

**BOARD OF REGENTS**  
**EASTERN MICHIGAN UNIVERSITY**

<b>SECTION: 29</b>
<b>DATE:</b> <b>June 16, 2015</b>

**RECOMMENDATION**

**UNIVERSITY ATHLETIC APPAREL AGREEMENT**

**ACTION REQUESTED**

It is recommended that the Board of Regents authorize the President to execute an agreement for the University to contract with adidas America Inc. (“adidas”) as the University’s provider of footwear, apparel, uniforms, and accessories. The agreement is for a seven (7) year term, commencing July 1, 2015.

**STAFF SUMMARY**

The University has most recently contracted with adidas America for athletic apparel, with the previous contract extending from June 2010 to May 2015. This proposed agreement, with a term of seven (7) years, provides for a substantial increase in promotional funds for the Athletics Department, and includes incentives based upon both academic and sport specific achievement. These funds will be used for the benefit EMU of student-athletes.

Under the terms of this agreement, the University will purchase all apparel, footwear, uniforms and accessories from adidas, and receive substantial discounts on these purchases. In addition, the University shall identify adidas as the exclusive brand for athletic footwear, apparel and accessories.

**FISCAL IMPLICATIONS**

The University will receive a minimum of \$200,000 in annual promotional dollars, compared to \$90,000 annually in the previous agreement. The minimum spending threshold increases from \$200,000 to \$325,000 annually. The promotional and minimum spending amounts are incorporated in the Recommend FY16 General Fund Budget.

**ADMINISTRATIVE RECOMMENDATION**

The proposed Board action has been reviewed and is recommended for Board approval.

\_\_\_\_\_  
**University Executive Officer**

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

## TEAM AGREEMENT

This Team Agreement (this “Agreement”) is entered into between adidas America, Inc., an Oregon corporation (“adidas”), and Eastern Michigan University (“School”), effective as of the first day of the Term (as defined in Section 7.1 below).

### RECITALS

- A. School fields athletic teams and programs in **Women’s**: Basketball, Cross Country, Golf, Gymnastics, Rowing, Soccer, Softball, Swimming and Diving, Tennis, Track and Field, and Volleyball, and **Men’s**: Baseball, Basketball, Cross Country, Football, Golf, Swimming and Diving, Track and Field, and Wrestling (each, a “Team”) and retains and supports the coaches, staff and student athletes in connection therewith (collectively, the “Team Participants”).
- B. adidas designs, manufactures, distributes, and sells athletic footwear, apparel and related accessories and equipment through its Team Direct Sales Program (the “adidas Team Program”), the terms and conditions of sale are updated periodically in the adidas Team Sales Catalog. The products included in the adidas Team Program include Footwear Products, Non-Footwear Products, and Inflatables; Basketballs, Footballs and Soccer Balls (each as defined in Section 1 below) (collectively, “adidas Products”). adidas wishes to support School and its athletic teams and programs by, as more specifically described in this Agreement, supplying adidas Products to School under the adidas Team Program.
- C. School wishes to acquire and use adidas Products under the adidas Team Program and consistent with the terms of this Agreement.

The parties agree as follows:

### AGREEMENT

#### 1. adidas Products.

- 1.1. Footwear Products. During the Term, School agrees to purchase adidas Footwear Products directly from adidas for Team Participants’ use in accordance with the adidas Team Program (45% off MSRP / 30% off MSRP for all miteam footwear products). “Footwear Products” means all footwear for Team Participants for all Team events, including competition, practices, training, coaching, travel, and recruiting and media engagements.
- 1.2. Apparel, Custom Uniforms, Accessories and Equipment. During the Term, School agrees to purchase, directly from adidas, Non-Footwear Products for Team Participants’ use in accordance with the adidas Team Program (50% off MSRP for all apparel) for Team Participants’ use in each case for all Team events. “Non-Footwear Products” means all apparel, uniforms (including custom uniforms), accessories, equipment (including travel bags, headwear (i.e. Football sideline and baseball), socks, wristbands, gloves, watches, eyewear, hard goods, and inflatables (i.e. basketballs, footballs and soccer balls) included in the adidas Team Program, but excluding Footwear Products.

- 1.3. Baseball and Fastpitch Products. During the Term, School agrees to purchase, directly from adidas, batting helmets, equipment bags, and helmet bags at 37.5% off MSRP for Team Participants' use.
- 1.4. No Warranties. adidas shall not be liable for any injury or damage suffered by School or Team Participants from wearing or using adidas Products, and School hereby expressly knowingly and irrevocably waives all such liability, except to the extent such injury or damage is caused by adidas's gross negligence or willful misconduct. **ALL GOODS PURCHASED OR OTHERWISE ACQUIRED BY SCHOOL PURSUANT TO THIS AGREEMENT ARE TRANSFERRED AS-IS. ADIDAS HEREBY DISCLAIMS ANY AND ALL IMPLIED WARRANTIES, INCLUDING THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND THOSE THAT MAY ARISE BY COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE.**

2. **Exclusive Use.**

- 2.1. Athletic Activities. During the Term, School shall ensure that each Team (including all Team Participants) exclusively uses and wears adidas Products whenever engaged in any Team event and any other athletic activities for which such attire is appropriate, including games and certain practice sessions, being filmed by motion picture or video tape, posing for photographs, and conducting or participating in camps or clinics.
- 2.2. No Spatting. School shall not permit any Team Participant or any other person to "spat", obstruct or alter adidas' logos and marks in any way.

Exceptions to this Section 2 require written approval by adidas.

3. **License.** School hereby grants to adidas the right and license, during the Term and at all times thereafter to the extent necessary for purposes of this agreement, to use School's name and trademarks worldwide in connection with the development, promotion, marketing, advertising and sale of adidas Products. School shall not knowingly grant any comparable right to any other person or entity if the other person or entity is engaged in any business competitive with adidas. This license includes the right to use School's name, nickname, initials, photograph, likeness, image or facsimile image, video or film portrayals and any other means of expressing School's use of adidas Products in connection with, but not limited to, television and radio advertisements, print advertisements, advertisements on any public or private on-line service or the Internet, catalogs, posters, billboards, building murals, video or audio promotional productions, promotional or marketing appearances, and hang tags and other in-store displays. School acknowledges that no royalty shall be paid on adidas Products provided by adidas to School's Teams and Team Participants under this Agreement.

4. **Promotional Merchandise.**

- 4.1. Merchandise Provided if Purchase Minimums Met. During the Term, adidas will provide School with merchandise listed in Section 4.2 below, during each School Year (defined as July 1 through May 30) of the Term, contingent upon School achieving and

maintaining minimum annual purchase volumes of \$325,000 (wholesale pricing) (which includes custom uniform purchases directly through the adidas Team Program). If the School does not comply with the minimum purchase requirement (i.e., \$325,000) in any given year, School shall provide adidas with cash compensation equivalent to the sales shortfall.

4.2. Promotional Merchandise for Each School Year. For each School Year, during the Term, adidas shall provide the following types and values of Promotional Merchandise:

“Promotional Merchandise” means promotional merchandise orders from the adidas Team Sales Catalog. Promotional merchandise amounts that remain unused as of 5:00 PM EST May 30 in any given year, are forfeited by School. As a result, Promotional Merchandise cannot be carried from one School Year to the next.

**4.3 Athletic Director Discretionary Fund: \$200,000 (retail value annually)**

**\*AD will receive an additional promotional allotment during the first year of this agreement of \$50,000 (retail value). As a result, the first year of this agreement will provide the AD with a discretionary fund of \$250,000 (retail value). This is awarded in appreciation from adidas to EMU for the continued partnership. This amount must be spent prior to June 1, 2016.**

5. **Incentive Compensation.** adidas shall provide School the following bonus amounts in any School Year if School achieves any of the applicable goals defined below during such School Year.

Olympic Team Sports Post Season Play (NCAA):	\$2,000
Conference Coach of the Year:	\$1,000
Men’s and Women’s Basketball NCAA Tournament:	\$5,000
Football Bowl Game Appearance:	\$10,000
Team GPA of 3.0 or higher after Spring Semester:	\$1,000

Head Men’s and Women’s Basketball Coach and Head Football Coach will receive \$3,000 for using the adidas basketball and footballs.

**Wholesale Spend Bonus (applicable when School exceeds minimum annual purchase volumes of \$325,000):**

<b>Spend</b>	<b>Additional Retail Allotment</b>
<b>\$350,000</b>	<b>\$10,000</b>
<b>\$375,000</b>	<b>\$10,000</b>
<b>\$400,000</b>	<b>\$10,000</b>

**Same program/pricing will stay in place for additional wholesale spends above \$400,000 (i.e., for every \$25,000 School spends, adidas will allocate an additional \$10,000 to School in promotional dollars).**

6. **Marketing Benefits.** In all media and methods of communication listed below, School shall identify adidas as the School's exclusive athletic footwear, apparel, and accessory brand permitted to advertise its products.

**Athletic Collateral Materials:**

Adidas logo to appear on all athletic department media guides, game day programs, schedule cards, coaches' clinics, schedule posters, and camp brochures.

**Stadium Signage:**

- (2) adidas signs within Rynearson Stadium
- (1) adidas sign on Convocation Centers Official's Table
- (1) adidas sign on all other EMU home venues (where applicable)

**Athletic Department Website:**

Adidas link to appear on EMUEAGLES.com homepage

**Public Address Announcements:**

- (2) Announcements at all EMU home contests listing adidas as the official supplier of all EMU Athletics' apparel and footwear.

**Radio Broadcasts:**

- (2) Announcements per broadcast listing adidas as the official supplier of EMU Athletics apparel and footwear.

Title Sponsor of "adidas Player of the Game" per game aired on EMU Radio Network.

**Season Tickets:**

- (4) Club Seats and (2) Parking passes to all home football games
- (2) Floor Level Tickets and (1) parking pass to all home men's and women's basketball games.

**Season Ticket Holders Mailing:**

Adidas shall work with School's Athletics department to send out an email blast to notify Season Tickets Holders of new adidas/EMU apparel/promotions. (2) Per year.

7. **Representations and Warranties.** Each party represents and warrants that such party (i) is not party to any agreement, contract or understanding, whether oral or written, that would prevent, limit or hinder the performance of any of its obligations under this Agreement; and (ii) has the due and proper authority to enter into and perform its obligations under this Agreement.

8. **Term and Termination.**

**Term.** This Agreement shall remain in effect from July 1<sup>st</sup>, 2015 and until June 30<sup>th</sup>, 2022, unless sooner terminated pursuant to the terms of this Agreement (the "Term").

8.1. Termination for Cause. Either party may terminate this Agreement if the other party materially breaches this Agreement and, if such breach is curable, fails to cure such breach within 30 days of written notice from the non-breaching party. The parties acknowledge and agree that the breach of Section 2 constitutes an incurable material breach of this Agreement.

8.2. Termination by adidas. adidas may, in its sole discretion, reduce the amount of Promotional Merchandise described in Section 4 by 50% or terminate this Agreement if (a) one or more coaches, Teams or players are suspended or otherwise subject to material disciplinary action by the NCAA, including any disciplinary action that limits the Team's competitiveness or prevents the Team from participating in regular season or tournament games; or (b) in adidas' sole estimation one or more coaches, Teams, or players engage in conduct that reflects poorly on adidas or that harms adidas' reputation in any way.

8.3. Right of Suspension or Reduction. If School has breached any term of this Agreement, then adidas may (in its sole discretion) suspend or reduce payments of incentive compensation and/or reduce the dollar amount of adidas Products available to School under Section according to the following schedule:

For the first offense, there will be a 25% reduction in the amount of Promotional Merchandise. The second offense will incur a 50% reduction in the amount of Promotional Merchandise or termination of the Agreement. The third offense will incur a 100% reduction in the amount of Promotional Merchandise or termination of the Agreement, at adidas' sole discretion. Any reductions in the amount of Promotional Merchandise will be deducted in the following School Year unless the breach occurs in the final year of this Agreement, in which case the deduction will occur in the current School Year or in the first renewal year. The decision to apply the deduction in the current School Year or the first renewal year rests entirely with adidas.

8.4. Effect of Termination; Survival. The right of termination under this Agreement is not exclusive and is in addition to any and all other rights and remedies available to the parties under applicable law. The termination of this Agreement shall not relieve a party from liability for a prior breach of this Agreement. The provisions of this Agreement that by their context or nature are intended to survive the expiration or termination of this Agreement, including Sections 9.1 and 9.2 shall survive the expiration or termination of this Agreement.

## 9. Rights of First Dealing and First Refusal.

- 9.1. First Dealing. Beginning not less than 60 days before the end of the Term and through the end of the Term, the parties shall meet and negotiate in good faith the renewal of this Agreement (“First Dealing Period”). The parties shall not be obligated to enter into an agreement if they cannot settle on mutually agreeable terms during the First Dealing Period. During the First Dealing Period, School shall not, and School shall not permit its agents, attorneys, accountants, representatives or employees to, engage in any discussions or negotiations with any third party for any agreement or arrangement involving, in whole or in part, the same subject matter as in this Agreement, including the sponsorship, promotion, advertisement or endorsement of athletic apparel and footwear products, or providing consulting or similar services with respect to athletic apparel and footwear products (“Third Party Deal”).
- 9.2. First Refusal. School shall not enter into an endorsement or similar agreement with a third party without first giving adidas an opportunity to enter into an agreement with School for such rights on the third party terms and conditions, measured solely in terms which are material, measurable and matchable (“Third Party Terms”). School to the extent allowed without violating any pre-existing terms or agreement will notify adidas of any Third Party Terms it receives. School will provide adidas with an opportunity to match or better any third party offer. If School provides such an offer it must be on the third party’s letterhead and a copy thereof must be supplied to adidas. adidas shall have 30 days from its receipt of the Third Party Terms to match such Third Party Terms. If adidas matches the Third Party Terms, then School shall enter into a new agreement with adidas consistent with the Third Party Terms.

## 10. Covenants of Parties.

- 10.1. Confidentiality. Subject to applicable state public records law, the terms of this Agreement are strictly confidential and neither party may disclose the terms hereof to any third party without the prior written consent of the other party. Notwithstanding the foregoing, either party may disclose the terms hereof to such party’s professional, financial and similar advisors provided such persons are bound by covenants or obligations prohibiting further disclosure and restricting their use of such information to purposes consistent with the provisions of this Agreement.
- 10.2. Compliance with Law. Each party shall comply with all laws, rules and regulations applicable to it in the performance of its obligations under this Agreement.
- 10.3. No Resale. During and after the Term, School agrees to not sell or distribute, or to permit the sale or distribution of, any adidas Products acquired pursuant to this Agreement, provided that School may sell such adidas Products to: (i) affiliates of the School, including on-campus retail outlets that provide services or sales to the School’s teams, athletic facilities, faculty, students and visitors; and (ii) vendors of the School that provide services to the School’s teams or athletic facilities but only to the extent related to vendor’s provision of service to the School.

11. **Notices.** Notices required by this Agreement shall be sent to the address listed below or to such other address as the parties may from time to time by notice provide.

If to adidas:

adidas America, Inc.  
5055 N. Greeley Ave.  
Portland, OR 97217  
Attn: Director, U.S. Team Sports

If to School:

Heather Lyke  
Vice President and Director of Athletics  
Eastern Michigan University  
Department of Athletics  
799 N. Hewitt Road  
Ypsilanti, MI 48197

With a copy to:

adidas America, Inc.  
5055 N. Greeley Ave.  
Portland, OR 97217  
Attn: Legal Dept.

Notice is effective when actually received if sent by any means that leaves a hard-copy record in the hands of the recipient. If sent registered mail, postage prepaid, return receipt requested, notice shall be deemed effective on the date the return receipt shows the notice was accepted, refused, or returned undeliverable.

12. **Miscellaneous.**

- 12.1. Severability. If any provision of this Agreement is held to be invalid or unenforceable in any respect for any reason, the validity and enforceability of such provision in any other respect and of the remaining provisions of this Agreement will not be in any way impaired.
- 12.2. Choice of Law; Venue; Jurisdiction. This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon. The parties hereby agree and consent to the exclusive jurisdiction and venue of any federal or State court located in Multnomah County, Oregon.
- 12.3. Binding Effect. This Agreement will be binding on and inure to the benefit of the parties and their respective heirs, personal representatives, successors and permitted assigns.
- 12.4. Assignment. Neither party may assign, sell or transfer this Agreement or any of its rights, interests or obligations under this Agreement without the other Party's prior written consent.
- 12.5. Construction. The captions used in this Agreement are provided for convenience only and will not affect the meaning or interpretation of any provision of this Agreement.



All references in this Agreement to “Section” or “Sections” without additional identification refer to the Section or Sections of this Agreement. All words used in this Agreement will be construed to be of such gender or number as the circumstances require. Whenever the words *include* or *including* are used in this Agreement, they will be deemed to be followed by the words *without limitation*.

- 12.6. Expenses. Except as otherwise expressly provided in this Agreement, each party to this Agreement will bear its own expenses in connection with the preparation, execution and performance of this Agreement and the transactions contemplated by this Agreement. School shall be solely responsible for the payment of all taxes or other associated expenses on any compensation or considerations received under this Agreement.
- 12.7. School/adidas Relationship. Nothing contained in this Agreement shall be construed as establishing an employer/employee, agency, partnership or joint venture relationship between the parties.
- 12.8. Entire Agreement. This Agreement, together with the terms and conditions of the adidas Team Sales catalog which School acknowledges receipt and has reviewed its terms and conditions. It has also completed various account or credit applications before executing this agreement, all of which are incorporated into this Agreement by reference, constitutes the entire understanding between the parties with respect to the subject matter hereof and cannot be amended or modified except by an agreement in writing, signed by each of the parties. All previous understandings or agreements between the parties related to the subject matter herein shall have no further force and effect.

IN WITNESS WHEREOF, the undersigned individuals hereby certify that they are duly authorized to execute this Agreement on behalf of the parties.

**adidas America, Inc.**

**EASTERN MICHIGAN UNIVERSITY**

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Name: Mark Daniels  
Title: Director of US Team Sports

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Name: Heather Lyke  
Title: Vice President and Director of Athletics