

OAKLAND UNIVERSITY
TERMS AND CONDITIONS FOR SPONSORSHIP AGREEMENTS (“TERMS AND CONDITIONS”)

These Terms and Conditions are made a part of and incorporated by reference into any Oakland University Sponsorship Agreement (the “Agreement”) by and between Oakland University (“University”) and sponsor named in the Agreement (“Sponsor”).

1. **Program/Publication Preparation.**

- a. ***Responsibility.*** The University is responsible for providing broadcast time or publication space for sponsorship messages or materials prepared by the Sponsor. Sponsorship messages and materials are referred to collectively in these Terms and Conditions as “sponsorship materials” or “materials.” Production costs, talent charges, and service charges if any, associated with sponsorship materials are not covered under the Agreement, but can be obtained from the University for an additional service fee.
 - b. ***Approval of Material.*** Sponsorship materials prepared by the Sponsor are subject to the prior written approval of the University’s Communications and Marketing department. The sponsorship materials shall be prepared in such a way so as to preserve the integrity, character, and dignity of the University, and shall be of high quality in design, material and workmanship. In the event the materials are unsatisfactory, the University, although not required to do so, shall have the right to produce a substitute broadcast/publication as under paragraphs (c) and (d) below. Any approval by the University hereunder shall not be deemed to be an approval as to conformity with federal, state, or local laws or regulations governing the Sponsor or sponsorship material.
 - c. ***Right to substitute for Nonreceipt-Broadcast.*** In the case of sponsorship materials for broadcast, if the University does not receive material for any broadcast at least 24 hours before the specified due date, the University, although not required to do so, shall have the right to produce a substitute broadcast, making its regular charges for time and a reasonable charge for talent used, announcing the name, address and business of the Sponsor or other replacement copy at the discretion of the University. However, the University’s failure to broadcast the materials due to the Sponsor’s failure to meet the specified due date shall in no way relieve the Sponsor of any of its obligations and duties under the Agreement, including the obligation to pay the sponsorship payment in full.
 - d. ***Failure to Deliver Material-Publication.*** In the case of sponsorship materials for publication, if the University has not received material for publication or sponsorship panels by the specified due date, or if copy corrections are submitted after the specified due date, the University shall not be obligated to publish the materials or correct materials, whichever the case may be. However, the University’s failure to publish the materials or corrected materials due to the Sponsor’s failure to meet the specified due date shall in no way relieve the Sponsor of any of its obligations and duties under the Agreement, including the obligation to pay the sponsorship payment in full.
 - e. ***Revisions to Materials.*** Any revision, patching, repairing or special handling of negatives, positives, Scotch prints, etc., will be at the sole cost of the Sponsor.
 - f. ***Positions/Timing of Broadcast/Publication.*** Any requested positions or timing broadcasts or publications are not guaranteed unless specifically noted in the Agreement.
2. **Sponsor Panel Replacement.** If, during the Term of the Agreement, the Sponsor desires to change the sponsorship materials, it shall notify the University in writing, setting forth the desired changes. The University shall have the right to approve or reject such changes. At the University’s

option, the production of any new display panel(s), or the alteration of any existing panels, shall be performed by the University, or its agents, or by a contractor retained by the University, at the Sponsor's expense. The Sponsor shall be solely responsible for the cost of production and installation of any new or altered display panel.

3. **Content of Sponsorship Materials.** The Sponsor warrants and represents that its sponsorship materials shall not:
 - a. Violate any applicable law or regulation including but not limited to any NCAA, Horizon League (or the University's athletic conference at the relevant time) or University regulations, policies, or procedures now or hereafter enacted.
 - b. Infringe upon the copyright, trademark, right of publicity or other right of any third party. The Sponsor shall defend, indemnify and hold harmless the University, and the University's trustees, directors, officers, employees, agents, representatives and designees, in their official and personal capacities, from any and all claims, liabilities, damages, cost and expenses, including, without limitation, reasonable attorney's fees, arising out of or relating to the content of the sponsorship materials or the breach or alleged breach of this warranty. This indemnity shall survive any termination or expiration of the Agreement.
4. **Force Majeure.** The University shall not be responsible for events beyond its reasonable control, such as public emergency or necessity, legal restrictions, labor disputes, strikes, boycotts, casualties, government restrictions, acts of God, epidemics, pandemics, unforeseen commercial delays, or for any reason, including but not limited to, mechanical breakdowns beyond the control and without fault of the University that impair or otherwise cause the University to be unable to broadcast/publish sponsorship materials at the time or in the manner specified. The University shall not be liable to Sponsor except to the extent of allowing a rate reduction or suitable "make goods". If any such event occurs and such event precludes the broadcast/publishing of the Sponsor's sponsorship materials for a period exceeding ninety (90) consecutive days, the Term shall be automatically extended for an equivalent period at no additional cost to the Sponsor. The failure to display sponsorship materials during such time shall not constitute a breach of the Agreement by the University and shall not affect the Sponsor's payment obligation hereunder.
5. **Limitation of Liability.** Any delay in commencing of service and/or posting of fewer locations than specified and/or resulting loss of advertising service caused by any reason whatsoever, shall not render the University liable for any damages or offsets of any kind and shall be remedied solely by extending the Term of the Agreement to provide an equivalent amount of sponsorship at the contracted broadcast times and/or location or a replacement time and/or location of equal value, or at the University's option, result in a pro-rated credit, with all other remedies at law or equity being expressly waived by the Sponsor.
6. **Confidential Information.** The Sponsor cannot publish or otherwise disclose to any person or entity, other than the University, any information or data obtained as a result of the Agreement from the University, private individuals or private or public entities, except with the consent of the University and such person or entity.
7. **Notices.** Any notices required or permitted to be given hereunder shall be delivered to the person who signed the Agreement on behalf of the party receiving the notice, or any other person designated in writing by such party, personally, or by commercial overnight carrier or first class U.S. mail only.
8. **Non-Waiver.** No failure, delay or course of dealing on the part of either party in exercising any of its rights, remedies, powers or privileges under the Agreement will be deemed to be a waiver of any such rights, remedies, powers or privileges, nor will any single or partial exercise of any right, remedy, power or privilege preclude any other further exercise of any right, remedy, power or privilege.

9. **Interpretation of Agreement.** The Agreement, together with these Terms and Conditions embody the entire and final agreement between the University and Sponsor and supersede all prior discussions, negotiations, representations and agreements, whether verbal or in writing. There are no promises, undertakings, representations, or warranties by the University not expressly set forth in this Agreement. This Agreement may be modified only in writing signed by authorized representatives of all parties to the Agreement. The covenants and agreements herein contained shall inure to the benefit of and be binding upon the heirs, legal representatives, successors, and permitted assigns of the parties.

10. **Qualified Sponsorship Payments.** The University is an exempt organization under Sections 170(c) and 501(c)(3) of the Internal Revenue Code. This Agreement is intended, to the greatest extent permitted by law, to provide the University with qualified sponsorship payments excludable and/or excepted from unrelated business taxable income under Section 513(i) of the Internal Revenue Code so that the Sponsor's payments to the University will not be subject to unrelated business income tax. Except as stated specifically in this Agreement, the parties do not intend to create any arrangement or expectation that the Sponsor will receive any substantial return benefit in exchange for its payments to the University. This Agreement shall be interpreted and applied in a manner consistent with this paragraph, and the University reserves the right to disclaim any relevant term, clause, provision or paragraph of this Agreement that the University determines to be inconsistent with this paragraph.

11. **Applicable Law and Forum.** Michigan law, including without limitation the Michigan Persons with Disabilities Civil Rights Act, the Michigan Elliott-Larsen Civil Rights Act, the Michigan Governmental Tort Liability Act ("Act"), and the Michigan Uniform Commercial Code, all as may be amended from time to time, including the provision that illegal discrimination by the Sponsor may be considered a material breach of the Agreement, will govern the validity, construction and performance of this Agreement. Michigan will be the forum for any legal or equitable proceedings in connection with the Agreement and the Sponsor hereby submits to *in personam* jurisdiction in Michigan, waives any objection Sponsor may now or hereafter have to venue in Michigan or that any legal or equitable proceeding was brought in an inconvenient court, and agrees to service of process by overnight mail as well as any other manner permitted by Michigan law. Notwithstanding anything contained in this Agreement to the contrary, whether express or implied, no provision of this Agreement waives the University's rights under the Act or effectively creates any direct or indirect liability for the University otherwise prohibited by the Act. The University may disclose any information described as confidential or proprietary in response to a judicial or administrative order or a freedom of information request.

12. **Insurance.** For sponsorship activities occurring on University grounds, Sponsor shall maintain general liability insurance in an amount totaling no less than \$1,000,000 per occurrence and \$2,000,000 aggregate.

13. **Indemnification.** The Sponsor, at its sole cost and expense, will defend, indemnify and hold the University, and the University's trustees, directors, officers, employees, agents, representatives and designees, in their official and personal capacities, (collectively "the University Indemnified") harmless from and against any and all claims, demands, suits, damages, judgments, liabilities, losses and expenses, including without limitation personal or bodily injury, defamation, infringement of copyright, trademark, patent or other intellectual property, and reasonable attorneys' fees and expenses of litigation (collectively "Liabilities"), to which the University Indemnified may become subject actually or allegedly arising out of, relating to or resulting from the Sponsor's breach of this Agreement, and/or the willful misconduct, wrongful acts, errors or omissions, unlawful acts or omissions and/or negligence of Sponsor. This indemnification will survive expiration or termination of the Agreement.

14. **Effect of Breach.**

- a. ***By Sponsor.*** The University reserves the right to cancel the Agreement at any time upon the default or delay by the Sponsor in the payment of the amounts due under the Agreement, (and failure of the Sponsor to cure such nonpayment within 10 business days after receiving from the University written notice thereof), or in the event of any other material breach on the part of the Sponsor of any of the conditions contained herein. In case of delinquency in payment under the Agreement or if the University reasonably believes that the Sponsor's credit has been materially impaired, the University shall have the right to change the requirements as to the terms of payment under the Agreement as it may see fit, by giving the Sponsor written notice. In the event of a cancellation by reason of material breach by the Sponsor (if such material breach is not cured within 10 business days after receiving from the University written notice thereof), the Sponsor shall pay to the University, in addition to such other remedies as may be obtained, all amounts then due under the Agreement.
- b. ***By University.*** The Sponsor reserves the right to cancel the Agreement in the event of a material breach on the part of the University if the University fails to cure such material breach within 10 days after receiving from the Sponsor written notice thereof.

15. **General.**

- a. ***Subject to Federal and State Laws.*** The Agreement is subject to all federal and state laws and regulations now in force, or which may be enacted in the future, including the rules, orders and regulations of the Federal Communications Commission.
- b. ***Assignment.*** The Agreement, including the rights under it, may not be assigned or transferred by the Sponsor without first obtaining the prior consent of the University in writing; nor may the University be required to perform hereunder for the benefit of any other sponsor than the Sponsor.
- c. ***Cancellation.*** Except in the event of a breach not cured by the University, the Agreement shall be non-cancelable by the Sponsor.
- d. ***Waiver of Claims Against University.*** The Sponsor warrants, represents and acknowledges that the Agreement is solely between the Sponsor and the University and the Sponsor hereby fully waives, renounces, abandons and entirely relinquishes any and all potential legal rights allegedly existing against the University whether existing in tort, contract or otherwise, and specifically agrees not to assert same in any litigation against the University. The Sponsor acknowledges that the University is and may rely upon the content and veracity of this waiver.
- e. ***University Intellectual Property.*** Sponsor warrants and represents that no University trademarks, service marks, trade names, logos, symbols or other University indicia and/or any audio, visual, textual or other similar copyrighted works (collectively "University Intellectual Property") will be used in any sponsorship materials without the prior express written approval of the University's Communication and Marketing Department.
- f. ***Disclaimer of Endorsements.*** Nothing contained in the Agreement authorizes the Sponsor to represent in any communication medium that the Sponsor or any particular product or service has been endorsed, selected or approved by the University.
- g. ***Benefit of University.*** Any limited license granted to use University Intellectual Property will be nonexclusive, non-assignable and nontransferable without the University's written approval and the Sponsor agrees and acknowledges that the Sponsor shall not acquire ownership or any other proprietary rights in and to any University Intellectual Property, including any derivatives, other than the limited licenses expressly granted in writing.

- h.* **Severability.** If any term, clause, provision or paragraph of the Agreement is declared by a court of competent jurisdiction to be illegal, void, or unenforceable, such declaration will not affect the validity and enforceability of the remaining terms, clauses, provisions or paragraphs of this Agreement.
- i.* **Captions.** The captions or headings in the Agreement are for convenience only and in no way define or limit the scope or intent of any term, clause, provision, or paragraph.
- j.* **Counterparts.** The Agreement can be executed in several counterparts, each of which will be deemed an original, and all of which together will constitute one and the same instrument.
- k.* **Other Conflicts.** In the event of any conflict, discrepancy or inconsistency in the terms and conditions contained in the Agreement, the terms and conditions most favorable to the University, as determined by the University, will control.
- l.* **Non-Reliance.** The Sponsor acknowledges that the University has not made any representations, warranties, assurances, or guarantees, of any kind, nature, or description, express or implied that the Agreement will result in or cause the Sponsor's business to succeed or achieve any specific objectives. The Sponsor is capable of assuming, and does assume, all risks related to the Agreement, and to any business conducted by Sponsor.
- m.* **Beneficiaries.** The Agreement is for the sole and exclusive benefit of the University and the Sponsor and neither the University nor the Sponsor intends to create a benefit in favor of any other person, entity, or third party.
- n.* **Consequential Damages.** Under no circumstances shall either party be liable to the other party for any consequential, punitive, incidental, exemplary, lost profits, lost revenues, indirect or other special damages of any kind even if either or both parties had knowledge of the possibility of any such losses or damages.