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MIKE WOELFEL
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Mediation: If you would like the AAA to contact the other parties and attempt to arrange a mediation, please check this box . There is no additional administrative fee for this service.

You are hereby notified that a copy of our arbitration agreement and this demand are being filed with the American Arbitration Association with a request that it commence administration of the arbitration. The AAA will provide notice of your opportunity to file an answering statement.

Name of Respondent: Marshall University, et al.

Address: One John Marshall Dr.

City: Huntington State: West Virginia Zip Code: 25755

Phone No.: 304-696-3170 Fax No.:

Email Address: Houdyschell2@marshall.edu

Name of Representative (if known): Jendonnae L. Houdyschell

Name of Firm (if applicable): Office of General Counsel

Representative's Address: One John Marshall Dr.

City: Huntington State: West Virginia Zip Code: 25775

Phone No.: 304-696-6295 Fax No.: 304-696-6453

Email Address: Houdyschell2@marshall.edu

The named claimant, a party to an arbitration agreement which provides for arbitration under the Commercial Arbitration Rules of the American Arbitration Association, hereby demands arbitration.

Brief Description of the Dispute:
See attached Demand for Arbitration

Dollar Amount of Claim: \$ n/a

Other Relief Sought: Attorneys Fees Interest Arbitration Costs Punitive/Exemplary
 Other: See attached Demand for Arbitration

Amount enclosed: \$ 3,500.00

In accordance with Fee Schedule: Flexible Fee Schedule Standard Fee Schedule

Please describe the qualifications you seek for arbitrator(s) to be appointed to hear this dispute:

Hearing locale: Dallas, TX
(check one) Requested by Claimant Locale provision included in the contract



Estimated time needed for hearings overall:		hours or	days
Type of Business:			
Claimant: Collegiate Sports Conference		Respondent: University	
Are any parties to this arbitration, or their controlling shareholder or parent company, from different countries than each other? n/a			
Signature (may be signed by a representative): /s/ Leane K. Capps		Date: February 15, 2022	
Name of Claimant: Conference USA			
Address (to be used in connection with this case): 3100 Olympus Blvd., #400			
City: Coppell		State: Texas	Zip Code: 75019
Phone No.: 214-774-1300		Fax No.:	
Email Address: lcapps@polsinelli.com			
Name of Representative: Leane K. Capps			
Name of Firm (if applicable): Polsinelli, PC			
Representative's Address: 2950 N. Harwood St., Suite 2100			
City: Dallas		State: Texas	Zip Code: 75201
Phone No.: 214-397-0030		Fax No.: 214-397-0033	
Email Address: lcapps@polsinelli.com			
To begin proceedings, please file online at www.adr.org/fileonline . You will need to upload a copy of this Demand and the Arbitration Agreement, and pay the appropriate fee.			

American Arbitration Association

CONFERENCE USA,

Claimant,

v.

MARSHALL UNIVERSITY;

MARSHALL UNIVERSITY BOARD OF GOVERNORS;

KATHY D'ANTONI, in her official capacity as a member of the Marshall University Board of Governors;

SHAWN BALL, in his official capacity as a member of the Marshall University Board of Governors;

PATRICK FARRELL, in his official capacity as a member of the Marshall University Board of Governors;

DONALD HOLCOMB, in his official capacity as a member of the Marshall University Board of Governors;

Case No. 012200006694

CHRIS MILLER, in his official capacity as a member of the Marshall University Board of Governors;

ANGEL MOORE, in her official capacity as a member of the Marshall University Board of Governors;

SAMUEL MOORE, in his official capacity as a member of the Marshall University Board of Governors;

BILL NOE, in his official capacity as a member of the Marshall University Board of Governors;

CHAD PENNINGTON, in his official capacity as a member of the Marshall University Board of Governors;

GEOFFREY SHEILS, in his official capacity as a member of the Marshall University Board of Governors;

WILLIAM SMITH, in his official capacity as a member of the Marshall University Board of Governors;

hereinafter collectively “Marshall University” or “Respondents” unless otherwise noted.

Introduction

1. C-USA must file this demand for arbitration because Respondents would rather Marshall University breach its contractual and statutory obligations than wait one year to leave C-USA, which is required by C-USA’s Bylaws.

2. Under Marshall BOG’s authority and supervision, Marshall University’s sports teams have competed as members of C-USA for nearly two decades.

3. In that time, Marshall University has received millions of dollars through broadcast rights agreements, bowl participation agreements, and sponsorship agreements that C-USA negotiated on behalf of all C-USA members, including Marshall University.

4. In exchange, Marshall University and Marshall BOG agreed to comply with C-USA’s Bylaws, which require Marshall University and Marshall BOG to give C-USA 14 months’ notice before joining a different athletics conference.

5. Late last year, Marshall University notified C-USA that it would withdraw as a C-USA member and join the Sun Belt Conference (“SBC”).

6. Unwilling to wait to join the SBC, Marshall University has announced that it is leaving C-USA one year early, breaching its obligations under the Bylaws and infringing upon C-USA’s copyrights.

7. C-USA seeks a declaration that Marshall University and Marshall BOG are bound by the Bylaws’ fair notice obligations; C-USA also seeks interim relief, injunctive relief and damages.

The Parties

8. Conference USA is a not-for-profit corporation organized under Illinois law with a principal place of business in Dallas Texas.

9. Marshall University is a public entity created by statute under West Virginia law with a principal place of business in Huntington, West Virginia.

10. Marshall University Board of Governors is a public entity created by statute under West Virginia law with a principal place of business in Huntington, West Virginia, and it has control, supervision, and management authority over Marshall University, including Marshall University's athletics programs.

11. Each Individual Respondent is an individual and a member of the Marshall BOG.

Jurisdiction and Venue

12. The American Arbitration Association has jurisdiction over this action under C-USA's Bylaws § 14.01. (Exhibit 1).

13. Under Bylaw § 14.01, the exclusive venue for this arbitration is Dallas, Texas.

14. Respondents have waived sovereign immunity as to the claims in this case and, in any event, they are not entitled to sovereign immunity under West Virginia and/or federal law.

Facts Common to All Counts

A. Conference USA

15. C-USA is an intercollegiate athletics conference comprised of colleges and universities participating in NCAA Division I sports.

16. C-USA was incorporated in 1995, and it is currently in its 27th year of sponsoring intercollegiate athletics.

17. C-USA currently has 14 member institutions across ten states, including Texas, Louisiana, Mississippi, Alabama, Florida, Tennessee, Kentucky, West Virginia, Virginia, and North Carolina.

18. Marshall University is C-USA's only member located in West Virginia.

19. C-USA currently sponsors competition in 20 sports—nine for men (including baseball, basketball, cross country, football, golf, soccer, tennis, and indoor and outdoor track and field) and 11 for women (including basketball, beach volleyball, cross country, golf, soccer, softball, swimming and diving, tennis, indoor and outdoor track, and volleyball).

20. C-USA sponsors league play and tournament or championship competition in its sports and its members compete in NCAA championship competitions.

21. With C-USA's members' approval, C-USA has entered into broadcast rights agreements with multimedia sports broadcasting companies to broadcast competitions involving C-USA members.

22. With C-USA's members' approval, C-USA has also entered into sponsorship agreements with regional and national companies to promote those companies' products in connection with C-USA-sponsored athletics events.

23. With C-USA's members' approval, C-USA has entered into bowl participation agreements permitting C-USA members' football teams to participate in bowl games.

B. Marshall University as a C-USA Member

24. Prior to 2003, Marshall University competed in the Mid-America Conference.

25. On October 24, 2003, Marshall BOG voted unanimously for Marshall University to become a C-USA member.

26. Dan Angel, who was Marshall University's president at that time, stated that "[a] move to Conference USA affords Marshall University the opportunity to extend its championship image to a wider market of potential students and supporters. This move [from the Mid-America Conference to C-USA] places the institution in a competitive mode in many areas and will benefit both athletics and academics."

27. On October 24, 2003, at Marshall BOG's direction, Marshall University also entered into a "NEW MEMBER AGREEMENT" (the "New Member Agreement") with C-USA. (Exhibit 2).

28. The New Member Agreement includes a section headed "**Background**" stating in part that the New Member Agreement "memorialize[s] the terms and conditions . . . upon which Marshall will join [C-USA]."

29. Under New Member Agreement § 4, Marshall University and Marshall BOG agreed that "the terms and conditions of Marshall's participation in [C-USA] as a Member shall be governed by [C-USA's] Bylaws, as such Bylaws may be amended from time to time."

30. New Member Agreement § 4 also states that "Marshall agrees fully and completely to abide by and comply with all provisions and conditions of the Bylaws, as such Bylaws may be amended from time to time."

31. After entering into the New Member Agreement, Marshall University's sports teams began competing as C-USA members under the Bylaws.

C. C-USA's Bylaws

32. Bylaw § 1.02 states that C-USA's purpose:

is to provide a structure which will better enable the Conference's members to enhance, publicize, fund (through payments or distributions from the Conference, or otherwise), administer, and regulate their respective varsity intercollegiate athletic programs within the context of higher education and

the National Collegiate Athletic Association (the "NCAA"), and to better provide student-athletes attending member universities with quality educational and athletic opportunities.

33. "In furtherance of such purpose," C-USA agrees to:

- (a) Provide member institutions with the opportunity to participate in a major athletic conference;
- (b) Provide member institutions with a voice in NCAA affairs and provide the opportunity for member institutions to play a significant role in intercollegiate athletics;
- (c) Enhance the level of competition and visibility of men's and women's athletics;
- (d) Provide a consortium for member institutions to exchange information and foster interchange to enhance academic, fiscal and athletic policies;
- (e) Provide championships in Conference sports and to enhance the quality of member institutions' athletic programs;
- (f) Provide a compliance program to assist member institutions in complying with NCAA, Conference and institution rules and regulations.

34. C-USA agreed to perform those functions to "enhance the national stature of each member institution."

35. Under Bylaw § 3.05, Marshall University "covenants and agrees" to certain obligations.

36. Under Bylaw § 3.05(a), Marshall University agrees to "administer its athletic program in accordance with . . . [C-USA's] Bylaws"

37. Under Bylaw § 3.05(f), Marshall University agrees to "conduct its intercollegiate athletic program in keeping with the highest recognized standards and in a manner, which will enhance [C-USA's] reputation for integrity."

38. Under Bylaw § 3.05(g), Marshall University agrees to “cooperate in the spirit of mutual trust with the other members of [C-USA] in supporting and promoting the objectives of [C-USA].”

39. Under Bylaw § 3.05(i), Marshall University agrees to “participate in such [C-USA] television and other broadcasting packages as [C-USA] . . . may approve . . . to provide the most mutually beneficial and attractive broadcasting inventory possible for the benefit of [C-USA] and its members.”

40. Under Bylaw § 3.05(j), Marshall University agrees to:

participate in all men’s and women’s regular season and championship competition, all post-season NCAA Championships, Tournaments, the Men’s Basketball National Invitational Tournament, subject to the provisions of Section 3.05(m), any bowl games for which the member might be selected, retain competition in a sport to protect [C-USA’s] automatic qualification to NCAA championship in that sport and participate in any other post-season competition approved by the Board of Directors in any sport in which the member sponsors a team.

41. Under Bylaw § 3.05(m) Marshall University agrees to:

fully perform and comply with all of its obligations and duties in accordance with the terms of each and every agreement duly approved by the majority of [C-USA], acting through the Board of Directors or any [C-USA] advisory bodies the Board may appoint, and executed at their direction that requires the Conference champion, co-champion, or second, third, or fourth place team in any sport to participate in a specific preseason or postseason athletic contest or tournament.

42. Under Bylaw § 3.05(n), Marshall University agrees to

fully perform and comply with all of its obligations and duties in accordance with the terms of each and every agreement duly approved by the majority of the Conference, acting through the Board of Directors or any Conference advisory bodies the Board may appoint, and executed at their direction that requires each member school to allow a certain number of athletic contests or games in any or all sports in which such member fields a team (preseason, season, or postseason) to be selected for distribution, transmittal, exhibition, licensure, sub licensure, promotion, publicity, and performance, in whole or in part and as part of any derivative work or compilation, throughout the universe by any and all means, uses, and media now known or hereafter

developed (including internet distribution, video streaming, electronic re-creation of games, distribution of still pictures, and similar methods of distribution), in perpetuity or otherwise, with or without limitation on the number of exhibitions (cumulatively, the “broadcast rights”).

43. Under Bylaw § 3.05(o), Marshall University agrees to:

fully perform and comply with all of its obligations and duties in accordance with any resolution duly adopted by the majority of the Board of Directors establishing the number of Conference games per season (and the manner of selection of Conference opponents) that must be played by the team(s) fielded by such member in any or all sports in which the member fields a team.

44. Under Bylaw § 3.05(p), Marshall University agrees that “[i]t will not withdraw, attempt to withdraw, or renege upon any legally binding commitment of its [president].”

45. Under Bylaw § 3.05(r), Marshall University authorizes:

the explicit or implicit transfer of all its broadcast rights in and will abide by the provisions of any agreement authorized and approved by a majority of the [C-USA] Board of Directors that:

- (i) Assigns, licenses, or otherwise allocates or transfers broadcast rights and revenues, including rights and revenues that may be owned or controlled by individual members of [C-USA], for inter-conference sports competitions.
- (ii) Entitles [C-USA] to receive payments as a result of or in connection with broadcasts of inter-conference sports competitions;
- (iii) Obligates [C-USA] to make payments as a result of or in connection with broadcasts of inter-conference sports competitions; and/or
- (iv) Obligates [C-USA] members to participate in inter-conference sports competitions (in which [C-USA] members have otherwise agreed to participate) pursuant to terms established by such agreement concerning broadcast rights, revenues, and payments.

46. Under Bylaw § 3.05(s), Marshall University agrees that

[i]t will not grant, transfer, license, assign, or otherwise convey (jointly “convey” or “conveyance”) any broadcast rights: (i) in conflict with the provisions of any agreement referenced in subparagraph (n) above, (ii) that [C-USA] has conveyed in any agreement referenced in subparagraph (n) above, or (iii) for any time period subsequent to the expiration of any

agreement referenced in subparagraph (n) above that is in place at the time of such member's conveyance of rights.

47. Bylaws § 3.06 states as follows:

Withdrawal From Conference. No member of [C-USA] may withdraw from [C-USA] except pursuant to and as allowed by this Section 3.06.

No member may withdraw from [C-USA] without providing [C-USA] prior written notice. Any and all withdrawals from [C-USA] shall be effective on July 1 of the year specified in the notice of withdrawal; provided, however, that the withdrawing member must afford [C-USA] notice at least fourteen months prior to the effective date of the withdrawal (i.e. no later than May 1 of the prior year). . . . In the event that a member attempts to leave [C-USA] without fully complying with the notice of withdrawal requirements set forth above, [C-USA] shall be entitled to equitable relief without having to prove actual injury, irreparable or otherwise, including, but not limited to, an injunction requiring the member to comply fully with the notice of withdrawal requirements set forth above, to fulfill all of its obligations as a [C-USA] member, and to remain in [C-USA] until the earliest permissible date upon which the member could have, under the circumstances, withdrawn with full and proper prior notice as required above. The members agree that any attempted withdrawal of a member without full compliance with the prior notice requirements set forth above would cause a disruption in the scheduling of competitions among the members for which there is no adequate remedy at law which would cause harm that would not in any respect be compensated by payment of a withdrawal fee, and for which, therefore, equitable relief is appropriate. . . (emphasis added).

48. Under Bylaw § 11.02, Marshall University agrees to “indemnify, to the full extent

authorized by. . . applicable law, [C-USA] . . . for any acts . . . arising out of the future conduct of business of the member after leaving [C-USA]”

49. Under Bylaw § 14.01, Marshall University agrees that “[a]ll disputes,

controversies, claims, demands, and differences” between C-USA “and any one or more members”

of C-USA “shall be resolved by final and binding arbitration in Dallas, Texas . . . before a panel

of three arbitrators, at least two of which shall be licensed attorneys, pursuant to the Rules of the

American Arbitration Association in effect at the time the dispute arises.”

50. After entering into the New Member Agreement and the Bylaws, C-USA, Marshall University, and Marshall BOG began performing their mutual obligations under those agreements.

D. Broadcast Rights, Bowl, and Sponsorship Agreements

51. After Marshall University became a C-USA member, C-USA entered into a series of broadcast rights agreements with multimedia sports broadcasting companies to broadcast competitions involving C-USA members.

1. The CBS Agreement

52. On or about March 14, 2018, C-USA entered into a “BROADCAST RIGHTS AGREEMENT” (the “CBS Agreement”) with CSTV Networks, Inc., d/b/a CBS Sports Network (“CBSSN”).

53. The CBS Agreement specifically identifies Marshall University as a C-USA member.

54. Under the CBS Agreement, C-USA grants CBSSN telecast and distribution rights for certain C-USA regular season, championship tournament, and championship football, basketball, and Olympics sports events.

55. Under the CBS Agreement, CBSSN agrees to pay C-USA rights fees in exchange for telecast and distribution rights.

56. The CBS Agreement states that C-USA owns intellectual property rights, including exclusive copyrights, in telecasts for events covered by the CBS Agreement.

57. Under the CBS Agreement, if any C-USA member leaves C-USA, C-USA and CBSSN can negotiate adjustments to the agreement and CBSSN has the right to reduce the rights fees unilaterally under certain circumstances.

58. With Marshall BOG's authority and supervision, Marshall University voted to approve the CBS Agreement.

59. After C-USA and CBSSN entered the CBS Agreement, portions of the revenues CBS paid to C-USA under the CBS Agreement were distributed to Marshall University.

2. The ESPN Agreement

60. On or about July 19, 2018, C-USA entered into an "AGREEMENT" (the "ESPN Agreement") with ESPN, Inc. ("ESPN").

61. The ESPN Agreement states that C-USA has the right to license telecasts of certain C-USA sporting events.

62. Under the ESPN Agreement, ESPN agrees to pay C-USA rights fees in exchange for telecast and distribution rights.

63. The ESPN Agreement states that C-USA and ESPN co-own intellectual property rights, including exclusive copyrights, in telecasts for events covered by the ESPN Agreement.

64. Under the ESPN Agreement, if any C-USA member leaves C-USA, C-USA and ESPN can negotiate adjustments to the agreement, and ESPN has the right to reduce the rights fees unilaterally under certain circumstances.

65. With Marshall BOG's authority and supervision, Marshall University voted to approve the ESPN Agreement.

66. After C-USA and ESPN entered the ESPN Agreement, portions of the revenues ESPN paid to C-USA under the ESPN Agreement were distributed to Marshall University.

3. The Stadium Agreement

67. On or about February 21, 2018, C-USA entered into a "MEDIA RIGHTS AGREEMENT" (the "Stadium Agreement") with 120 Sports, LLC d/b/a Stadium ("Stadium").

68. The Stadium Agreement specifically identifies Marshall University as a C-USA member.
69. The Stadium Agreement states that C-USA has the right to license telecasts of certain C-USA sporting events.
70. Under the Stadium Agreement, Stadium agrees to pay C-USA rights fees in exchange for telecast and distribution rights.
71. The Stadium Agreement states that C-USA owns intellectual property rights, including exclusive copyrights, in telecasts for events covered by the Stadium Agreement.
72. With Marshall BOG's authority and supervision, Marshall University voted to approve the Stadium Agreement.
73. After C-USA and Stadium entered the Stadium Agreement, portions of the revenues Stadium paid to C-USA under the Stadium Agreement were distributed to Marshall University.

4. Bowl Participation Agreement

74. On May 1, 2020, C-USA entered into a "BOWL PARTICIPATION AGREEMENT" (the "Bowl Participation Agreement") with ESPN Productions, Inc. ("EPI").
75. The Bowl Participation Agreement's preamble describes C-USA as "a collegiate athletic conference currently comprised of fourteen member institutions," and it references an "Exhibit A" specifically identifying Marshall University as a member institution.
76. Under Bowl Participation Agreement Art. 3, C-USA agrees that its member institutions will participate in various college football bowl games.
77. Under Bowl Participation Agreement Art. 4, EPI agrees to pay C-USA a "Conference Guarantee" for C-USA member institutions participating in bowl games.

78. Bowl Participation Agreement Art. 17 states in part:

If the composition of the C-USA Football Members listed in Exhibit A increases, decreases or changes in composition for any reason during the Term, both parties shall undertake a good faith renegotiation of this Agreement (which may include, but is not limited to, a reduction in the Conference Guarantee set forth herein).

79. With Marshall BOG's authority and supervision, Marshall University voted to approve the Bowl Participation Agreement.

80. After C-USA and EPI entered the Bowl Participation Agreement, portions of the revenues EPI paid to C-USA under the Bowl Participation Agreement were distributed to Marshall University.

81. C-USA is also a party to other agreements to participate in bowl games with terms substantially similar to the Bowl Participation Agreement.

5. Sponsorship Agreements

82. In addition to C-USA's broadcast rights agreements and the Bowl Participation Agreement, C-USA has entered into sponsorship agreements valued in whole or in part by Marshall University being a C-USA member.

83. For example, on or about February 28, 2020, C-USA entered into a "CORPORATE SPONSORSHIP AGREEMENT" (the "Sponsorship Agreement") with the United States Air Force Reserve (the "USAFR").

84. Under Sponsorship Agreement § 1, C-USA gives USAFR "certain sponsorship, marketing and media opportunities . . . as detailed herein and in Appendix A attached hereto."

85. Under Sponsorship Agreement § 3, USAFR agrees to pay C-USA an amount annually in exchange for sponsorship rights.

86. Sponsorship Agreement Appendix A includes a section covering "LOCAL MARKET PROMOTION" rights among the sponsorship rights to which USAFR is entitled.

87. The Local Market Promotions include paid media, earned media, assets based on member schools, host sites, community marketing, and regional coverage.

88. After C-USA and USAFR entered the Sponsorship Agreement, portions of the revenues USAFR paid to C-USA under the Sponsorship were distributed to Marshall University.

E. Marshall University Announces its Intent to Withdraw Early from C-USA and Compete as a Sun Belt Conference Member

89. On November 1, 2021, Marshall University held a press conference announcing it would join the SBC and the SBC began publicizing Marshall University's future membership.

90. On November 1, 2021, Marshall University served C-USA with a purported withdrawal notice (the "Notice").

91. Under Bylaw § 3.06, Marshall University's withdrawal could be effective no earlier than July 1, 2023, that is, "July 1 of the year specified in the notice of withdrawal" so long as that date is "at least fourteen months prior to the effective date of the withdrawal."

92. The Notice states that it is effective "no later than June 30, 2023." As a result, Marshall implicitly admitted that the earliest it could leave C-USA under the Bylaws was June 30, 2023.

93. On December 22, 2021, C-USA's Director of Legal Affairs, Scott Hays, sent Marshall University a letter acknowledging the Notice and setting forth sections of the Bylaws controlling withdrawal, including the full text of Bylaws § 3.06.

94. Despite Mr. Hays's letter, on January 12, 2022, Marshall University sent C-USA a letter stating that Marshall University would cease being a C-USA member on July 1, 2022, one full year earlier than permitted under the Bylaws.

95. On January 20, 2022, C-USA's counsel sent Marshall University a letter specifically stating that early withdrawal "is expressly prohibited by [C-USA's] Bylaws that

Marshall University agreed to abide by when it joined Conference USA” and “would adversely impact [C-USA’s] revenues.”

96. On January 25, 2022, Marshall University responded to C-USA’s January 20, 2022 letter by reaffirming its intent to withdraw early from C-USA.

97. On February 11, 2022, C-USA released its 2022 football schedule to conference members, and the schedule included games for Marshall University.

98. After C-USA released its football schedule, Marshall University released a public statement reaffirming its intent to withdraw early from C-USA in violation of its obligations under the Bylaws.

99. Marshall University also sent C-USA a letter reaffirming its intent to withdraw early from C-USA and requesting that it be taken off C-USA’s football schedule.

100. Based on this private correspondence and public statements, it is clear that Marshall University intends to withdraw early from C-USA and begin competing as a member of the SBC.

101. Marshall University’s athletics website states that Marshall University intends to compete in all its varsity sports programs this fall, including games that are subject to the CBS Agreement, ESPN Agreement, and Stadium Agreement.

102. It is reasonably certain that some of those games will be televised.

103. It is reasonably certain that, in order for these games and others to be televised, Marshall BOG will assign or transfer its broadcast rights to the SBC for use under the SBC’s broadcast rights agreements.

E. Marshall University’s Early Withdrawal Violates C-USA’s Legal and Contractual Rights

104. Marshall University’s early withdrawal from C-USA violates C-USA’s legal and contractual rights.

1. Early Withdrawal Gives Rise to a Justiciable Controversy

105. Based on the parties' private correspondence and public statements, it is clear that C-USA and Marshall University disagree as to whether Marshall University is allowed to leave C-USA before July 1, 2023.

106. The parties' disagreement is a real and substantial controversy involving a genuine conflict of tangible interests, not merely a theoretical dispute.

107. Under the CBS Agreement, Marshall University's early withdrawal may permit CBSSN to renegotiate rights fees and CBSSN could contractually reduce those rights fees if it chose to take such action.

108. Under the ESPN Agreement, Marshall University's early withdrawal may permit ESPN to renegotiate rights fees and ESPN could contractually reduce those rights fees if it chose to take such action.

109. Marshall University withdrawing early from C-USA and competing as an SBC member in televised events will violate C-USA's exclusive rights under 17 U.S.C. § 106, which Marshall University specifically affirmed in approving the CBS Agreement, ESPN Agreement, and Stadium Agreement.

110. Under the Bowl Participation Agreement and similar agreements, Marshall University's early withdrawal could cause parties to those agreements to renegotiate those agreements.

111. Under the Sponsorship Agreement—and other agreements like it—Marshall University's early withdrawal diminishes the Local Market Promotion rights afforded to sponsors and could prevent C-USA from meeting its contractual obligations.

112. The conflict therefore constitutes a justiciable controversy as to their rights and status sufficient to support a claim for declaratory judgment.

2. Early Withdrawal Breaches Marshall University's Contractual Obligations

113. Early withdrawal violates Marshall University's obligation under the New Member Agreement to "be governed by [C-USA's] Bylaws." *See* New Member Agreement at § 4.

114. Early withdrawal violates Marshall University's obligation under the New Member Agreement to "fully and completely . . . abide by and comply with all provisions and conditions of the Bylaws" *See* New Member Agreement at § 4.

115. Early withdrawal violates Marshall University's obligation under Bylaw § 3.05(a) to "administer its athletic program in accordance with . . . [C-USA's] Bylaws."

116. Early withdrawal violates Marshall University's obligation under Bylaw § 3.05(f) to "conduct its intercollegiate athletic program in keeping with the highest recognized standards and in a manner, which will enhance [C-USA's] reputation for integrity."

117. Early withdrawal violates Marshall University's obligation under Bylaw § 3.05(g) to "cooperate in the spirit of mutual trust with the other members of [C-USA] in supporting and promoting the objectives of [C-USA]."

118. Early withdrawal violates Marshall University's obligation under Bylaw § 3.05(i) to "participate in such [C-USA] television and other broadcasting packages as [C-USA] . . . may approve"

119. Early withdrawal violates Marshall University's obligation under Bylaw § 3.05(j) to

participate in all men's and women's regular season and championship competition, all post-season NCAA Championships, Tournaments, the Men's Basketball National Invitational Tournament . . . any bowl games for which the member might be selected, retain competition in a sport to protect

[C-USA's] automatic qualification to NCAA championship in that sport and participate in any other post-season competition approved by the Board of Directors in any sport in which the member sponsors a team.

120. Early withdrawal violates Marshall University's obligation under Bylaw § 3.05(m)

fully perform and comply with all of its obligations and duties in accordance with the terms of each and every agreement duly approved by the majority of [C-USA], acting through the Board of Directors or any [C-USA] advisory bodies the Board may appoint, and executed at their direction that requires the Conference champion, co-champion, or second, third, or fourth place team in any sport to participate in a specific preseason or postseason athletic contest or tournament.

121. Early withdrawal violates Marshall University's obligation under Bylaw § 3.05(n)

fully perform and comply with all of its obligations and duties in accordance with the terms of each and every agreement duly approved by the majority of [C-USA], acting through the Board of Directors or [C-USA] advisory bodies the Board may appoint, and executed at their direction that requires each member school to allow a certain number of athletic contests or games in any or all sports in which such member fields a team (preseason, season, or postseason) to be selected for distribution, transmittal, exhibition, licensure, sub licensure, promotion, publicity, and performance, in whole or in part and as part of any derivative work or compilation, throughout the universe by any and all means, uses, and media now known or hereafter developed (including internet distribution, video streaming, electronic recreation of games, distribution of still pictures, and similar methods of distribution), in perpetuity or otherwise, with or without limitation on the number of exhibitions (cumulatively, the "broadcast rights").

122. Early withdrawal violates Marshall University's obligation under Bylaw § 3.05(o)

fully perform and comply with all of its obligations and duties in accordance with any resolution duly adopted by the majority of the Board of Directors establishing the number of Conference games per season (and the manner of selection of Conference opponents) that must be played by the team(s) fielded by such member in any or all sports in which the member fields a team.

123. Early withdrawal violates Marshall University's obligation under Bylaw § 3.05(p) to "not withdraw, attempt to withdraw, or renege upon any legally binding commitment of its [president]."

124. Marshall University withdrawing early, transferring its broadcast rights to the SBC, and competing as a member of the SBC violates its obligations under Bylaw § 3.05(s) to

not grant, transfer, license, assign, or otherwise convey (jointly "convey" or "conveyance") any broadcast rights: (i) in conflict with the provisions of any agreement referenced in subparagraph (n) above, (ii) that the Conference has conveyed in any agreement referenced in subparagraph (n) above, or (iii) for any time period subsequent to the expiration of any agreement referenced in subparagraph (n) above that is in place at the time of such member's conveyance of rights.

125. Under Bylaw § 3.06, Marshall University agreed that, if it attempted to leave C-USA

without fully complying with the notice of withdrawal requirements set forth [in § 3.06, C-USA] shall be entitled to equitable relief without having to prove actual injury, irreparable or otherwise, including, but not limited to, an injunction requiring [Marshall BOG] to comply fully with the notice of withdrawal requirements set forth above, to fulfill all of its obligations as a [C-USA] member, and to remain in [C-USA] until the earliest permissible date upon which [Marshall University] could have, under the circumstances, withdrawn with full and proper prior notice as required above. [Marshall University] agree[s] that any attempted withdrawal of [Marshall University] without full compliance with the prior notice requirements set forth above would cause a disruption in the scheduling of competitions among the members for which there is no adequate remedy at law which would cause harm that would not in any respect be compensated by payment of a withdrawal fee, and for which, therefore, equitable relief is appropriate.

126. In addition, Marshall University's early withdrawal injures C-USA by impairing its broadcast rights agreements, the Bowl Participation Agreement and similar agreements, and sponsorship agreements.

127. Under the CBS Agreement, Marshall University's early withdrawal may permit

CBSSN to renegotiate rights fees and CBSSN could contractually reduce those rights fees if it chose to take such action.

128. Under the ESPN Agreement, Marshall University's early withdrawal may permit

ESPN to renegotiate rights fees and ESPN could contractually reduce those rights fees if it chose to take such action.

129. Under the Bowl Participation Agreement and similar agreements, Marshall

University's early withdrawal could cause parties to those agreements to renegotiate those agreements.

130. Under the Sponsorship Agreement—and other agreements like it—Marshall

University's early withdrawal diminishes the Local Market Promotion rights afforded to sponsors and could prevent C-USA from meeting its contractual obligations.

3. Early Withdrawal Infringes C-USA's Copyrights, which Marshall University has Affirmed Repeatedly

131. Under Bylaw § 3.05(r), Marshall University authorized

the explicit or implicit transfer of all its broadcast rights in and will abide by the provisions of any agreement authorized and approved by a majority of the [C-USA] Board of Directors that:

- (v) Assigns, licenses, or otherwise allocates or transfers broadcast rights and revenues, including rights and revenues that may be owned or controlled by individual members of [C-USA], for inter-conference sports competitions.
- (vi) Entitles [C-USA] to receive payments as a result of or in connection with broadcasts of inter-conference sports competitions;
- (vii) Obligates [C-USA] to make payments as a result of or in connection with broadcasts of inter-conference sports competitions; and/or
- (viii) Obligates [C-USA] members to participate in inter-conference sports competitions (in which [C-USA] members have otherwise

agreed to participate) pursuant to terms established by such agreement concerning broadcast rights, revenues, and payments.

132. Marshall University has repeatedly affirmed that C-USA has copyrights in certain games in which Marshall University athletics participates.

133. Marshall University approved the CBS Agreement, which affirms that C-USA owns exclusive copyrights in telecasts of events covered by the CBS Agreement.

134. Marshall University approved the ESPN Agreement, which affirms that C-USA and ESPN co-own exclusive copyrights in telecasts of events covered by the ESPN Agreement.

135. Marshall University approved the Stadium Agreement, which affirms that C-USA and Stadium co-own exclusive copyrights in telecasts of events covered by the Stadium Agreement.

136. Marshall University withdrawing early, assigning or transferring its broadcast rights to the SBC, and competing as a member of the SBC under the SBC's broadcast rights agreements will willfully infringe C-USA's copyrights in all games controlled by the CBS Agreement, ESPN Agreement, and Stadium Agreement.

COUNT I

Declaratory Judgment Against All Respondents

And Interim Relief

137. C-USA incorporates the preceding paragraphs as if set forth fully herein.

138. Under Bylaw § 3.06, Marshall University may not “withdraw from [C-USA] without providing [C-USA] prior written notice” that is “effective on July 1 of the year specified in the notice of withdrawal,” so long as that date is “at least fourteen months prior to the effective date of the withdrawal (i.e. no later than May 1 of the prior year).”

139. On no fewer than three occasions, Marshall University has stated its intention to withdraw from C-USA effective July 1, 2022, fewer than 14 months after Marshall University served the Notice.

140. Bylaw § 3.06 states that early withdrawal entitles C-USA to:

an injunction requiring [Marshall University] to comply fully with the notice of withdrawal requirements . . . to fulfill all of its obligations as a [C-USA] member, and to remain in [C-USA] until the earliest permissible date upon which [Marshall University] could have, under the circumstances, withdrawn with full and proper notice as required

141. Despite this, Marshall University has repeatedly rejected C-USA's assertion that the Bylaws entitle C-USA to an injunction requiring Marshall University to comply fully with the Bylaws' withdrawal requirements, fulfill its obligations to C-USA, and remain in C-USA until July 1, 2023.

142. These facts show that C-USA and Marshall University are engaged in a real and substantial controversy.

143. Under the CBS Agreement, Marshall University's early withdrawal may permit CBSSN to renegotiate rights fees and CBSSN could contractually reduce those rights fees if it chose to take such action.

144. Under the ESPN Agreement, Marshall University's early withdrawal may permit ESPN to renegotiate rights fees and ESPN could contractually reduce those rights fees if it chose to take such action.

145. Marshall University withdrawing early from C-USA and competing as an SBC member in televised events will violate C-USA's exclusive rights under 17 U.S.C. § 106, which Marshall University specifically affirmed in approving the CBS Agreement, ESPN Agreement, and Stadium Agreement.

146. Under the Bowl Participation Agreement and similar agreements, Marshall University's early withdrawal could cause parties to those agreements to renegotiate those agreements.

147. Under the Sponsorship Agreement—and other agreements like it—Marshall University's early withdrawal diminishes the Local Market Promotion rights afforded to sponsors and could prevent C-USA from meeting its contractual obligations.

148. These facts show that the parties' controversy involves a genuine conflict of tangible interests and not merely a theoretical dispute.

149. The conflict therefore constitutes a justiciable controversy as to their rights and status sufficient to support a claim for declaratory judgment.

150. In all respects relating to this controversy, Marshall University has acted under the authority and supervision of Marshall BOG, including the Individual Respondents.

151. C-USA is therefore entitled to an order declaring its right to require Respondents to comply fully with the Bylaws' withdrawal requirements, fulfill its obligations to C-USA, and remain in C-USA until July 1, 2023.

WHEREFORE, Conference USA respectfully requests that Respondents be required to appear and answer and a judgment be entered in Conference USA's favor against Respondents as follows:

- a. Interim relief under AAA Commercial Arbitration Rule R-37 in the form an order enjoining Respondents from withdrawing Marshall University from Conference USA until July 1, 2023.

- b. An order declaring its right to require Respondents to comply fully with the Bylaws' withdrawal requirements, fulfill Marshall University's obligations to C-USA, and keep Marshall University in C-USA until July 1, 2023;
- c. Expenses and attorney's fees under Tex. Civ. Prac. & Rem. Code § 37.009;
- d. All additional relief that an arbitrator or arbitrators deems just and proper.

COUNT II

Breach of Contract Against All Respondents

Damages and Permanent Injunctive Relief

152. C-USA incorporates the preceding paragraphs as if set forth fully herein.

153. The New Member Agreement is a valid and enforceable contract.

154. Under New Member Agreement § 4, Marshall University "agrees fully and completely to abide by and comply with all provisions and conditions of the Bylaws."

155. C-USA has performed all its obligations under the New Member Agreement and the Bylaws.

156. Marshall University has breached its obligations under the New Member Agreement and the Bylaws as set forth above.

157. In all relevant respects, Marshall University has acted under the authority and supervision of Marshall BOG, including the Individual Respondents.

158. Marshall University's breaches have damaged C-USA in an amount to be determined at a hearing because, among other reasons, C-USA may be forced to renegotiate its broadcast rights agreements, the Bowl Participation Agreement and similar agreements, and Sponsorship Agreement and similar agreements, have revenues under those agreements be reduced unilaterally, or have those agreements terminated.

159. In addition, Marshall University withdrawing early from C-USA and competing as

an SBC member is reasonably certain to cause irreparable harm to C-USA.

160. Marshall University withdrawing early from C-USA and competing as an SBC member is reasonably certain to injure C-USA in a manner and degree for which C-USA has no adequate remedy at law.

161. Marshall University has agreed that its early withdrawal entitles C-USA

to equitable relief without having to prove actual injury, irreparable or otherwise, including, but not limited to, an injunction requiring [Marshall BOG] to comply fully with the notice of withdrawal requirements set forth above, to fulfill all of its obligations as a [C-USA] member, and to remain in [C-USA] until the earliest permissible date upon which [Marshall BOG] could have, under the circumstances, withdrawn with full and proper prior notice as required above.

162. C-USA is therefore entitled to an order enjoining Respondents from breaching Marshall University's obligations under the New Member Agreement and the Bylaws.

WHEREFORE, Conference USA respectfully requests that Respondents be required to appear and answer under and that a judgment be entered in Conference USA's favor against Respondents as follows:

- a. An order permanently enjoining Respondents from withdrawing Marshall University from Conference USA until July 1, 2023;
- a. Compensatory and consequential and special damages in an amount to be determined at a final hearing;
- b. Expenses and attorney's fees under Tex. Civ. Prac. & Rem. Code § 38.001;
- c. Prejudgment interest at the maximum rate permitted under law;
- d. Post-judgment interest at the maximum rate permitted under law; and
- e. All additional relief that an arbitrator or arbitrators deems just and proper.

Copyright Infringement Against Individual Respondents

Damages and Injunctive Relief

163. C-USA incorporates the preceding paragraphs as if set forth fully herein.

164. Under Bylaw § 3.05(r), Marshall University “authorizes the explicit or implicit transfer of all of its broadcast rights in and will abide by” the CBS Agreement, the ESPN Agreement, and the Stadium Agreement.

165. C-USA owns copyrights to broadcasts of games covered by the CBS Agreement, the ESPN Agreement, and the Stadium Agreement.

166. In approving the CBS Agreement, the ESPN Agreement, and the Stadium Agreement, Marshall University affirmed C-USA’s copyright ownership.

167. The broadcasts subject to the CBS Agreement, the ESPN Agreement, and the Stadium Agreement are wholly original and copyrightable subject matter under the laws of the United States.

168. C-USA has complied in all respects with the applicable provisions of the Copyright Act of 1976, 17 U.S.C. § 101, *et seq.*, and all other laws concerning federal copyrights.

169. Marshall University withdrawing early from C-USA and competing as an SBC member in televised events will directly, vicariously, and contributorily infringe C-USA’s copyrights in broadcasts subject to the CBS Agreement, the ESPN Agreement, and the Stadium Agreement.

170. Marshall University withdrawing early from C-USA and competing as an SBC member in televised events will infringe C-USA’s copyrights willfully.

171. Marshall University withdrawing early from C-USA and competing as an SBC member in televised events will violate C-USA's exclusive rights under 17 U.S.C. § 106.

172. In all relevant respects, Marshall University has acted under the authority and supervision the Individual Respondents.

173. Any actual violation of C-USA's copyrights will cause C-USA to incur damages.

174. C-USA is therefore entitled to an award of damages compensating C-USA for Marshall University's willful infringement under the authority and supervision of the Individual Respondents.

175. In addition, Marshall University withdrawing early from C-USA and competing as an SBC member in televised events is reasonably certain to cause irreparable harm to C-USA.

176. Marshall University withdrawing early from C-USA and competing as an SBC member in televised events is reasonably certain to injure C-USA in a manner and degree for which C-USA has no adequate remedy at law.

177. Marshall University has agreed that its early withdrawal entitles C-USA

to equitable relief without having to prove actual injury, irreparable or otherwise, including, but not limited to, an injunction requiring [Marshall BOG] to comply fully with the notice of withdrawal requirements set forth above, to fulfill all of its obligations as a [C-USA] member, and to remain in [C-USA] until the earliest permissible date upon which [Marshall BOG] could have, under the circumstances, withdrawn with full and proper prior notice as required above.

178. C-USA is therefore entitled to an order enjoining Marshall University's willful infringement under the authority and supervision of the Individual Respondents.

WHEREFORE, Conference USA respectfully requests that the Individual Respondents be required to appear and answer and that a judgment be entered in Conference USA's favor against Individual Respondents as follows:

- a. Interim relief under AAA Commercial Arbitration Rule R-37 in the form an order enjoining Individual Respondents from infringing prospectively all copyrights held by Conference USA, including those copyrights in broadcasts under the CBS Agreement, ESPN Agreement, and Stadium Agreement as set forth above;
- b. Permanent relief in the form of an order enjoining Individual Respondents from infringing all copyrights held by Conference USA, including those copyrights in broadcasts under the CBS Agreement, ESPN Agreement, and Stadium Agreement as set forth above;
- c. Compensatory and consequential and special damages in an amount to be determined at a final hearing;
- d. Prejudgment interest at the maximum rate permitted under law;
- e. Post-judgment interest at the maximum rate permitted under law; and
- f. All additional relief that an arbitrator or arbitrators deems just and proper.

Dated: February 15, 2022

Respectfully submitted,

POLSINELLI PC

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Exhibit 1

CONFERENCE USA BYLAWS

ARTICLE I

NAME AND PURPOSE

1.01 **Name.** The name of the Conference shall be Conference USA (the "Conference").

1.02 **Purpose.** The purpose of the Conference is to provide a structure which will better enable the Conference's members to enhance, publicize, fund (through payments or distributions from the Conference, or otherwise), administer, and regulate their respective varsity intercollegiate athletic programs within the context of higher education and the National Collegiate Athletic Association (the "NCAA"), and to better provide student-athletes attending member universities with quality educational and athletic opportunities. In furtherance of such purpose, it is intended that the Conference will:

- (a) Provide member institutions with the opportunity to participate in a major athletic conference;
- (b) Provide member institutions with a voice in NCAA affairs and provide the opportunity for member institutions to play a significant role in intercollegiate athletics;
- (c) Enhance the level of competition and visibility of men's and women's athletics;
- (d) Provide a consortium for member institutions to exchange information and foster interchange to enhance academic, fiscal and athletic policies;
- (e) Provide championships in Conference sports and to enhance the quality of member institutions' athletic programs;
- (f) Provide a compliance program to assist member institutions in complying with NCAA, Conference and institution rules and regulations.

As a result of the foregoing, it is expected that participation in the Conference will enhance the national stature of each member institution.

1.03 **Not-For-Profit Organization.** The Conference is formed exclusively for charitable or educational purposes and to foster national or international amateur sports competition, within the meaning of Section 501 of the Internal Revenue Code of 1986, as amended, or the corresponding provisions of any future United States Internal Revenue law (the "Code") and shall be organized and operated exclusively for and in furtherance of such purposes. Consistent with the purposes for which the Conference is organized:

- (a) No part of the net earnings or other assets of the Conference shall inure to the benefit of, or be distributable to, any director, officer, contributor or other private person, except that the Conference shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in accordance with the purposes set forth above.
- (b) The Conference shall not, as a substantial part of its activities, carry on propaganda, or otherwise attempt to influence local, state or federal legislation, and the Conference shall not participate in, or intervene in (including the publishing or distribution of statements) any political campaign on behalf of (or in opposition to) any candidate for public office, except as authorized under the Code.
- (c) Notwithstanding any other provisions of these Bylaws, the Conference shall not carry on any activities not permitted to be carried on (i) by an organization exempt from federal income tax under Section 501 (c) (3) of the Code or (ii) by an organization contributions to which are deductible under Sections 170 (c) (1) or (2) of the Code.

1.04 **Corporate Dissolution.** In the event of the dissolution of the Conference, whether voluntary or involuntary, no director, officer, contributor or any other private person shall be entitled to any distribution or division of its remaining property or its proceeds, and, after payment or provision for the payment of all the debts and obligations of the Conference (including obligations of the Conference to the members under any formula for allocation of Conference revenues adopted pursuant to Section 5.02(b)(ix) of these Bylaws), the balance of all money or other property received by the Conference from any source including the distribution of tournament television or other revenues (its "net assets") shall be distributed by the Conference equally among its then members, for their respective use exclusively for charitable or educational purposes, or, if not distributed pursuant to the preceding clause, to foster national or international amateur sports competition, within the meaning of Section 501 (c) (3) of the Code, provided that any such member shall then be an organization described in Section 501 (c) (3), 170 (c) (1) or 170 (c) (2) of the Code.

In the event that less than all of the Conference's members shall be entitled to receive a distribution of the Conference's net assets upon its dissolution, then the share of such member or members not entitled to a distribution shall be equally divided among the remaining member or members and added to its or their share and used by the recipient member or members exclusively for the purposes and uses set forth above. In the event that none of the Conference's members are entitled to receive a distribution from the Conference upon its

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dissolution, its net assets shall be disposed of exclusively for the purposes of the Conference in such manner, or to such organization or organizations organized and operated exclusively for charitable or educational purposes, or to foster national or international amateur sports competition, as shall at the time qualify as an organization described in Section 501 (c) (3), 170 (c) (1) or 170 (c) (2) of the Code, as the Board of Directors shall determine. Any assets not so disposed of shall be disposed of by the circuit court, or its judicial equivalent, of the county in which the principal office of the Conference is then located, exclusively for such purposes or to such organization or organizations as said court shall determine, which are organized and operated exclusively for such purpose.

ARTICLE II

CORPORATE OFFICES

The principal corporate office of the Conference shall be located in or near Dallas, Texas, or in such other city and state as the Board of Directors shall determine pursuant to Section 5.02(b)(x) of these Bylaws. The Conference shall have and continuously maintain in the State of Texas a registered office, and a registered agent whose office is identical with such registered office.

ARTICLE III

MEMBERSHIP

3.01 **Eligibility.** Colleges and universities described in Section 170 (b) (1) (A) (ii) of the Code that are located within the United States of America and are classified or have applied for classification as a NCAA Football Bowl Subdivision member, shall be eligible to be members of the Conference.

3.02 **Members.** The members of the Conference, hereinafter referred to as "Members," are University of North Carolina at Charlotte, Florida Atlantic University, Florida International University, Louisiana Tech University, Marshall University, Middle Tennessee State University, University of North Texas, Old Dominion University, Rice University, University of Southern Mississippi, University of Alabama at Birmingham, University of Texas at El Paso, University of Texas at San Antonio, and Western Kentucky University.

Admission of Additional Members. Colleges and universities meeting the requirements of Section 3.01 may apply for membership in the Conference. An application for membership shall be submitted to the Commissioner and, if the Commissioner deems the application worthy of consideration, it will be reviewed by the Board of Directors and the Joint Group. The Board of Directors shall determine whether the purpose of the Conference would be served by the admission of the applicant and whether the applicant may reasonably be expected to perform its financial obligations under Section 3.04 and, based on the prior conduct of its athletic programs, its covenants under Section 3.05. An applicant may be elected to membership in the Conference by a three-fourths (3/4) vote of the full membership of the Board of Directors on the application for membership. Members of the Board of Directors shall not be permitted to vote on the admission of additional members if the institution which they represent has notified the Conference of its intent to withdraw under 3.06. The Conference and its members shall be bound by the terms of any agreement executed between the Conference and a member (or prospective member) of the Conference concerning the terms and conditions of a member's admission into the Conference, which contract must be approved by a three-fourths (3/4) vote of the full membership of the Board of Directors. Any proposed change to the Bylaws that would alter the terms of any such agreement must be approved by a majority of the members of the Conference present and entitled under the Act and these Bylaws to vote on the proposed amendment, which majority must include the member party to the agreement that would be altered thereby.

3.03 **Initiation Fee.** Each member of the Conference shall pay an initiation fee to the Conference in an amount to be determined by the Board of Directors.

3.04 **Contributions.** The members of the Conference shall provide for the financial support of the Conference, the Conference office and Conference staff. For that purpose, the Board of Directors shall have the power to assess members for such amounts that may be necessary for such support and to fix the time for payment of such assessments.

3.05 **Member Covenants.** By accepting membership in the Conference, each member covenants and agrees that:

- (a) It will administer its athletic program in accordance with NCAA and Conference legislation, the Articles of Incorporation and Bylaws (including Addenda thereto) and Administrative Regulations of the Conference;
- (b) It will afford full cooperation to the Conference's compliance program to make it a joint cooperative effort between the Conference and each member;
- (c) It will require compliance with and support of Conference legislation;

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- (d) Its President/Chancellor, which, for purposes of these Bylaws, shall be defined as the "Chief Executive Officer" or "CEO" of the member institution, at all times will bear ultimate responsibility for and final authority over the conduct of its intercollegiate athletic programs;
- (e) It will support the Conference's programs and championships, and its administrators in the conduct of those programs;
- (f) It will conduct its intercollegiate athletic program in keeping with the highest recognized standards and in a manner, which will enhance the Conference's reputation for integrity;
- (g) It will cooperate in the spirit of mutual trust with the other members of the Conference in supporting and promoting the objectives of the Conference;
- (h) It will assure that its intercollegiate athletic program is maintained as an integral part of its educational objectives and programs;
- (i) It will participate in such Conference television and other broadcasting packages as the Conference, acting through the Board of Directors or any Conference advisory bodies the Board may so appoint, may approve (including those relating to internet distribution, video streaming and other similar matters), to provide the most mutually beneficial and attractive broadcasting inventory possible for the benefit of the Conference and its members;
- (j) It will participate in all men's and women's regular season and championship competition, all post-season NCAA Championships, Tournaments, the Men's Basketball National Invitational Tournament, subject to the provisions of Section 3.05(m), any bowl games for which the member might be selected, retain competition in a sport to protect the Conference's automatic qualification to NCAA championship in that sport and participate in any other post-season competition approved by the Board of Directors in any sport in which the member sponsors a team;
- (k) It will conduct all intercollegiate athletic programs without unlawful discrimination with respect to race, religion, sex, sexual orientation, age, disability, ancestry or national origin, at either the Conference headquarters or at member institutions;
- (l) It will subscribe to the principle of free exchange of information between members of the Conference with respect to the operation of its intercollegiate athletic program and, consistent with this principle, provide to any other member, upon request, complete information with respect to its entrance requirements, its academic requirements for athletic eligibility, its program of financial aid for student-athletes in comparison with its overall aid program for undergraduate students, and the academic standing of its student-athletes, including the school of origin and the academic record in the member institution. The preceding shall not, however, be intended or permit or require a member to violate the antitrust, restraint of trade, privacy, or other similar laws of the United States or of any state;
- (m) It will fully perform and comply with all of its obligations and duties in accordance with the terms of each and every agreement duly approved by the majority of the Conference, acting through the Board of Directors or any Conference advisory bodies the Board may appoint, and executed at their direction that requires the Conference champion, co-champion, or second, third, or fourth place team in any sport to participate in a specific preseason or postseason athletic contest or tournament;
- (n) It will fully perform and comply with all of its obligations and duties in accordance with the terms of each and every agreement duly approved by the majority of the Conference, acting through the Board of Directors or any Conference advisory bodies the Board may appoint, and executed at their direction that requires each member school to allow a certain number of athletic contests or games in any or all sports in which such member fields a team (preseason, season, or postseason) to be selected for distribution, transmittal, exhibition, licensure, sub licensure, promotion, publicity, and performance, in whole or in part and as part of any derivative work or compilation, throughout the universe by any and all means, uses, and media now known or hereafter developed (including internet distribution, video streaming, electronic re-creation of games, distribution of still pictures, and similar methods of distribution), in perpetuity or otherwise, with or without limitation on the number of exhibitions (cumulatively, the "broadcast rights");
- (o) It will fully perform and comply with all of its obligations and duties in accordance with any resolution duly adopted by the majority of the Board of Directors establishing the number of Conference games per season (and the manner of selection of Conference opponents) that must be played by the team(s) fielded by such member in any or all sports in which the member fields a team;
- (p) It will not withdraw, attempt to withdraw, or renege upon any legally binding commitment of its CEO and hereby agrees that its CEO has and will have full authority to speak and act for such member on all matters involving or affecting the Conference;

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- (q) It will prevent, to the fullest extent permitted by law, its administrative staff, athletic director(s), athletic staff, and coaches from disparaging or commenting unfavorably about (either on or off the record) the Conference or any member of the Conference in connection with any action, decision, inaction, or resolution of the Conference;
- (r) It authorizes the explicit or implicit transfer of all of its broadcast rights in and will abide by the provisions of any agreement authorized and approved by a majority of the Board of Directors that:
- (i) Assigns, licenses, or otherwise allocates or transfers broadcast rights and revenues, including rights and revenues that may be owned or controlled by individual members of the Conference, for inter-conference sports competitions;
 - (ii) Entitles the Conference to receive payments as a result of or in connection with broadcasts of inter-conference sports competitions;
 - (iii) Obligates the Conference to make payments as a result of or in connection with broadcasts of inter-conference sports competitions; and/or
 - (iv) Obligates Conference members to participate in inter-conference sports competitions (in which Conference members have otherwise agreed to participate) pursuant to terms established by such agreement concerning broadcast rights, revenues, and payments.
- (s) It will not grant, transfer, license, assign, or otherwise convey (jointly "convey" or "conveyance") any broadcast rights; (i) in conflict with the provisions of any agreement referenced in subparagraph (n) above, (ii) that the Conference has conveyed in any agreement referenced in subparagraph (n) above, or (iii) for any time period subsequent to the expiration of any agreement referenced in subparagraph (n) above that is in place at the time of such member's conveyance of rights.

3.06 **Withdrawal From Conference.** No member of the Conference may withdraw from the Conference except pursuant to and as allowed by this Section 3.06.

No member may withdraw from the Conference without providing the Conference prior written notice. Any and all withdrawals from the Conference shall be effective on July 1 of the year specified in the notice of withdrawal; provided, however, that the withdrawing member must afford the Conference notice at least fourteen months prior to the effective date of the withdrawal (i.e. no later than May 1 of the prior year). However, if a Member makes statements or takes actions that evidence intent of such Member to withdraw from the Conference either currently or in the future, such actions will be determined as notice of withdrawal by a three-fourths (3/4) vote of the remaining Members of the Board of Directors. In the event that a member attempts to leave the Conference without fully complying with the notice of withdrawal requirements set forth above, the Conference shall be entitled to equitable relief without having to prove actual injury, irreparable or otherwise, including, but not limited to, an injunction requiring the member to comply fully with the notice of withdrawal requirements set forth above, to fulfill all of its obligations as a Conference member, and to remain in the Conference until the earliest permissible date upon which the member could have, under the circumstances, withdrawn with full and proper prior notice as required above. The members agree that any attempted withdrawal of a member without full compliance with the prior notice requirements set forth above would cause a disruption in the scheduling of competitions among the members for which there is no adequate remedy at law which would cause harm that would not in any respect be compensated by payment of a withdrawal fee, and for which, therefore, equitable relief is appropriate.

The withdrawing member shall be responsible for the amount of any and all assessments or debts that the member owes to the Conference as of the effective date of the withdrawal.

From the date of notice of withdrawal, the withdrawing member shall have no rights to receive distribution of Conference revenues of any nature (i.e. the Conference shall be entitled to retain distribution for two fiscal years) and shall continue to be obligated to pay Conference expenses, assessments, or debts. Further, the term of office of any Board Member representing a Withdrawing Member shall automatically expire and such Chief Executive Officer shall no longer be a Board Member of the Conference effective as of the notice date or determination of notice to withdraw and such Withdrawing Member shall not be entitled to have a representative on the Board of Directors thereafter. During the period thereafter the number of Board Members shall automatically be reduced by the number of Withdrawing Members; and the Withdrawing Member(s) shall not be permitted to attend any meeting of, vote on any matter before, receive notice of any meeting of, or receive copies of materials distributed to the Board of Directors; the Conference shall however, inform the Chief Executive Officer of a Withdrawing Member about matters (as determined by the Commissioner in his sole discretion) that may materially impact the Withdrawing Member during the period prior to the effective date of the withdrawal in a manner disproportionate to the Withdrawing Member and shall provide the Chief Executive Officer of the Withdrawing Member with a reasonable opportunity for discussion with the Board of Directors on such issues as requested.

Each of the Members agrees that withdrawal of a member from the Conference would cause damage and financial hardship to the Conference and its continuing members, that the financial consequences to the Conference and its continuing members of such withdrawal cannot be measured or estimated with certainty at this time, and that the withholding of distributions pursuant to the

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preceding paragraph is a reasonable method of compensating the Conference and the continuing members for such damage and financial hardship and is not and shall not be construed as a penalty.

3.07

Suspension and Expulsion. A member shall be subject to suspension or expulsion for cause by the Board of Directors (provided, however, that the Director representing the withdrawing member may not participate or vote in connection with any such decision) pursuant to Section 5.02(c)(iii) if the member:

- (a) Fails to meet its financial obligations to the Conference;
- (b) Violates any of the provisions of these Bylaws or the rules and regulations of the Conference (collectively referred to as "Conference Legislation") or the NCAA; or,
- (c) Engages in a course of conduct significantly contrary to the best interests or reputation of the Conference and the remaining members of the Conference as determined by the Board of Directors.

A member suspended or expelled for cause shall not be entitled to receive a return of any initiation fee or subsequent contributions paid by it to the Conference, nor shall it (a) be relieved of any financial obligations to the Conference arising prior to such suspension or expulsion, including, without limitation, assessments made pursuant to Section 3.04; or, (b) be entitled to distributions, if any, of Conference income, whether pursuant to Section 5.02(b)(xii) or otherwise, for the fiscal year in which suspension or withdrawal occurs or for any subsequent fiscal years. The suspension or expulsion of a member for cause shall not be deemed a waiver by the Conference or other Conference members of any claims it or they may have against the member for losses or damages incurred as a result of the conduct giving rise to such suspension or expulsion.

In addition, the Conference's Board of Directors (provided, however, that the Director representing the withdrawing member may not participate or vote in connection with any such decision) may, in its sole discretion, expel a member without cause pursuant to Section 5.02(c)(iii). Any decision by the Conference's Board of Directors to expel a member without cause shall not be reviewable by a court, and the members waive any and all rights they may have to seek court review of any such decision. Any member expelled without cause shall be entitled to (a) repayment of any obligations owed to it by the Conference at the time of such expulsion in accordance with the terms of the obligation plus (b) its share of current and future revenues of the Conference (which shall mean, for purposes of these Bylaws, revenues as of the date of expulsion payable for the year in which expulsion occurs in accordance with the Conference's revenue sharing formula, terms, and conditions in effect on the effective date of the expulsion). In addition, if a member expelled without cause has been a member for less than ten consecutive years on the effective date of the expulsion, the member so expelled shall be entitled to a sum equal to (a) the amount of any initiation fee and any other similar contributions and assessments paid by the member for the right to join the Conference and for the costs and expenses of forming and organizing the Conference multiplied by (b) a fraction the numerator of which is the difference between 120 and the actual number of full consecutive months during which the member has been a member of the Conference and the denominator of which is 120. If the member expelled without cause has been a member for more than ten consecutive years, the preceding sentence shall not be applicable. In the sole discretion of the Conference's Board of Directors (excluding the director of the member at issue), any amount payable to the member expelled without cause which can be calculated with reasonable certainty may be paid in a lump sum at its then present value. In calculating the present value, the discount rate shall be the interest rate at which the Conference could borrow the funds necessary to make the payment from its primary depository bank, and any television rights fees and NCAA basketball fund units shall be assigned a value equal to their actual value (in the event of a dispute or question as to "actual value", the determination by the Commissioner shall be deemed to be final and binding) in the Conference's fiscal year in which the member is expelled without cause. The provisions of this subsection shall take priority over any contrary provisions of any present or future agreement, revenue sharing formula, or other similar document or understanding among the members or between the Conference and its members.

Expulsion without cause shall be deemed to be effective on the last day of the fiscal year of the Conference in which expulsion occurs, or at such other date as the Board of Directors and the expelled member may agree.

In consideration of the payment by the Conference of the foregoing sum, which sum shall be deemed to be liquidated damages, a member expelled without cause agrees to hold harmless, indemnify and release the Conference and its members from any and all claims or obligations related to its participation and separation from the Conference.

ARTICLE IV

CONFERENCE CHAMPIONSHIPS

4.01

Championships. Except as the Board of Directors may otherwise determine, the Conference shall conduct championships in the sports of men's and women's basketball, men's and women's tennis, men's and women's cross country, men's and women's indoor and outdoor track, men's and women's golf, men's and women's soccer, football, baseball, softball, women's swimming and diving, and volleyball. Notwithstanding the foregoing, the Conference shall not be required to sponsor a championship in a sport unless at least one-half (1/2) of the members sponsor the sport at the intercollegiate varsity level. This section (4.01) does not prohibit the Conference from sponsoring a

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championship in an emerging sport (as identified by the NCAA), even if less than one-half (1/2) of the members sponsor the sport at the intercollegiate varsity level.

- 4.02 **Basketball Tournament.** The Conference shall sponsor a men's and women's basketball tournament at the conclusion of the regular season. The winners of the respective Conference basketball tournament shall be declared the Conference champion for purposes of automatic qualification in the NCAA Basketball Tournament.
- 4.03 **Football.** The Conference champion in football shall be determined by a championship game between the regular season champions of the Eastern and Western Divisions, as determined by the Conference. In the event the Conference should decide not to play a football championship game, the Conference champion in football shall be determined by regular season competition.
- 4.04 **Other Sports.** In other team sports, the winner of any post-season tournament shall be declared the Conference champion for purposes of automatic qualification to NCAA championship play. In the absence of a tournament, the Conference champion shall be determined by regular season competition.
- 4.05 **Ineligibility.** A member institution shall be prohibited from participation in a Conference championship game, tournament or meet in a sport if the institution is precluded from participation in NCAA championship or post-season play in that sport (e.g., Academic Performance Program restrictions, Committee on Infractions sanctions). In the event the Conference should decide not to play a football championship game, or a post-season championship tournament or meet, a member institution on NCAA probation in that sport may participate in regular season conference football games, tournaments or meets if permitted to do so by the terms of such NCAA probation, but shall not be eligible for the Conference championship. In addition to any financial penalties imposed by the governing association (i.e., NCAA or College Football Playoff), the financial penalties for teams subject to a postseason restriction are as follows (to be held from the current year end distribution):
- (a) Football – the member's share of football related revenue distribution up to a maximum of \$250,000;
 - (b) Men's Basketball - the member's share of men's basketball related revenue distribution up to a maximum of \$100,000;
 - (c) Each sport other than football and men's basketball - \$10,000.

ARTICLE V

BOARD OF DIRECTORS

- 5.01 **Composition.** The members of the Conference shall act through a Board of Directors. The Board of Directors shall consist of as many members as there are member institutions of the Conference, and the members of the Board of Directors shall be the Chief Executive Officers of each of the members of the Conference. Prior to the annual meeting specified in Section 5.03, if requested by the Commissioner or any member of the Conference, each member shall certify to the Conference the name of its Chief Executive Officer and each member shall advise the Conference immediately in the event of any change in the identity of its Chief Executive Officer. In the event that the identity of any member's Chief Executive Officer changes, his/her successor in office automatically shall replace him on the Board of Directors.
- 5.02 **Function.** The function of the Board of Directors shall be:
- (a) To establish policies for the management and operation of the Conference, or to delegate to other Conference advisory bodies, the authority to establish such policies;
 - (b) To act on the following matters with each matter requiring the vote of a majority of the full membership of the Board of Directors:
 - (i) Establishment of Board committees and other advisory bodies as permitted by the Act and appointment to such committees and advisory bodies of such persons permitted by the Act as the Board of Directors deems appropriate;
 - (ii) Removal of any member of any Board committee or other advisory body appointed pursuant to (b)(i) at any time with or without cause and filling of any vacancy on any such committee or advisory body;
 - (iii) Designation of a Chair (who shall be the Chairman of the Board of Directors) and the Vice Chair;
 - (iv) Appointment of, and execution of an employment contract with, the Commissioner;
 - (v) Removal of any officer, subject, however, to that officer's contract rights, and to fill vacancies in any office pursuant to Section 8.06 of these Bylaws;
 - (vi) Establishment of initiation fee and other terms and conditions, if any, for members joining the Conference after July 1, 2005;

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- (vii) Adoption of the annual budget for the Conference and approval of modifications thereof and deviations therefrom;
 - (viii) Sponsorship and approval of Conference championships pursuant to Section 4.01;
 - (ix) Establishment of the formula for allocation of Conference revenues between Conference members and the Conference;
 - (x) Any change in the location of the Conference office;
 - (xi) Approval of contracts not in the ordinary course of the Conference's business (including, without limitation, television contracts);
 - (xii) Adoption and amendment of rules and regulations relating to the operation of the Conference, the conduct of the members' athletics programs and such other matters relating to the Conference and its purposes as the Board of Directors shall deem necessary and/or appropriate;
 - (xiii) Such other matters as are not specifically reserved in these Bylaws (including the addenda thereto) to another person or governing body;
 - (xiv) Establishment of withdrawal fees for members who are not subject to the withdrawal fee specified in 3.06 or fees that are otherwise specified;
 - (xv) Establishment of such assessments as contemplated by Section 3.04 of these Bylaws.
- (c) To act on the following matters with the vote required as hereinafter specified:
- (i) Amendments to the Articles of Incorporation and Bylaws of the Conference (including the addenda thereto) shall require the affirmative vote of two-thirds (2/3) of the full membership of the Board of Directors, except that any provision requiring a greater than two-thirds (2/3) vote of the full membership of the Board of Directors to act cannot be amended without the affirmative vote required in that provision to act;
 - (ii) Admission of colleges and universities to full membership in the Conference shall require the vote of three-fourths (3/4) of the full membership of the Board of Directors;
 - (iii) Suspension or expulsion of a member of the Conference shall require the three-fourths (3/4) vote of the full membership of the Board of Directors other than the member whose removal is proposed.
- (d) To assure that the members of the Joint Group, the three (3) Administrative Groups (i.e., Athletics Directors, Faculty Athletic Representatives, Senior Woman Administrators), Board and other committees, and other advisory bodies as established by the Board of Directors and the Officers of the Conference are acting in a manner consistent with the authority granted to them under these Bylaws and the general policies established by the Board of Directors, and to review and/or act upon decisions of such subordinate groups;
- (e) To exercise such other powers as may be allowed or prescribed under the Act.

5.03

Meetings. The Board of Directors shall have at least two regular meetings during the fiscal year of the Conference within or without the State of Texas at such places as the Board of Directors shall determine. One of those meetings shall constitute the Annual Meeting of members of the Conference. At such Annual Meeting, the Board of Directors shall:

- (a) Require the Commissioner to deliver reports concerning the business and operations of the Conference;
- (b) Designate the following persons, each to serve at the pleasure of the Board of Directors:
 - (i) The members of committees and any other advisory bodies established by the Board of Directors;
 - (ii) The Chair and Vice Chair of the Board of Directors.
- (c) Transact such other business as may be allowed or required pursuant to the Act.

In addition to regular meetings, special meetings of the Board of Directors may be held at any time on the call of a majority of the members of the Board of Directors, the Chair or the Commissioner.

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The Chairs of the three Administrative Groups may be invited to attend, and, when appropriate, participate at the regular meetings, and special meetings of the Board of Directors.

- 5.04 **Quorum and Manner of Acting.** A majority of the total number of members of the Board of Directors shall constitute a quorum for the transaction of business at any meeting of the Board of Directors, provided that if less than a majority of the members are present, those members present may adjourn the meeting from time to time without further notice. The act of the majority of the Directors present at a meeting at which a quorum is present shall be the act of the Board of Directors, unless the act of a greater number is required by these Bylaws. Institutions are to be represented solely by the Chief Executive Officer. Substitutions are not permitted to attend meetings unless special circumstances arise and are approved in advance by the Commissioner or Board Chair.

ARTICLE VI

EXECUTIVE COMMITTEE

- 6.01 **Composition.** An Executive Committee of the Board shall be appointed by a majority vote of the Board of Directors at the Annual Meeting set forth in section 5.03 and shall be comprised of the Chair, the Vice-Chair, and three additional members. One of the five (5) members shall be the NCAA Division I Board of Directors representative for the Conference. All members of the Executive Committee must be members of the Board.
- 6.02 **Function.** The Board may authorize the Executive Committee to take action and make decisions, pursuant to such rules and limitations as the Board might prescribe, in accordance with and as allowed by the Act. The Executive Committee shall (i) act as consultants to the Commissioner when so requested by the Commissioner or the Board on such matters the Commissioner would otherwise seek the counsel of the entire Board, if time allowed, and (ii) shall have full power and authority to act on behalf of the Board of Directors when expressly authorized in advance to do so by the Board. The Executive Committee shall report at each Regular or Special Meeting of the Board of Directors such matters considered or actions taken by it since the last meeting of the Board of Directors.
- 6.03 **Terms of the Office.** Each member shall be elected annually and will be limited to three continuous years of service. Terms will be staggered to maintain continuity while providing opportunity for all to serve on the Executive Committee. Ex-officio membership may be established to accommodate the NCAA Board representative.

ARTICLE VII

GENERAL PROVISIONS RELATING TO MEETINGS AND GOVERNANCE

- 7.01 **Notice of Meetings.** Written notice of each regular or special meeting of the Board of Directors and each meeting of the Executive Committee shall be communicated by or at the direction of the Commissioner to each member. Notice of each regular or special meeting of the Board of Directors shall occur not less than five nor more than sixty days, unless otherwise required by the Act, before the day on which the meeting is to be held. Notice of each Executive Committee meeting shall occur as soon as possible subsequent to the meeting being called. All notices of meetings shall set forth the place, date, time and in the case of a special meeting of the Board or a meeting of the Executive Committee, the purpose for which the meeting is called in which case the business transacted shall be limited to that stated in the notice.
- 7.02 **Waiver of Notice.** Notice of any meeting of the Board of Directors may be waived in writing by a person entitled to such notice either before or after the meeting. Attendance at any meeting shall be deemed to be a waiver of notice unless the person at the meeting objects to the holding of the meeting prior to the start of the meeting because proper notice was not given.
- 7.03 **Action in Lieu of Meetings.** Any action required or permitted to be taken at any meeting of the Board of Directors or any committee or advisory body created by the Board of Directors may be taken without a meeting and without a vote if a consent in writing, setting forth the action so taken, shall be signed by all of the members of such governing body entitled to vote with respect to the subject matter thereof.
- 7.04 **Telephonic Conferences.** Meetings of the Board of Directors and any meetings of committees or other advisory bodies created by the Board of Directors under these Bylaws, may be through the use of a telephone conference or other communications equipment of which all persons participating in the meeting can simultaneously communicate with each other. Participation in such meeting shall constitute attendance and presence in person at the meeting of the person or persons so participating.

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- 7.05 **Rules.** The Board of Directors may adopt rules for its own governance not inconsistent with these Bylaws. Any Committee or advisory body appointed and established by the Board of Directors may also adopt and create rules for its own governance which the Board of Directors shall have the right to review, approve and modify at any time and which rules shall not be inconsistent with these Bylaws.

ARTICLE VIII

OFFICERS

- 8.01 **Designation.** The officers of the Conference shall be the Chair and Vice-Chair of the Board of Directors and the Commissioner.
- 8.02 **The Chair.** The Chair of the Conference shall be the person serving as the chair of the Board of Directors. The Chair shall preside at meetings of the Board of Directors, shall act as Chair of the Executive Committee, and shall sign contracts and agreements when appropriate on behalf of the Conference.
- 8.03 **Vice Chair.** The Vice Chair shall perform the duties of the Chair in the event of the Chair's absence or unavailability and shall perform such other duties and responsibilities as may be assigned to him or her from time to time by the Board of Directors.
- 8.04 **Commissioner.** The Commissioner, who is not a member of the Board of Directors, shall serve as the Chief Executive Officer of the Conference, and shall be responsible to the Board of Directors for the operation and administration of the Conference office, the keeping of minutes and corporate records, and the financial operations of the office. The Commissioner shall have the power and authority to perform all such responsibilities. In addition, the Commissioner shall enjoy and be entitled to exercise power and authority and shall perform such other duties (i) as may be reasonably necessary to achieve the purposes of the Conference, to advance the best interests of the Conference and Conference members, and to resolve problems and disputes of the Conference, and (ii) as may be assigned to them by the Board of Directors, provided that the Board of Directors shall not assign duties or responsibilities to the Commissioner inconsistent with his position or with the terms of any employment contract between the Conference and the Commissioner.
- 8.05 **Terms of Office.** Each Officer shall be elected annually and hold office until his or her successor shall have been duly elected or until his or her death or until he or she shall resign or shall have been removed in the manner hereinafter provided; however, no member institution is eligible to have its representative serve as Chair of the Board more than two (2) years within any six (6) year period.
- 8.06 **Removal; Vacancies.** The Board of Directors shall have the right at any time, with or without cause, to remove any Officer. However, the right to remove the Commissioner shall be subject to, and without prejudice to, any rights the Commissioner may have under his or her Employment Agreement. The Chair or Vice Chair shall automatically cease to serve in such positions in the event the Chair or Vice Chair would cease to be the Chief Executive Officer of his/her member institution. The Board of Directors, at its discretion, shall have the right to fill any vacancy in any such office.

ARTICLE IX

COMPENSATION

No member of the Board of Directors or other committee or advisory bodies and no officer of the Conference, shall receive, directly or indirectly, any salary or other compensation from the Conference unless specifically authorized by the Board of Directors. The Board of Directors may authorize, from time to time, the reimbursement of expenses incurred by the officers or other persons on behalf of the Conference.

ARTICLE X

FISCAL YEAR

The fiscal year of the Conference shall begin on July 1 and end on June 30.

ARTICLE XI

INDEMNIFICATION

- 11.01 **Indemnification by the Conference.** The Conference shall indemnify, to the full extent authorized by the Act and other applicable law, any person who was or is a party, or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he or she is or was a member of a committee or advisory body or an officer, employee or agent of the Conference, or who is or was serving at the request of the Conference as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses, including attorneys' fees, judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or

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proceeding. Such indemnification shall not be deemed exclusive of any other rights to which a person may be entitled under any bylaw, agreement, vote of disinterested members of the Board of Directors, or as a matter of law or otherwise. The Conference may purchase and maintain insurance on behalf of any person who is or was a member of a committee or advisory body or an officer, employee or agent of the Conference, or who is or was serving at the request of the Conference as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against any liability asserted against such person and incurred by such person in any such capacity, or arising out of his or her status as such, whether or not the Conference would have the power to indemnify such person against such liability under the provisions of this Section. The Conference, but not its Members, shall be liable for the indemnification obligations of this paragraph.

- 11.02 **Indemnification of the Conference by Members.** Unless prohibited by the Anti-Deficiency Act or other similar laws of the United States or of any state, each member of the Conference shall indemnify, to the full extent authorized by the Act and other applicable law, the Conference and any of its other members to the same extent provided in Section 11.01 for any acts, prior conduct, liabilities or claims arising out of that member's withdrawal from another Conference or arising out of the prior conduct of business of any member prior to joining the Conference or arising out of the future conduct of business of the member after leaving the Conference, whether by withdrawal or expulsion.

ARTICLE XII

MISCELLANEOUS

- 12.01 **Construction.** Whenever from the context it appears appropriate, each term stated in either the singular or the plural shall include the singular and the plural, and each term stated in the masculine gender shall include the masculine, feminine and neuter gender.
- 12.02 **Severability.** The invalidity of any provision of these Bylaws shall not affect the validity or enforceability of any other provision hereof.
- 12.03 **Use of Collective Membership Marks.** Members of the Conference shall be entitled to use any collective membership marks of the Conference, whether or not registered with the U.S. Patent and Trademark Office, for the sole purpose of identifying themselves as members of the Conference, provided that any such mark shall be used in the form prescribed by the Conference. The Conference shall be entitled to use the names, marks and logos of Conference Members in conjunction with the name, mark and/or logo of the Conference for the sole purpose of the Conference's purposes and actions. The Conference shall be entitled to require any member or members to discontinue any use of the Conference's collective membership marks if such use is inconsistent with the purpose of the Conference, detrimental to the Conference, or otherwise would lead to the potential diminution in or destruction of the value of such marks. Each member shall be entitled to require the Conference to discontinue any use of the member's name, marks and logos if such use is unreasonably detrimental to the marks or otherwise would lead to the potential diminution in or destruction of the value of such marks.

ARTICLE XIII

AMENDMENT

These Bylaws may be altered or amended by the affirmative vote of two-thirds (2/3) of the full membership of the Board of Directors, except that any provision requiring a greater than two-thirds (2/3) vote of the full membership of the Board of Directors to act cannot be amended without the affirmative vote required in that provision to act, at any annual, regular or special meeting of the Board. The proposed amendment, in written form, shall be tendered to each of the Board of Directors with the Notice of Meeting as required pursuant to Section 7.01 of these Bylaws.

The Administrative Regulations, which shall have the same force and effect of these Bylaws, may be amended by a majority vote of the members.

ARTICLE XIV

DISPUTE RESOLUTION

- 14.01 **Arbitration.** All disputes, controversies, claims, demands, and differences (herein all referred to as "dispute"):
- (a) Between or among the Conference and any one or more members, former members, suspended members, or expelled members of the Conference; or
 - (b) Between or among two or more members, former members, suspended members, or expelled members of the Conference arising from or relating in any respect to the Conference or to the participation of any member of the Conference in the affairs of the Conference, shall be resolved by final and binding arbitration in Dallas, Texas, or the city in which the Conference Office is located before a panel of three arbitrators, at least two of which shall be licensed attorneys, pursuant to the Rules of the American Arbitration Association in effect at the time the dispute arises.

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- 14.02 **Mediation.** Any dispute subject to binding arbitration under Section 14.01 may be mediated if all of the parties to the dispute agree to mediation.
- 14.03 **Not a Precondition.** Neither arbitration nor mediation of any dispute or any other matter shall be a precondition or prerequisite to the Conference or any of its member(s) taking or refraining from taking any action.
- 14.04 **Judicial Process.** Each member of the Conference agrees and covenants not to institute a civil action or other judicial proceeding with respect to any matter subject to binding arbitration pursuant to Section 14.01. Should any member institute a legal proceeding in violation of this provision, such member shall be responsible for reimbursing the Conference defendants, whether they be the Conference itself and/or any of its members, or persons employed by or agents of the Conference and/or any of its members, for all costs, including attorney's fees, related to the defense of such action.

ARTICLE XV

GOVERNANCE OF THE CONFERENCE

- 15.01 **Board of Directors.** See Article V.
15.02 **Joint Group.**

- (a) **Role.** The role of the Joint Group is to advise the Board of Directors with respect to all matters within the plenary authority of the Board of Directors and to conduct the business of the Conference to the extent such authority is entrusted to it, subject to the ultimate authority of the Board of Directors as set forth in these Bylaws. The Joint Group may delegate any of its functions or authority to one of the Administrative Groups or to a committee or subcommittee, and the Board of Directors may determine other organizational reporting lines as it deems appropriate. Matters within the jurisdiction of the Joint Group include:
- (i) Advising the Board of Directors as to the admission of new members, expulsion of members, revenue sharing, approval of Conference budget;
 - (ii) Appointments from the Conference to NCAA councils, cabinets, committees, or other bodies, except the NCAA Board of Directors;
 - (iii) Appointments to all Conference committees or subcommittees of the Joint Group;
 - (iv) Adoption of Conference policies relating to student-athlete eligibility, academic standards, and scheduling of Conference competitions and championships, subject to approval of the Board of Directors;
 - (v) Approval of schedules for Conference competitions and championships;
 - (vi) Review (and approval when appropriate) of all other matters entrusted in the first instance to one of the Administrative Groups or a Conference committee or subcommittee.

The Board of Directors shall retain jurisdiction over all matters relating to its operation, the hiring of the Commissioner, and the internal operation of the Conference office.

- (b) **Board Action.** Actions of the Joint Group shall be forwarded to the Board of Directors for affirmation or approval. At the request of any three (3) members of the Board of Directors, any such forwarded action of the Joint Group will be placed on the agenda for a Regular or Special Meeting of the Board of Directors, and the Board of Directors will determine its final disposition. Except for those matters specified in Section 5.02, if three (3) members of the Board of Directors do not request such action to be placed on the agenda of the Board of Directors within a period of thirty (30) days after notification of the Board of Directors, the action of the Joint Group will be considered to be affirmed. Actions of the Joint Group requiring more prompt resolution can be so designated by the Executive Committee of the Board of Directors.
- (c) **Membership.** The Joint Group will be composed of the Faculty Athletics Representatives (FARs), the Athletic Directors (ADs), and the Senior Woman Administrators (SWAs) from all of the member institutions. The Chair of the Joint Group will be the Chair of the ADs Administrative Group. The Vice Chair will be the Chair of the FAR Administrative Group. The Commissioner or his/her designee will be the ex officio secretary of the Joint Group without voting power.
- (d) **Meetings.** The Joint Group shall meet a minimum of two (2) times per academic year, once in the fall and once in the spring. Additional meetings, either via teleconference, videoconference, or in-person, may be held at any time on the call of the majority of the member institutions, the Chair, or the Commissioner.

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- (e) **Procedures.** Seventy-five percent (75%) of the member institutions must be represented at a validly called meeting in order for a quorum to be established and action taken at that meeting. The Chair of the Joint Group will preside at all meetings at which the Chair is present. In the absence of the Chair, the Vice Chair will preside. If neither the Chair nor the Vice Chair is present, the Chair of the SWA Administrative Group will preside. Meetings of the Joint Group and all subsidiary Groups and Committees will be conducted according to Robert's Rules of Order, unless the Joint Group or a subsidiary Group or Committee establishes alternative rules by unanimous vote. The Joint Group and its subsidiary Groups and Committees may always proceed more informally with the unanimous consent of the member institutions.
- (f) **Voting.** Each member institution shall have one (1) vote on the Joint Group. It is expected that said vote will reflect a consensus of the three (3) members representing each institution. If none of the three (3) representatives of an institution are present, the institution will be deemed unrepresented and will not be entitled to vote on any matters before the Joint Group at that meeting. Any of the three (3) representatives will be permitted to appoint a substitute, with permission of the Commissioner. Proxy voting is not permitted. Each member institution may vote on all matters, including those relating to a sport or sports that the institution does not sponsor. However, an institution is encouraged to abstain on votes related to sports not sponsored by that institution when such votes would have minimal impact, financially or otherwise, on that institution.

15.03 **Administrative Groups.** There are three (3) Administrative Groups of the Conference: (1) The Faculty Athletic Representative (FAR) Group, (2) The Athletic Directors (AD) Group, and (3) The Senior Woman Administrators (SWA) Group.

(a) **FAR Group.**

- (i) **Role.** The role of the Faculty Athletics Representatives (FARs) is to develop and recommend policies and procedures in the following areas:
- (a) Academic standards and policies for the Conference (e.g., initial and continuing eligibility);
 - (b) General welfare of the student-athletes as it relates to academic issues;
 - (c) Issues as they relate to the academic status and well-being of the Conference;
 - (d) Graduation Rates and Academic Performance Rate information;
 - (e) Missed days away from campus and examination conflicts;
 - (f) Academic awards and management of the Conference postgraduate scholarship program;
 - (g) Oversight of compliance with NCAA and Conference legislation in conjunction with the Athletics department;
 - (h) Review of secondary violations;
 - (i) NCAA coaches and institutional certification programs, and
 - (j) Hardship and progress towards degree waivers.
- (ii) **Membership.** The FAR Group shall consist of the Faculty Athletics Representatives, as designated by the institution, of all member institutions.
- (iii) **Meetings.** The FARs shall meet a minimum of two times each year. Additional in-person, teleconference, or videoconference meetings may be called. The Chair will rotate alphabetically among the FARs on the same rotation that is established for the Chair of the ADs and SWAs, so that the Chair of the FAR Group will be from the same member institution as the other two administrative groups. It is understood that there can/will be exceptions to this scenario in years when it is not prudent for all groups to have Chairs from the same institution. The rules for the conduct of and voting at meetings of the FAR Group will, to the extent relevant, be the same as those for the conduct of and voting at meetings of the Joint Group.
- (iv) **Procedures.**
- (a) Each institution may vote on any sport whether it sponsors that sport or not.
 - (b) Institutions have to be represented only by the FAR. A designee may substitute for the FAR only with approval by the Commissioner.

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(v) **Institutional Term of Appointment.** FARs terms of appointments shall be at the discretion of the institutions.

(b) **AD Group.**

(i) **Role.** The role of the Athletic Directors (ADs) is to develop and recommend policies and procedures for the regulation of Conference sports and to conduct the routine business of the Conference, including, but not limited to, the following:

- (a) Set regulations for the conduct of Conference tournaments and the conduct of Conference sports;
- (b) Develop programs designed to enhance the level of competition and visibility of Conference sports;
- (c) Approve schedules for Conference sports;
- (d) Approve the sites for Conference championships and recommend the bid process for the basketball tournaments;
- (e) Review and recommend television plans;
- (f) Cooperate in the exchange of information concerning the respective academic, fiscal and athletic policies;
- (g) Review and approve plans for sport additions or deletions;
- (h) Review annual Conference budget;
- (i) Establish and maintain Conference officiating initiatives (e.g., assignors, fees);
- (j) Establish and oversee Conference sports award programs.

(ii) **Membership.** The ADs Group shall consist of the Conference's athletic directors.

(iii) **Meetings.** The ADs shall meet a minimum of three times, once in the winter, spring and fall. Additional meetings either via teleconference, videoconference, or in-person shall be held at the discretion of the Athletic Directors. The Chair will rotate alphabetically among the ADs on the same rotation that is established for the Chair of the FARs and SWAs, so that the Chair of the ADs Group will be from the same member institution as the other two administrative groups. It is understood that there can/will be exceptions to this scenario in years when it is not prudent for all Groups to have Chairs from the same institution. The rules for the conduct of and voting at meetings of the AD Group will, to the extent relevant, be the same as those for the conduct of the Joint Group.

(iv) **Procedures.**

- (a) Each institution may vote on any sport whether it sponsors that sport or not.
- (b) Institutions are to be represented solely by the Athletic Director. A designee may substitute for the Athletic Director only with approval from the Commissioner.

(c) **SWA Group.**

(i) **Role.** The role of the Senior Woman Administrators (SWAs) is to develop and recommend policies and procedures in the following areas:

- (a) Policies relating to sports programs other than baseball, men's basketball and football;
- (b) Policies relating to equity and Title IX, and
- (c) Policies relating to student-athlete welfare.

The SWAs shall be responsible for reviewing coaches' recommendations and matters relating to regular season and championship competition in all Conference sports excluding baseball, men's basketball and football. They shall be responsible for recommending championship sites and dates; reviewing championships on a sport by sport basis; developing criteria for hosting championships, and determining common thresholds for support of Conference

CONFERENCE USA BYLAWS

championships. The Senior Woman Administrators shall make recommendations and forward them to the Athletic Directors for final approval.

- (ii) **Membership.** The SWAs Groups shall consist of the senior woman administrators, as designated by the institution, of all member institutions.
- (iii) **Meetings.** The SWAs shall meet a minimum of two times. Additional meetings may be held via teleconference or videoconference at the discretion of the Senior Woman Administrators. Additional in-person meetings must be approved by the Athletic Directors. The Chair will rotate alphabetically among the SWAs on the same rotation that is established for the Chairs of the FARs and ADs, so that the Chair of the SWA Group will be from the same member institution as the other two administrative groups. It is understood that there can/will be exceptions to this scenario in years when it is not prudent for all Groups to have Chairs from the same institution. The rules for the conduct of and voting at meetings of the SWA Group will, to the extent relevant, be the same as those for the conduct and voting at meetings of the Joint Group.
- (iv) **Procedures.**
 - (a) Each institution may vote on any sport whether it sponsors that sport or not.
 - (b) Substitutions are not permitted in the SWAs meetings unless special circumstances arise (e.g., NCAA meeting, Conference championship, medical emergency) and are approved by the Conference office and Group chair. Further, a member must be present to vote, or if unable to be present, the member can provide a proxy vote to the chair as long as it is done ahead of time.

15.03.1 **Communication Lines.** Agendas and minutes of all three Administrative Groups' meetings will be shared fully with the other two Administrative Groups.

15.03.2 **Decision Making Authority.** The Board of Directors will have final decision-making authority on all Conference matters. Final authority in certain areas may be delegated to the Joint Group and Athletic Directors as noted in their roles, or as determined by the Board of Directors. Unless specifically designated to the contrary, the three (3) Administrative Groups are recommending bodies and do not have final policy making authority.

15.04 **Permanent Committees.** The Board of Directors shall designate permanent committees. Membership on permanent committees shall include representatives from each of the three Administrative Groups whenever appropriate. The Joint Group or each Administrative Group, as appropriate, shall be responsible for selecting its representatives to a permanent committee. Committee chairs shall be allowed to appoint committee replacements as needed. No institution shall have more than one representative on a committee at the same time. Terms shall be three years and representatives may be re-elected. Committees may establish their own procedures, except that if necessary, the rules for the conduct of and voting at meetings of a committee will, to the extent relevant, be the same as those for the conduct of and voting at meetings of the Joint Group.

(a) **Budget Committee.** The role of the Budget Committee is to oversee all issues related to the Conference budget. Budget Committee recommendations shall be forwarded to the Joint Group for review and comment before going to the Board of Directors for final approval.

- (i) **Membership.** The Committee shall consist of three athletic directors, one senior woman administrator, and one faculty athletics representative.
- (ii) **Communication.** The Conference office shall provide quarterly financial reports to the Budget Committee. A summary report shall be provided to the Administrative Groups and Board of Directors at each scheduled in-person meeting.

(b) **Nominating Committee.** The Nominating Committee shall vet and recommend nominees of the Conference to any NCAA council, cabinet, committee, or other body (except the Division I Board of Directors).

- (i) **Membership.** The Nominating Committee shall be comprised of two FARs, two ADs and two SWAs.
- (ii) **Communication/Process.** The Committee may nominate one or more persons for each such representative position. Nominees need not be members of any of the Administrative Groups. Committee reports and recommendations will be forwarded to the Joint Group.

(c) **Officiating Committee.** The Officiating Committee shall be responsible for the oversight of officiating for all Conference athletic contests, tournaments, and meets.

CONFERENCE USA BYLAWS

- (i) **Membership.** The Officiating Committee shall be comprised of three ADs and one SWA.
- (ii) **Communication/Process.** Committee reports and recommendations will be forwarded to the AD Group and the Joint Group.
- (d) **Student-Athlete Health and Safety Committee.** The Student-Athlete Health and Safety Committee shall monitor sports medicine best practices and develop new initiatives for the care of Conference USA student-athletes.
 - (i) **Membership.** The Student-Athlete Safety Committee shall be comprised of five ADs, one SWA and one FAR. Ex-officio members may be added for their expertise.
 - (ii) **Communication/Process.** Committee reports and recommendations will be forwarded to the AD Group and the Board of Directors.

15.05 **Ad Hoc Committees.** The Board of Directors or any of the three Administrative Committees can establish Ad Hoc Committees. Committee membership shall be cross-representational when the topic relates to the charge of more than one committee (e.g., championships, eligibility standards, student-athlete welfare). Communication and reporting lines shall be determined based on the function of the Ad Hoc Committee. Terms on Ad Hoc Committees shall be three years unless otherwise designated.

15.06 **Working Groups/Committees.** The Conference may establish Working Groups/Committees representative of various constituencies related to the operation and governance of the Conference. These groups shall meet as appropriate and as determined among themselves. Working Groups/Committees include the following:

- (a) **Academic Advisors Committee.** The Committee will be comprised of the directors of academic and student services support services. The Committee is responsible for exchanging best practices and providing input on academic services.
- (b) **Compliance Coordinators Committee.** The Compliance Coordinators Committee shall consist of one Compliance Coordinator, as designated by the institution, from each member institution. The Committee is responsible for exchanging best practices and providing input on compliance issues.
- (c) **Legislative Liaison Committee.** The Legislative Liaison Committee shall consist of one representative from each institution, as designated by the Chief Executive Officer. The Committee shall meet via teleconference throughout the year to review proposed legislation and discuss new legislative concepts. Institutional positions and comments relating to proposed legislation will be forwarded to C-USA representatives in the NCAA governance structure. All recommendations of this Committee regarding new legislative concepts shall be forwarded to all three Administrative Groups for review and comment with final approval authority resting with the Board of Directors. The Legislative Liaison Committee may submit an amendment to any legislative proposal under review during the 60-day comment period provided three-fourths of all committee members support the modification and the amendment does not increase the scope of the original proposal.
- (d) **Life Skills/Student-Athlete Development Committee.** The Life Skills/Student-Athlete Development Committee shall consist of the chief life skills administrator from each member institution. The Committee is responsible for exchanging best practices and providing input on life skills and student-athlete development issues.
- (e) **Marketing Administrators Committee.** The Marketing Administrators Committee shall consist of the chief marketing administrator from each member institution. The Committee is responsible for exchanging best practices and providing input on marketing issues.
- (f) **Sport Committees.** Sport Committees shall consist of the head coaches of each Conference sponsored sport. These committees shall meet at least once a year either in person or by teleconference to discuss policies and issues affecting their sport. They shall forward all recommendations to the Athletic Directors and Senior Woman Administrators for consideration.
- (g) **Sports Information Directors Committee.** The Sports Information Directors Committee shall consist of the head SID from each member institution. The Committee is responsible for exchanging best practices and providing input on sports information and strategic communications.
- (h) **Student-Athlete Advisory Committee.** The Student-Athlete Advisory Committee (SAAC) shall consist of one representative from each institution. The Committee shall review issues relating to the student-athlete experience and welfare. The Committee shall meet once in person each year and four times via teleconference. All recommendations of this Committee shall be forwarded to all three Administrative Groups for review and comment with final approval resting with the Joint Group or Board of Directors. At least one student-athlete from the SAAC will participate as a nonvoting member in two meetings of each administrative governance group (i.e., fall, spring). They will attend the fall meeting and participate via teleconference in the May meeting. The Chair of the C-USA

CONFERENCE USA BYLAWS

Student-Athlete Advisory Committee (SAAC) or his/her designee will also attend the winter meeting of the Board of Directors as a nonvoting member.

Exhibit 2

NEW MEMBER AGREEMENT

This New Member Agreement ("Agreement") is made and entered into effective this 24th day of October, 2003, by and between Marshall University ("Marshall") and Conference USA (the "Conference").

Background

The Conference has issued an invitation to Marshall for Marshall to join the Conference as a Member, contingent upon (i) the fulfillment of certain conditions precedent, as set forth below, and (ii) the execution and delivery of this Agreement. Marshall has accepted such invitation. Marshall and the Conference enter into this Agreement to memorialize the terms and conditions, subject to the fulfillment of the conditions precedent below, upon which Marshall will join the Conference.

Terms of Agreement

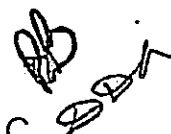
Now, therefore, the Conference and Marshall agree as follows:

1. This Agreement shall only be valid, enforceable, and effective if at least two current members of the Conference other than the United States Military Academy publicly announce their resignation from Conference membership and give notice of withdrawal pursuant to section 3.07 or 3.07A of the Conference Bylaws. If these conditions precedent are not fulfilled, then this Agreement shall be null and void and of no force or effect.

2. Subject to the fulfillment of the conditions precedent set forth in paragraph 1 (i) Marshall hereby agrees to become a Member of the Conference pursuant to the terms and conditions set forth herein, and (ii) the Conference hereby accepts Marshall as a Member, effective July 1, 2005, or such earlier date upon which both parties may agree, pursuant to the terms and conditions set forth herein.

3. As a condition of becoming a Conference Member, Marshall agrees to make payments to the Conference (directly and in the form of reduced revenue distributions) as set forth on Exhibit A, which is attached hereto and incorporated herein by reference.

4. Except as specifically provided herein, the terms and conditions of Marshall's participation in the Conference as a Member shall be governed by the Conference Bylaws, as such Bylaws may be amended from time to time. As a condition of becoming and remaining a Conference Member, Marshall agrees fully and completely to abide by and comply with all provisions and conditions of the Bylaws, as such Bylaws may be amended from time to time.



5. The Conference has entered into television rights and broadcast agreements and will enter into such agreements in the future with various broadcast entities (which agreements are herein referred to as the "TV Agreements"). Marshall agrees to abide by the provisions of the TV Agreements and to allow its home and intra-Conference football and men's basketball games (and games in such other sports as may be subject to such TV Agreements) to be telecast pursuant to such TV Agreements.

6. Marshall warrants and represents to the Conference that: (i) it has not entered into any agreements, obligations, or other encumbrances that have or will in any respect prevent, compromise, interfere with, or give rise to obligations inconsistent with Marshall's obligations pursuant to this Agreement; and (ii) its President has full and proper authority to execute this Agreement.

7. This Agreement is entered into by the Conference explicitly to benefit its present and future members, and all obligations of Marshall hereunder shall be fully enforceable both by the Conference and by each present and future member of the Conference.

8. This Agreement constitutes the entire Agreement between and among Marshall, the Conference, and all the members of the Conference concerning the subject matter hereof. The Agreement may not be modified except in a writing duly executed and delivered by both parties hereto.

9. This Agreement is binding upon the parties hereto and their successors and assigns.

10. This Agreement may be executed in counterparts, all of which when taken together shall constitute one and the same agreement.

11. In the event that any provision of this Agreement shall be determined to be invalid or unenforceable, such invalidity or unenforceability shall not invalidate or render unenforceable any other provision hereof.

12. Each individual signatory hereto individually warrants, agrees, and represents that he has full authority to act on behalf of his or her respective principal. No other obligations hereunder shall extend to or bind the individual signatories in their individual capacities, but all obligations hereunder shall be fully binding upon the Conference and Marshall pursuant to the terms hereof.

 10/24/03

BB
DDE

10/17/2003 12:11 FAX

CONFERENCE USA

By: Britton Banowsky
Britton Banowsky, Commissioner

MARSHALL UNIVERSITY

Corporate Seal

By: [Signature]
Name: MARSHALL UNIVERSITY
Title: President

ATTEST:

_____ Secretary

[Handwritten mark]

Exhibit A

In addition to the yearly assessments by the Board of Directors for operating expenses of the Conference and such other assessments as may be duly levied upon members by the Board of Directors pursuant to the Bylaws of the Conference, Marshall agrees to pay \$1,000,000 to the Conference in four installments as follows:

- o \$250,000 on or before January 1, 2004.
- o \$250,000 on or before January 1, 2005.
- o \$500,000 on or before July 1, 2005.

These payments shall be placed in the Conference's reserve and disbursed in the future in the manner that the Board of Directors may determine.

In addition, Marshall agrees that the revenue (excluding NCAA broad based distributions) which would otherwise be distributed by the Conference in the normal course of the Conference's operations pursuant to the revenue distribution formula adopted by the Board of Directors with respect to member distributions shall be reduced by \$200,000 for each fiscal year of the Conference beginning with the 2005-2006 fiscal year and ending with the 2009-2010 fiscal year, inclusive (for a total reduction over the five year period of \$1,000,000); provided, however, that there shall be no reduction in such distributions in and for a particular fiscal year if and to the extent that the total gross revenue (without any adjustment for Conference expenses) distributed to Marshall in such year would be less than \$700,000.

In the event there is revenue that accrues to Marshall following the effective date of its membership in the Conference as a result of Marshall's prior participation in the NCAA men's basketball tournament, that revenue shall be included in the revenue of the Conference and distributed pursuant to the Conference's revenue distribution policies; provided, however, Marshall shall receive a credit against any reductions referenced herein for all such revenue distributed to other Conference members.

The funds available as a result of any and all such reductions shall be disbursed in the future in the manner that the Board of Directors may determine.

Time is of the essence of these provisions and obligations.



AMERICAN
ARBITRATION
ASSOCIATION*

INTERNATIONAL CENTRE
FOR DISPUTE RESOLUTION*

FILED

Central Case Management Center
Rod Toben
Vice President
13727 Noel Road
Suite 700
Dallas, TX 75240
Telephone: (972)702-8222
Fax: (855)267-4082

2022 FEB 22 A 11: 07

MIKE WOELFEL
CIRCUIT CLERK
CABELL CO. WV

February 17, 2022

Leane K. Capps, Esq.
Polsinelli, PC
2950 North Hardwood
Suite 2100
Dallas, TX 75201
Via Email to: lcapps@polsinelli.com

Jendonnae L. Houdyschell, Esq.
Office of General Counsel
One John Marshall Drive
Huntington, WV 25775
Via Email to: Houdyschell2@marshall.edu

Case Number: 01-22-0000-6694

Conference USA

-vs-

MARSHALL UNIVERSITY; MARSHALL UNIVERSITY
BOARD OF GOVERNORS; KATHY D'ANTONI;
SHAWN BALL; PATRICK FARRELL; DONALD
HOLCOMB; CHRIS MILLER; ANGEL MOORE;
SAMUEL MOORE; BILL NOE; CHAD PENNINGTON;
GEOFFREY SHEILS; WILLIAM SMITH; TONEY
STROUD; and SANDRA THOMAS; in their official
capacity as a member of the Marshall University
Board of Governors.

Dear Parties:

Thank you for choosing the American Arbitration Association (the AAA) to assist you in resolving your dispute. The AAA is committed to providing you with the highest level of service in order to facilitate the resolution of your dispute. This letter--along with the attached Arbitration Information Sheet, AAA-ICDR® Best Practices Guide for Maintaining Cybersecurity and Privacy, and AAA-ICDR Cybersecurity Checklist--provide basic information about the AAA's arbitration process.

I will be your primary contact for this matter and am here to serve as your resource during the administration of your case. There may be times when you are contacted, on my behalf, by a member of my staff. Please do not hesitate to contact me directly with any questions, issues, or concerns.

This will acknowledge receipt on February 15, 2022 of a Demand for Arbitration dated February 15, 2022, providing for administration of a controversy arising out of a contract between the above-captioned parties, containing a clause providing for administration by the AAA. We understand that a copy was sent to Respondent. A copy of our Commercial Arbitration Rules may be obtained from our website at www.adr.org.

EXHIBIT D

Claimant has requested that the hearing be held in Dallas, TX. Please review the Rules and the Arbitration Information Sheet regarding the locale of hearings. In accordance with the Rules, Respondent may file an answering statement with the AAA within 14 calendar days from the date of this letter. If no answering statement is filed within the stated time, the respondent will be deemed to deny the claim. Failure to file an answering statement shall not delay the arbitration from proceeding forward.

A Respondent may file a counterclaim at any time after notice of the filing of the Demand. If a counterclaim is asserted, it shall meet all filing requirements as described in the Rules. The filing fee, as prescribed in the applicable AAA Fee Schedule, must be paid at the time of filing. Counterclaims that do not meet the filing requirements will not be presented to the arbitrator until such time the filing is perfected. If the deficiencies are not cured by the date specified by the AAA, the counterclaim may be returned to the filing party.

Inasmuch as the claim exceeds \$75,000, the parties shall mediate their dispute pursuant to AAA's Commercial Mediation Procedures, or as otherwise agreed upon by the parties, in accordance with Rule R-9 (Mediation). Absent agreement of the parties, the mediation shall take place concurrently with the arbitration and shall not serve to delay the arbitration proceedings. The parties may mediate their dispute at any time while the arbitration is pending. Any party may unilaterally opt-out of this rule upon notification to the AAA and the other parties to the arbitration.

We invite the parties to consider mediation, at this early stage in the arbitration process, in an effort to resolve your dispute more quickly and economically. If you are interested in Mediation at this time, please contact me at your earliest opportunity.

For the purpose of scheduling an administrative conference call in this matter, please provide your availability using the when2meet.com online calendar.

<https://www.when2meet.com/?14648804-kllxu>

To indicate your availability, please click on the above link, enter your full name where indicated, and highlight the times that you are available. All parties' and arbitrator's availability is compiled and displayed as it is entered and entries are saved instantly. All times displayed on the online calendar are in Central Time. When complete the webpage may be closed.

Please provide your availability via when2meet.com by **February 22, 2022.**

The purpose of the administrative conference is to assist the AAA in administering your case more efficiently and expeditiously.

To help arbitrators during the appointment process, the parties must complete a Checklist for Conflicts form. This form helps to avoid the possibility of a last-minute disclosure and/or disqualification of the arbitrators. Parties are requested to provide the full and complete names of all persons, firms, companies or other entities involved in this matter including, but not limited to, subsidiaries, related entities, witnesses, consultants, and attorneys. Arbitrators may need to divulge any relevant information in order to make necessary disclosures, in accordance with the rules. This form is not a preliminary or final witness list, and the AAA will not share your Checklist with the opposing party and the parties are not required to exchange them. The Checklist is due by **March 3, 2022** and may be completed online via the AAA's WebFile at www.adr.org. Subsequent updates to the Checklist may be completed at any time.

Payments can be paid online using our new Quick Pay option. A unique Pay Pin can be found on the 'Payment Options' page of your invoice. To pay an invoice or statement, please visit www.adr.org, select 'File or Access Your Case' and then choose 'Quick Pay an Invoice.' We accept Visa, MasterCard, and American Express. To make other payment arrangements, please contact me.

If you have a Webfile account, you should see this case listed when you log in. If you do not see the case number when you login, please contact the undersigned. If you do not have a Webfile account, please email a request for a registration code to: customerservice@adr.org and they will send you an email with the code and instructions for registering for immediate case access.

Please feel free to call if you have any questions. I look forward to assisting you in this matter.

Sincerely,

Kathleen A Gossett-Cantrell

Kathleen A Gossett-Cantrell
Manager of ADR Services
Direct Dial: (866)440-1792
Email: KathleenCantrell@adr.org
Fax: (855)267-4082

KC/sp

Enclosures



Arbitration Information Sheet

This document provides information about your upcoming arbitration and the expectations concerning each party's conduct throughout the process. Please save this information sheet so that you may refer to it throughout the arbitration.

Administrative Conference - The AAA may conduct an Administrative Conference with the parties to discuss issues that will assist the AAA in administering the case as efficiently as possible. This is also a good time for the parties to discuss ways to conduct the arbitration to meet their specific needs. Please be prepared to discuss the following:

- Estimates on the expected duration of the case;
- Number of arbitrators/party-appointed arbitrator provision;
- Method of appointment of arbitrators, if applicable;
- Your views on the qualifications of the arbitrators to be proposed;
- The possibility of submitting this dispute to mediation;
- The handling of extension requests;
- Reminder for parties to review the *AAA-ICDR® Best Practices Guide for Maintaining Cybersecurity and Privacy*;
- Means of communication between the AAA and the parties;
- The possibility of utilizing a documents only process.

Exchange of Correspondence and Documents - It is also important to note that the parties must exchange copies of all correspondence during the course of the arbitration. The two exceptions are the Checklist for Conflicts mentioned above and the party's arbitrator ranking list, which you will receive further information on during the course of the arbitrator appointment process. The parties only need to send copies of documents, such as discovery, to the AAA if the document is to be transmitted to the arbitrator for a determination.

Communications with Arbitrator - It is very important that parties do not engage in any ex-parte communications with the arbitrator. So as to minimize the potential of such communications, this case will be administered by facilitating the exchange of appropriate written documents through the AAA. To ensure the proper handling of all case-related documents, the parties are asked not to submit correspondence directly to the arbitrator. Correspondence should be submitted to your primary contact for transmittal to the arbitrator, copying the other party.

Timeliness of Filings - Please pay particular attention to response dates included on any correspondence sent to you by the AAA. Untimely filings or responses will not be considered by the AAA. Therefore, if you need an extension to any deadline, please contact the other party to reach an agreement. In the event you are unable to agree, the AAA or the arbitrator will determine if an extension will be granted.

International Arbitrations - If either party believes a matter involves an arbitration agreement between parties from different countries or otherwise has an international nexus that may give rise to unique issues, please let the AAA know within fifteen days. The International Centre for Dispute Resolution (ICDR, www.ICDR.org) is a Division of the AAA that administers international arbitrations worldwide, including in the US. The ICDR is available for assistance in any arbitration handled by the AAA, or, alternatively, can administer the case, if both parties agree. The AAA can also apply its Supplementary Procedures for International Arbitration under any of its Rules. The Supplementary Procedures are available on either www.ADR.org or www.ICDR.org.

Locale of the Arbitration - The parties may agree to a locale for the arbitration. This agreement can be made in the parties' agreement or contract, or when the arbitration is submitted to the AAA. The AAA will place the

arbitration within the agreed upon locale.

When the parties' arbitration agreement is silent or ambiguous with respect to locale, and the parties disagree as to locale, the AAA may determine the place of arbitration, subject to the power of the arbitrator after appointment, to make a final determination on the locale.

In these circumstances, the Claimant will generally request that the hearing be held in a specific locale. If the Respondent fails to file an objection to the locale requested by the Claimant within 14 calendar days after the notice of the request has been sent to the Respondent by the AAA, the AAA will confirm the locale requested by the Claimant is agreeable.

When a locale objection is filed, each party is requested to submit written statements regarding its reasons for preferring a specific locale. In preparing their written statements, the parties are asked by the administrator to address the following issues:

- Location of parties & attorneys;
- Location of witness and documents;
- Location of records;
- If construction, location of site, place or materials and the necessity of an on-site inspection;
- Consideration of relative difficulty in traveling and cost to the parties;
- Place of performance of contract;
- Place of previous court actions;
- Location of most appropriate panel;
- Any other reasonable arguments that might affect the locale determination.

AAA WebFile - We encourage the parties to visit our website to learn more about how to file and manage your cases online. As part of our administrative service, AAA's WebFile allows parties to perform a variety of case related activities, including:

- File additional claims;
- Complete and update the Checklist for Conflicts form;
- View invoices and submit payment;
- Merge forms that auto-populate with case and party information;
- Share and manage documents;
- Strike and rank listed neutrals;
- Review case status or hearing dates and times;
- Upload hearing exhibits in a dedicated space activated by the arbitrator.

AAA WebFile provides flexibility because it allows you to work online as your schedule permits - day or night. Cases originally filed in the traditional offline manner can also be viewed and managed online. If the case does not show up when you log in, please contact your AAA case manager to request access.

Refund Schedule - The AAA has a refund schedule in the administrative fee section of the Rules. After 60 days of the AAA's receipt of the Demand or the appointment of the arbitrator the filing fees are non-refundable. The AAA will only refund filing fees as outlined in the Rules and does not refund neutral costs incurred when parties settle their dispute or withdraw their claims. Case service Final fees are fully refundable if the parties provide at least 24 hours' notice prior to the hearing.

Revised 12/17/2020

Billing Information Sheet

Deposits - After the preliminary management hearing, the arbitrator will notify the case manager how much time is anticipated for the arbitration process. The Manager of ADR Services will then notify the parties of this amount. Once billing is entered into our system an invoice is automatically generated and transmitted within 2 weeks. Should you need an immediate copy to expedite payment please contact your case manager. Your Invoice/Statement includes a list of "Payment Options." If paying by check, please make it payable to "American Arbitration Association" and send it to your case manager's attention at the office address specified on the "Payment Options" page of your Invoice/Statement. These deposits are typically due thirty days prior to the evidentiary hearings, but this may vary depending on the schedule specific to this case.

At the conclusion of the preliminary management hearing, the parties' representatives and the Manager of ADR Services may discuss the AAA's billing and deposit practices with regard to covering the arbitrator's anticipated fees and expenses for the entire proceeding. We ask that the representatives discuss this with their clients prior to the conference so that any questions they may have can be addressed.

Deposits are typically due thirty days prior to the first evidentiary hearing and failure to make deposits by the established due date may result in the arbitrator suspending the proceeding. Therefore, please comply with all established due dates for payment in order to avoid interruption in the progress of the case. All unused deposits shall be promptly refunded.

Parties are also reminded that you may view case financial information, as well as make payments with a credit card online via AAA's WebFile.

Compensation to the arbitrator represents an independent obligation of the parties, and it is understood that the AAA has no liability, direct or indirect, for such payment. Each party shall promptly deposit in advance with the AAA such sums of money as required by the administrator to defray the costs of the arbitrator(s) fees. Compensation incurred will be deducted from deposits on hand, if any.

Abeyance Fee - Should parties agree, it is the policy of the Association to hold cases in abeyance for up to one year. The parties may continue to hold the matter in abeyance beyond that period providing they remit a payment of \$500.00 to the AAA to cover the administrative expense of continued tracking of such cases.

Final Fee - The Final Fee covers all AAA services from the time a hearing is scheduled to when the case is awarded, settled or withdrawn. The Final Fee is billed after an arbitrator has been appointed and a hearing has been scheduled and is payable in advance of the first scheduled hearing. The Final Fee will be incurred for all cases that proceed to their first evidentiary regardless of whether that hearing is held in person, via video conference, or via telephone and is payable by each party filing a claim or counterclaim, pursuant to the applicable fee schedule. If a hearing does not take place, the Final Fee will be fully refunded if the parties provide at least 24 hours' notice prior to the hearing.

Refund Schedule - The AAA has a refund schedule in the administrative fee section of the Rules. After 60 days of the AAA's receipt of the Demand or the appointment of the arbitrator the filing fees are non-refundable. The AAA will only refund filing fees as outlined in the Rules and does not refund arbitrator costs incurred when parties settle their dispute or withdraw their claims. The date of receipt by the AAA of the demand for arbitration will be used to calculate refunds of both claims and counterclaims.

Cabell County Circuit Clerk's Office
750 5th Avenue
Huntington, WV 25701

RECEIPT
NUMBER: 325208

February 22, 2022

Received of: Perry W. Oxley

The exact sum of Two Hundred and Twenty Dollars and 00 cents

Plaintiff: Marshall University Board of Governors
Defendant: Conference USA

Case Number: CK-6-2022-C-66

Description	Amount
FILE CIVIL Filing Fee	200.00
SERVICE CERC Certified Mail by Circuit Clerk to Conference USA	20.00
PAYMENT-CHECK (3422)	-200.00
PAYMENT-CASH	-20.00

Michael J. Woelfel, Circuit Clerk

Deputy

TG

2195 0420 0000 0560 1207

U.S. Postal Service™
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Domestic Mail Only

For delivery information, visit our website at www.usps.com®.

OFFICIAL USE

Certified Mail Fee \$

Extra Services & Fees (check box, add fee as appropriate)

<input type="checkbox"/> Return Receipt (hardcopy)	\$
<input type="checkbox"/> Return Receipt (electronic)	\$
<input type="checkbox"/> Certified Mail Restricted Delivery	\$
<input type="checkbox"/> Adult Signature Required	\$
<input type="checkbox"/> Adult Signature Restricted Delivery	\$

Postage \$

Total Postage and Fees \$

Sent to
Conference USA
Street and Apt. No. or PO Box No.
2105 Olympus Blvd # 400
City, State, ZIP+4®
Carmel, IN 46019

22-C-666
Postmark Here

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions