announcement of a specific matter or transaction has been approved in writing by the Parties, either Party’s subsequent reference to that specific matter or transaction will not require another approval from the other Party, and (iv) each Party may make any public announcement

or issue any press release that it is required by law or rule or regulation of any governmental authority or self-regulatory organization to issue, provided such Party gives reasonable prior notice of such announcement or press release to the other Party. Each Party will protect and keep confidential the Confidential Information of the other Party from misappropriation and unauthorized use or disclosure, and at a minimum, will take precautions at least as great as those taken to protect its own confidential information of a similar nature. Without limiting the foregoing, the receiving Party will disclose such Confidential Information only to those of its or its Affiliates’ employees, agents, consultants, investors, potential investors, advisors and others who have a need to know the same and who are subject to confidentiality duties or obligations. The receiving Party may also disclose Confidential Information of the disclosing Party to the extent necessary to comply with applicable law or legal process, provided that the receiving Party provides the disclosing Party reasonable advance notice thereof so it can obtain a protective order if it so desires. Upon request of the other Party, or in any event upon the expiration or earlier termination of this Agreement, each Party will return to the other all materials, in any medium, which contain, embody, reflect or reference all or any part of any Confidential Information of the other Party; provided, however that the receiving Party may retain copies of the disclosing Party’s Confidential Information for the receiving Party’s files to the extent required by the receiving Party’s record retention policies or necessary for the receiving Party to comply with legal and/or regulatory requirements. Notwithstanding the return of Confidential Information, each Party will continue to be bound by its obligations of confidentiality under this Agreement.

(b) **Force Majeure; Compliance with Laws.** If either Party is unable to perform any of its obligations under this Agreement due to an event beyond the control of that Party, including natural disaster, acts of God, fire, actions or decrees of governmental bodies, act of war, terrorism, failure or discontinuance of the Internet or failure of communications lines or networks, that Party will use commercially reasonable efforts to resume performance of its obligations but will have no liability to the other Party for failure to perform its obligations under this Agreement for so long as it is unable to do so as a result of such event. Each party shall comply, in all material respects, with all applicable laws and rules and regulations with respect to the performance of its obligations pursuant to this Agreement.

(c) **Notices; Approvals.** Unless otherwise provided, all notices, consents or other communications required or permitted to be given under this Agreement must be in writing and will be deemed to have been duly given (i) when delivered personally, (ii) three (3) Business Days after being mailed by first class mail, postage prepaid, or (iii) one (1) Business Day after being sent by a reputable overnight delivery service, postage or delivery charges prepaid, to the Parties at their respective addresses stated on the signature page of this Agreement. Notices may also be given by electronic mail and will be effective on the date transmitted if confirmed within twenty-four (24) hours thereafter by a signed original sent in the manner provided in the preceding sentence. Notices to Operator will be sent to its address stated on the signature page of this Agreement to the attention of its Executive Vice President, Business Affairs, with a copy sent simultaneously to the same address to the attention of its General Counsel. Notices to Institution will be sent to its address stated on the signature page of this Agreement, with a copy sent simultaneously to its General Counsel. Either Party may change its address for notice and the address to which copies must be sent by giving notice of the new addresses to the other Party in accordance with this Section 13(c), except that any such change of address notice will not be effective unless and until received. References in this Agreement to approval, authorization or consent of Institution shall mean (x) that Institution shall have the right to authorize, approve or consent to such referenced matter, which authorization, approval or consent, as the case may be, shall not be unreasonably withheld, conditioned or delayed, and (y) without limiting the foregoing, Institution shall provide written notice

to Operator with respect to the decision regarding any such authorization, approval or consent, as the case may be, within a reasonable period of time.

(d) **Amendment; Waiver; Assignment.** This Agreement may be amended, modified or supplemented by the Parties but only in a writing that is signed by a duly authorized representative of each Party. No waiver by a Party with respect to this Agreement will be effective or enforceable against a Party unless in writing and signed by that Party. Except as otherwise expressly provided herein, no failure to exercise, delay in exercising, or single or partial exercise of any right, power or remedy by a Party, and no course of dealing between or among any of the Parties, will constitute a waiver of, or will preclude any other or further exercise of the same or any other right, power or remedy. Neither Party may assign this Agreement or any of its rights or obligations hereunder without the other Party's prior written consent. Notwithstanding the foregoing, either Party, without the consent of the other Party, may assign this Agreement (and its rights and obligations hereunder) to any Affiliate or successor of such Party. Subject to the foregoing, this Agreement will be binding on and enforceable by the Parties and their respective successors and permitted assigns.

(e) **Counterparts and Transmitted Copies; Severability; Choice of Law.** This Agreement may be executed in any number of counterparts, each of which when executed and delivered (which can be by email (.pdf) or other electronic means) will be deemed an original, but all of which taken together will constitute but one and the same instrument, and it will not be necessary in making proof of this Agreement to produce or account for more than one original counterpart hereof. If any provision of this Agreement is construed to be invalid, illegal or unenforceable, then the remaining provisions hereof will not be affected thereby and will be enforceable without regard thereto. This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon applicable to contracts entered into and performed entirely within that state, without giving effect to any choice or conflict of law provision or rule (whether of the State of Oregon or any other jurisdiction) that would cause application of the laws of any jurisdiction other than the State of Oregon.

(f) **Headings; References; Construction.** The headings in this Agreement are for convenience of reference only and are not intended to restrict, affect or otherwise influence the interpretation or construction of any provision. All words used in this Agreement will be construed to be of such number and gender as the context requires or permits. Unless a particular context clearly provides otherwise (i) the words "hereof" and "hereunder" and similar references refer to this Agreement in its entirety and not to any specific section hereof, and (ii) the word "include" or "including" will mean "include without limitation" or "including without limitation". Any rule of construction to the effect that ambiguities are to be resolved against the drafting Party will not be applied in the construction or interpretation of this Agreement or any other agreements or documents delivered in connection herewith.

(g) **Independent Contractors; Affiliates and Subcontractors.** The Parties are entering into this Agreement as independent contractors, and this Agreement will not be construed to create a partnership, joint venture or employment relationship between them. Neither Party will represent itself to be an employee or agent of the other or enter into any agreement or legally binding commitment or statement on the other's behalf or in the other's name. Each Party (i) shall, to the extent any rights granted by such Party hereunder are owned or controlled by any other Person, obtain the necessary rights to provide the other Party such rights or cause such other Person to provide such rights to the other Party, (ii) in performance of its obligations hereunder, may utilize one or more Affiliates and/or subcontractors and provide such Affiliate or subcontractor with any materials or information necessary to perform any obligation (except that subcontractors and Affiliates shall not receive Confidential Information unless necessary to perform its obligation to a

Party and, in such event, such subcontractors and Affiliates shall be subject to confidentiality duties or obligations similar to those set forth in this Agreement); provided that such Party shall remain liable to the other Party for the performance of such obligations, and (iii) may elect to have such Party's rights under this Agreement exercised by such Party or by an Affiliate of such Party.

(h) **Further Assurances; Entire Agreement.** Each of the Parties hereto shall, and shall cause its respective Affiliates to, from time to time at the reasonable request of the other Party, without any additional consideration, furnish the other Party such further information or assurances, execute and deliver such additional documents, instruments and conveyances, and take such other reasonable actions and do such other things, as may be reasonably necessary or appropriate to carry out the provisions of this Agreement and give effect to the transactions contemplated hereby. This Agreement represents the entire understanding between the Parties with respect to the specific subject matter hereof and supersedes all previous oral or written communications or agreements, and all contemporaneous oral communications and agreements, between the Parties and their respective Affiliates regarding such subject matter. No breach of this Agreement by either Party will affect the rights or obligations of either Party under any other agreement between the Parties, except the consumer products trademark license agreement referenced in Section 6 of this Agreement.

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Exhibit A

Marketing Assets

Institution will provide the following marketing assets to Operator [REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]