

## COLLEGE TEAM PRODUCT SUPPLY & SALES CONTRACT

THIS IS A CONTRACT made and entered into by and between APPALACHIAN STATE UNIVERSITY, a constituent institution of the University of North Carolina with a principal place of business located at 438 Academy Street, Boone, NC 28608 (the "UNIVERSITY"), and NIKE USA, Inc., ("NIKE"), with offices at One Bowerman Drive, Beaverton, OR 97005, with regard to the purchase and supply of NIKE product for use by the UNIVERSITY and its athletic programs. In consideration of the mutual promises, terms and conditions set forth in this "Contract Terms Sheet" and in the attached NIKE Standard Terms and Conditions (the "Standard Terms") the parties agree as follows:

- A. CONTRACT PERIOD:** The Contract term shall be June 1, 2015 to May 31, 2022 unless sooner terminated in accordance with the terms and conditions hereof (collectively, the "Contract Period"). This Contract shall replace and supersede the contract between the parties executed on January 7, 2013.
- B. GRANT OF RIGHTS & USE OF NIKE PRODUCT:** In consideration of the product supplied, preferential pricing and purchase credit provided by NIKE under this Contract, and subject to the Standard Terms, the UNIVERSITY: (1) grants to NIKE, and NIKE hereby accepts, the exclusive right to (i) supply products to the "Covered Programs" in the Athletics Department of UNIVERSITY (as defined in the Standard Terms), and (ii) utilize (subject to the approval provisions of this Contract) the "Designations", the "Licensed Marks", and/or "Game Photos" or "Game Footage" (as each term is defined in the Standard Terms) worldwide, in any media (now known or hereafter created) including, but not limited to, the worldwide web, CD-ROM and other interactive and multi-media technologies, in connection with the advertising, marketing, promotion and sale of "Products" (as defined in the Standard Terms), and NIKE brands; and (2) shall ensure that the players and staff of the Covered Programs wear and/or use exclusively NIKE Product in accordance with Paragraph 2 of the Standard Terms.
- C. PRODUCT CONSIDERATION:** In consideration for the rights granted under this Contract, each "Contract Year" (as defined in the Standard Terms), University shall be entitled to order directly from NIKE, and receive, the below indicated amounts of NIKE Product for use by (or in connection with) the Covered Programs, clinics, camps, Coaches, Staff and such other purposes as University and/or the Director of Athletics may deem appropriate to support the relationship between the parties.

<b>Football*/±:</b>	<b>Quantity/Amount</b>
Team Product Allotment	\$72,500 (retail value)
NIKE Elite	\$12,500 (retail value)
<b><u>Men's Basketball:</u></b>	
Footwear	60
Bags	20
Warm Ups	20
Balls	20
NIKE Elite:	
Head Coach	\$3,000 (retail value)
Asst Coach x 3	\$1,000 (retail value)
<b><u>Women's Basketball:</u></b>	
Footwear	50
Warm Ups	25
Balls	12
NIKE Elite	\$1,000 (retail value)
<b><u>Athletic Department:</u></b>	
NIKE Elite**:	

1st Contract Year	\$100,000 (retail value)
2nd Contract Year	\$105,000 (retail value)
3rd Contract Year	\$110,000 (retail value)
4th Contract Year	\$115,000 (retail value)
5th Contract Year	\$120,000 (retail value)
6th Contract Year	\$125,000 (retail value)
7th Contract Year	\$130,000 (retail value)

\* Football Program is required to use NIKE Footballs.

\*\* To be allocated at the discretion of the Director of Athletics.

‡ Football SM Comp money will be transferred to College Sports Marketing to manage under on GameDay account.

If in any Contract Year UNIVERSITY requires additional NIKE Product in quantities in excess of that provided under this Section C, UNIVERSITY agrees that all Product for Covered Programs use shall be purchased directly from NIKE. UNIVERSITY shall be entitled to purchase such product direct from NIKE in accordance with the discounts set forth in Section D below, and subject to availability and NIKE standard sales terms and conditions.

#### D. PURCHASE OBLIGATIONS & PRICING DISCOUNTS:

In consideration of the product supply, merchandise credit and preferential pricing provided by NIKE under this Contract, the UNIVERSITY agrees that all Product for Covered Programs use shall be purchased directly from NIKE and that the UNIVERSITY shall not purchase or accept any Products from any party other than NIKE. All Product purchased pursuant to this provision shall be sold to the UNIVERSITY at the discounted rate set forth in the chart below:

Product Description	Discount
Apparel	@ wholesale
Uniforms	@ wholesale
Footwear	@ wholesale
Equipment	@ wholesale

#### E. SPONSOR BENEFITS:

As a sponsor of the Covered Programs, each Contract Year and at no charge to NIKE, the UNIVERSITY shall provide to NIKE:

- (1) Four (4) complimentary season tickets for all Football games (best available field level); and
- (2) Two (2) complimentary tickets to any post-season events which UNIVERSITY participates in, including national championships; and
- (3) Eight (8) complimentary tickets to each Conference and NCAA Tournament game in which the Men's Basketball Team competes; and
- (4) Eight (8) complimentary tickets to each Conference and NCAA Tournament game in which the Women's Basketball Team competes; and
- (5) UNIVERSITY shall also facilitate a full-page black and white advertisement supplied by NIKE in UNIVERSITY's Women's Basketball media guide.

#### F. ANNUAL SPECIFIED APPEARANCES:

Each "Contract Year" (as defined in the Standard Terms), the head coach of the Football Program shall make up to one (1) appearance and the head coach of the Women's Basketball Program shall make up to one (1) appearance in accordance with Paragraph 11 of the Standard Terms.

[Signature Page Follows]

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

APPALACHIAN STATE UNIVERSITY

By: 

Its: Athletic Director

UNIVERSITY Address:

Appalachian State University

Attn: Department of Athletics

438 Academy Street

Boone, NC 28608

Federal Identification No.: 56-1176030

NIKE USA, Inc.

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

Its: \_\_\_\_\_

Dated: \_\_\_\_\_

## NIKE STANDARD TERMS & CONDITIONS

1. **ADDITIONAL DEFINITIONS.** The terms set forth below in this Paragraph shall be defined for all purposes under this Contract as follows:
  - (a) "NIKE Group" shall mean NIKE USA, Inc., NIKE Retail Services, Inc. (d/b/a NikeTown), their parent company NIKE, Inc., their licensees, distributors, subsidiaries, affiliates and any successor company.
  - (b) "Licensed Marks" shall mean the names, nicknames, mascots, identifications, trademarks, service marks, logographics and/or symbols, and any other recognized reference to the UNIVERSITY or the Covered Program.
  - (c) "Covered Programs" shall mean each of the varsity intercollegiate athletic programs listed in Exhibit A hereto.
  - (d) "Team Member" shall mean a student-athlete attending the UNIVERSITY during the term of this Contract and on the roster of a Covered Program.
  - (e) "Staff" shall mean, collectively, all coaches, equipment managers, trainers and any on-field staff employed by the UNIVERSITY during the term of this Contract to provide services to the Covered Programs.
  - (f) "Contract Year" shall mean each consecutive twelve (12) month period from June 1 through May 31 during the term of this Contract.
  - (g) "Products" shall mean: (i) all athletic and athletically inspired or derived footwear that any Team Member and/or wear or may be reasonably expected to wear while participating in their respective sport ("Footwear"); (ii) authentic competition apparel consisting of uniforms, warm-ups, practicewear, sideline apparel, and similar apparel, that Team Members or Staff wear or may be reasonably expected to wear while participating in Covered Program; (iii) all other apparel articles of an athletic or athleisure nature including but not limited to polo shirts, golf shirts, tank-tops, T-shirts, sweatsuits, separates and other body coverings, and accessories of an athletic or athleisure nature, including but not limited to headwear, headbands, wristbands, bags, socks, protective gloves that any Team Member or Staff wear or use or may be reasonably expected to wear or use while participating in Covered Program; (iv) competition balls; (v) protective eyewear, eyewear with performance attributes and sunglasses; and (vi) any other sports equipment NIKE currently makes or may add to its Products lines at any time during the Contract Period.
  - (h) "NIKE Products" shall mean all "Products" in connection with which, or upon which, the NIKE name, the Swoosh Design, the NIKE AIR Design, the Basketball Player Silhouette ("Jumpman") Design or any other trademarks or brands (e.g., Sports Specialties, Brand Jordan, SPL.28) now or hereafter owned and/or controlled by NIKE appear (collectively, the "NIKE Marks"), singly or in any combination.
2. **EXCLUSIVE USE OF NIKE PRODUCTS.** Throughout the Contract Period, the UNIVERSITY shall make NIKE Products available on an exclusive basis to the Covered Program to be worn and/or used by Team Members and Staff during practices, games, exhibitions (including during locker room activities), clinics and/or sports camps, lockerroom and/or sideline celebrations and/or presentations, and other official or UNIVERSITY-sanctioned activities (including but not limited to photo sessions and interviews) during which Team Members and Staff wear and/or use Products except as otherwise provided under this Paragraph. The UNIVERSITY shall ensure that no Team Member or Staff shall (a) alter or permit the alteration of any NIKE Product worn or used by them to resemble a non-NIKE Product; or (b) wear any non-NIKE Products which have been altered to resemble NIKE Products. The UNIVERSITY acknowledges that "polishing-out", "spatting" or otherwise taping, so as to cover or obscure any portion of any NIKE trademark, the NIKE Products worn by Team Member and/or Staff as required under this Paragraph is inconsistent with the purpose of this Contract. NIKE acknowledges that, notwithstanding anything in this Paragraph to the contrary, Staff may wear, as is appropriate for the circumstances, non-athletic footwear or apparel (e.g., business attire) in connection with their official duties and that wearing such apparel shall not constitute a breach of this Paragraph.

3. **MERCHANDISE ORDERS & DELIVERY.** All product to be supplied by NIKE under Section C above shall be delivered F.O.B. to the UNIVERSITY. Only properly submitted orders from the Athletic Director (or other authorized representative of the UNIVERSITY) shall be filled by NIKE. Provided the UNIVERSITY places its complete annual product orders on a timely basis in accordance with NIKE's standard ordering deadlines (which are typically 9-12 months in advance of the desired delivery date), the annual product allotments for each upcoming season shall be delivered to the UNIVERSITY generally thirty (30) days prior to the start of the regular season. Notwithstanding the foregoing, the UNIVERSITY acknowledges that product delivery may be staggered in accordance with a mutually agreed priority schedule.
4. **ADVERTISING APPROVALS & USE OF GAME PHOTOS/FOOTAGE.** In the event NIKE desires to use the Licensed Marks, Designations or Game Photos or Footage in any external advertising, NIKE shall submit a sample of such intended use to the UNIVERSITY for approval by the authorized representatives of UNIVERSITY at least seven (7) business days prior to actual commercial use, such approval not to be unreasonably withheld. In connection therewith, at NIKE's request, the UNIVERSITY shall permit NIKE to utilize, consistent with this Contract, Game Photos and Game Footage (owned and/or controlled by the UNIVERSITY), without a use fee, other than reasonable search and edit charges. NIKE acknowledges that the right to use Game Photos and/or Game Footage is subject to applicable NCAA rules and regulations with respect to the depiction of eligible athletes. Except as otherwise provided herein, UNIVERSITY shall retain all rights in and to UNIVERSITY's name, marks and endorsement and shall not be prevented from using, permitting, or licensing others to use UNIVERSITY's name or endorsement in connection with the advertisement, promotion, or sale of any product or service. NIKE and UNIVERSITY agree that they shall take reasonable steps during the term of this Contract to protect the UNIVERSITY Marks in connection with the advertisement, promotion and sale of NIKE products. NIKE recognizes the value of the UNIVERSITY's name and marks and acknowledges that the goodwill attached thereto belongs to UNIVERSITY and that nothing in this Contract serves to assign, convey or transfer to NIKE any rights, title or interest whatsoever in or to the UNIVERSITY name and marks. UNIVERSITY recognizes the value of the NIKE Marks and acknowledges that the goodwill attached thereto belongs to NIKE and that nothing in this Contract serves to assign, convey or transfer to UNIVERSITY any rights, title or interest in or to the NIKE Marks.
5. **RIGHTS OF EXTENSION, FIRST DEALING & FIRST REFUSAL.**
  - (a) At NIKE's request made no later than May 1, 2021, the UNIVERSITY shall for a 45-day period negotiate with NIKE in good faith with respect to the terms of a renewal of this Contract. The parties shall not be obligated to enter into an agreement if they cannot settle on mutually satisfactory terms. Prior to June 15, 2021 (the "Exclusive Negotiating End Date"), the UNIVERSITY shall not (nor shall the UNIVERSITY permit its agents, attorneys or representatives to) engage in discussions or negotiations with any third-party regarding product supply with respect to any Products, or sponsorship of any Covered Program (or similar supply or promotional arrangement) with respect to any Products, and to commence after this Contract has expired.
  - (b) During the term hereof and for a period of ninety (90) days thereafter, NIKE shall have the right of first refusal for Product Supply/Endorsement, as follows. If the UNIVERSITY receives any bona fide third-party offer at any time on or after the Exclusive Negotiating End Date with respect to any Product Supply/Endorsement, the UNIVERSITY shall submit to NIKE in writing the specific terms of such bona fide third-party offer in its entirety in the form of a true and complete copy which shall be on the offeror's letterhead or other identifiable stationery or imprint readily authenticatable by NIKE as having originated with such third-party offeror. NIKE shall have fifteen (15) business days from the date of its receipt of such true copy of the third-party offer to notify the UNIVERSITY in writing if it will enter into a new contract with the UNIVERSITY on terms no less favorable to the UNIVERSITY than the material, measurable and matchable terms of such third-party offer. If NIKE so notifies the UNIVERSITY within such 15-day period, the UNIVERSITY shall enter into a contract with NIKE on the terms of NIKE's offer. If NIKE fails or declines to match or better the material, measurable and matchable terms of such third-party offer within such 15-day period, the UNIVERSITY may thereafter consummate an agreement



with such third-party on the terms of the offer made to the UNIVERSITY. Prior to the Exclusive Negotiating End Date, the UNIVERSITY shall not solicit, consider or present to NIKE, and NIKE shall not be obligated to respond to, any third-party offer for any Product Supply/Endorsement.

**6. RIGHTS OF TERMINATION.**

- (a) The UNIVERSITY shall have the right to terminate this Contract immediately upon written notice to NIKE if: (i) NIKE is adjudicated insolvent or declares bankruptcy; or (ii) NIKE shall be in material breach of this Contract, which breach NIKE fails to cure, if curable, within thirty (30) days of NIKE's receipt of written notice from the UNIVERSITY specifying such breach.
- (b) NIKE shall have the right to terminate this Contract immediately upon written notice to the UNIVERSITY if: (i) Team Members or Staff fail to wear or use NIKE Products in violation of Paragraph 2 above, or wear NIKE Products altered, spatted or taped, in violation of the provisions thereof; or (ii) the UNIVERSITY shall be in material breach of this Contract, which breach the UNIVERSITY fails to cure, if curable, within thirty (30) days of the UNIVERSITY's receipt of written notice from NIKE specifying such breach. In the event of termination under this Paragraph, the UNIVERSITY shall forfeit any un-used merchandise credit.

**7. RIGHT TO USE OF LICENSED MARKS EXPIRATION/TERMINATION.** Upon expiration or termination of this Contract for any reason, NIKE shall have the right to for a period of six (6) months, exhaust all advertising and promotional materials bearing and/or including the Licensed Marks and/or Designations that were produced and approved by UNIVERSITY prior to the effective date of expiration or termination. Notwithstanding the foregoing, NIKE shall have the right to use in perpetuity, for non-commercial in-house exhibition, historical, educational or commemorative purposes, videotape, film or photographs showing NIKE Products provided under this Contract.

**8. REPRESENTATIONS, WARRANTIES.** The UNIVERSITY covenants, represents and warrants that: (a) it has the full legal right and authority to enter into and fully perform this Contract in accordance with its terms and to grant to NIKE all the rights granted herein; and (b) neither the UNIVERSITY nor any Staff member is party to any oral or written agreement, contract or understanding that would prevent, limit or hinder the performance of any obligations hereunder of the UNIVERSITY or Staff member. The UNIVERSITY further covenants, represents and warrants that during the term hereof it shall not in connection with the Covered Programs: (i) sponsor, endorse, or allow any Staff member to sponsor or endorse, Products sold by any manufacturer or seller of Products other than NIKE, or (ii) enter into, or allow any Staff member to enter into, any endorsement, promotional, consulting or similar agreement (including the sale of signage or other media) with any manufacturer or seller of Product other than NIKE that manufacturers, sells, licenses or is brand-identified to Footwear.

**9. NOTICES.** Any notice of breach or default shall be in writing and deemed given if sent postage prepaid via registered or certified mail, by verifiable facsimile transmission or hand delivery, or by express courier service with confirmed delivery, to the breaching party at the addresses set forth above (unless written notice of a change of address has been provided) and shall be deemed to have been given at the time it is sent properly addressed and posted. All notices to UNIVERSITY shall also be copied to: Appalachian State University, Office of General Counsel, Attn: Dayton Cole, ASU Box 32126, Boone, NC 28608. Notices to NIKE shall be sent to the Legal Department, attention: Contracts Specialist-Sports Law Practice Group (if faxed, to 503-646-6926).

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

**11. APPEARANCES.** Each Contract Year, upon reasonable prior notice and subject to the head coach's coaching commitments to the Team, designated head coaches shall make Personal Appearances and/or On-line Appearances on behalf of NIKE up to the number set forth in Section F of the Contract Terms Sheet in connection with the promotion of NIKE Products and/or NIKE brands. Such appearances may include, but are not limited to: (i) appearances to shoot photos for posters, brochures or other promotional materials, and photo or production sessions related to video

productions and/or advertising (including but not limited to print and television advertising); or (ii) speaking engagements, in-store appearances, NIKE website on-line chats, attendance at football camps or clinics, celebrity events or other public appearances. UNIVERSITY acknowledges that, except as provided below, head coaches shall receive no additional compensation for such appearances; provided, however, NIKE may request appearances by head coaches in addition to those described in this Paragraph 11 and for any such additional appearance agreed to and made, NIKE shall pay head coaches an appearance fee as mutually agreed upon by the parties within thirty (30) days after such appearance has been made. NIKE shall pay all reasonable and necessary travel and related out-of-pocket expenses incurred by the head coaches in connection with any such appearances.

12. **AUDITS OF RECORDS.** The North Carolina State Auditor, UNIVERSITY or UNIVERSITY's Auditor shall have access to persons and records as a result of all contracts or grants entered into by the UNIVERSITY in accordance with North Carolina General Statute section 147-64.7 or any successor statute.
13. **MISCELLANEOUS.** Nothing contained in this Contract shall be construed as establishing a partnership, agency or joint venture relationship between the parties. Every provision of this Contract is severable. The rights and obligations granted under this Contract are personal to each party hereto and shall not be assigned or delegated to any third-party without the prior written consent of the non-assigning party. The parties agree to comply with all applicable laws, regulations and UNIVERSITY policies in the performance of this Contract. This Contract shall constitute the entire understanding between the UNIVERSITY and NIKE and may not be altered or modified except by a written agreement, signed by both parties. Any previous agreements between the parties shall have no further force or effect.

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**EXHIBIT A**  
**Covered Programs**

Football
Basketball (m/w)
Baseball
Cross Country (m/w)
Golf (m/w)
Soccer (m/w)
Tennis (m/w)
Track and Field (m/w)
Wrestling
Volleyball (w)
Field Hockey (w)