

## E-COMMERCE STORE MERCHANDISE SALES AGREEMENT

This E-Commerce Store Merchandise Sales Agreement (this "**Agreement**"), dated as of January 30, 2020 (the "**Effective Date**"), is made and entered into by and between Dyehard Fan Supply, LLC, a North Carolina limited liability company ("**Dyehard**"), and Miami University, a public university established and existing under the laws of the State of Ohio ("**University**"). Dyehard and University may each be referred to herein as a "**Party**" and, collectively, as the "**Parties**."

WHEREAS, University issued a request for proposal, dated April 5, 2019 (the "**RFP**"), that sought a provider to create, manage, and maintain a web-based ordering system for the sale of goods on behalf of University Athletics and University Alumni;

WHEREAS, Dyehard operates at-event and e-commerce retail merchandise operations for various clients, and responded to the RFP on or about April 26, 2019 (the "**Response**"); and

WHEREAS, University desires to engage Dyehard as an independent contractor to provide the Services, and Dyehard desires to provide such Services as an independent contractor to University, in both instances pursuant to the terms and subject to the conditions of this Agreement.

Now, therefore, in consideration of the foregoing, of the mutual covenants and promises contained herein, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Definitions.** Whenever used in this Agreement, capitalized terms will have the meanings set forth herein or as otherwise defined in **Exhibit A** attached hereto.

2. **Engagement.** During the Term, Dyehard is hereby engaged as the "Official E-Commerce Store" for University Athletics and for University Alumni, with the right and opportunity to sell Licensed Merchandise and Consigned Goods via the Online Store in accordance with the provisions of this Agreement. In consideration of these rights and opportunities, Dyehard will pay University the royalties and provide the other benefits as described herein.

3. **Development of Online Store.** It is acknowledged that University's designee, Fanatics Retail Group of Ohio, Inc. ("**Fanatics**"), currently operates an on-line e-commerce store linked via the Athletics Site (the "**Current Store**"), and Fanatics will continue to operate the Current Store during the period following the Effective Date and until such date that Dyehard completes a buildout of a new Online Store in accordance with the terms of this Agreement, and can reasonably assume e-commerce sales and fulfillment via its Online Store for University Athletics and University Alumni as determined by the both Parties in their respective good faith determinations (such period the "**Transition Period**"). Following the Effective Date and during the Transition Period, Dyehard will build, at its expense, the Online Store with functionality suitable for merchandising and selling Licensed Merchandise, to provide shopping and ordering and payment functions, to facilitate order processing, fulfillment and overall operations associated with the e-commerce store of the Athletics Site and the Alumni Site. Dyehard will design the look and feel of the Online Store to be generally consistent with the look and feel of the Athletics Site and Alumni Site (as the case may be), with such look and feel to be subject to University's approval, not unreasonably withheld. The Parties will cooperate in communications related to development of the Online Store during the Transition Period. Dyehard, at its sole cost and expense, shall be responsible for acquiring all rights to use, and complying with, the software and technology utilized in connection with the creation and operation of the Online Store. At the end of the Transition Period, University will disable the link to the Current Store via the Athletics Site and shall thereafter, and during the Term, link to the Online Store operated by Dyehard pursuant to the terms hereof, which Dyehard may operate using the Alumni Shop URL and

Athletic Shop URL. Dyehard hereby acknowledges that University is required to provide thirty (30) days' prior written notice to Fanatics before terminating the agreement between University and Fanatics; accordingly, Dyehard shall provide University at least forty-five (45) days' notice before the end of the Transition Period.

4. **Operation of E-Commerce Store and Sales.** At the end of the Transition Period and throughout the remainder of the Term, Dyehard will maintain and operate, at its expense, the Online Store with an e-commerce platform suitable for merchandising and selling Licensed Merchandise and Consigned Goods. Once the Online Store is completed, Dyehard shall be responsible for providing the Services to University. With regard to the Online Store, for the period following the Transition Period and throughout the remainder of the Term, the Parties also agree as follows:

(a) Dyehard may utilize the URLs during the term, but University shall remain the owner of the URLs. During the Term, and subject to the terms of this Agreement, the Parties shall cooperate in pointing, forwarding, or redirecting internet and digital traffic to the URLs.

(b) University shall discontinue any online/e-commerce sales activities via the Current Store or otherwise via the Athletics Site or the Alumni Site, other than via promotion and use of the Online Store, such that the Online Store thereafter will be the only e-commerce platform selling Licensed Merchandise that is promoted or linked on websites or digital platforms hosted, operated or licensed by University Athletics or University Alumni. University represents that it has the rights and licenses to operate the Athletics Site and Alumni Site throughout the remainder of the Term and the rights to determine all commercial exploitation via the Athletics Site or the Alumni Site.

(c) University shall provide a link to the Online Store via the main navigation bar on the home page of the Athletics Site and via the main navigation bar on the home page of the Alumni Site (including on desktop and mobile platform sites) with a link designed by Dyehard and subject to University approval, not unreasonably withheld. If proposed by Dyehard, University will consider additional links and click-throughs in other placements within the Athletics Site and the Alumni Site.

(d) [Intentionally deleted.]

(e) Dyehard will be responsible for assuring the Online Store is operational consistent with industry standards and operationally available to Customers at least 99% of the time during all months of each Year throughout the Term.

(f) University hereby grants Dyehard a non-exclusive license to utilize the federally registered block "M" trademark and the federally registered "Miami University" word mark for the sole purpose of designing the Online Store and marketing Licensed Merchandise via the Online Store. Any use of the University Trademarks for such purposes remains subject to the approval of University's Director of Brand Management and Strategy (see <http://www.miamioh.edu/ucm/trademarks-licensing/>), which may be withheld in University's sole and absolute discretion. Dyehard hereby acknowledges and agrees that University shall remain the sole and exclusive owner of and retain all right, title and interest in and to the University Trademarks and the goodwill associated therewith. Unless otherwise specified in writing by University, all permissions to use the University Trademarks shall expire upon the expiration or earlier termination of the Agreement.

(g) University will utilize reasonable good faith efforts to promote the Online Store as the official E-Commerce Store for University Athletics and for University Alumni.

(h) University agrees that the link to the Online Store via the Athletics Site or the

Alumni Site will be the only link or shop button on either such website or digital platform, respectively, that markets or facilitates the sale of University Licensed Merchandise.

(i) Dyehard shall be responsible for procuring, maintaining, and selling a reasonable assortment of Licensed Merchandise for sale via the Online Store. Dyehard agrees to carry and sell a variety of University branded products from its sideline partner (currently adidas) as agreed between the Parties on an annual basis. Dyehard will use its best efforts to procure and sell through the Online Store Licensed Merchandise reasonably suggested by University (e.g. "initiative products," etc.). Notwithstanding the foregoing, Dyehard shall not be obligated to offer any merchandise to the extent prohibited by applicable Law or other restriction (whether imposed by any licensor, manufacturer, or any other third party). Although University reserves approval rights on designs of Licensed Merchandise products, once such approval is provided, Licensed Merchandise shall remain approved so that Dyehard may sell, via the Online Store, products purchased in reliance upon such prior approval.

(j) Dyehard will be (i) the seller of record for all goods and services through the operation of the Online Store, (ii) responsible for establishing the selling price for all Licensed Merchandise sold via the Online Store, and (iii) responsible for calculating, reporting, remitting and paying all sales and similar taxes on goods and services sold.

(k) [Intentionally deleted.]

(l) Dyehard will provide Customer Service and have information regarding the Customer Service prominently featured on the Online Store.

(m) Consignment.

(i) During the Term, University will from time to time consign to Dyehard certain Consigned Goods, and Dyehard, subject to its approval, not unreasonably withheld, will agree to accept such Consigned Goods on consignment from University.

(ii) The Consigned Goods shall be: (A) stored at the Facility in a segregated area designated and marked clearly as "Property of Miami University on Consignment"; and (B) segregated from the goods of all other persons and not commingled with any such goods.

(iii) University shall retain title, and Dyehard shall release any right, title, or interest it might otherwise have in the Consigned Goods, except the right to sell, to convey good title thereto to purchasers of the Consigned Goods from Dyehard on terms acceptable to Dyehard, and to receive the proceeds of each sale of Consigned Goods, subject to the provisions of Section 6(a).

(iv) University shall bear all risk of loss to all Consigned Goods until such Consigned Goods are actually delivered to the Facility. Dyehard agrees to carry customary insurance on the cost of the Consigned Goods which insurance shall name University as "Loss Payee." Dyehard shall bear all risk of loss to all Consigned Goods from and after the time of delivery of such Consigned Goods to University. Dyehard will immediately notify University of any change in insurance coverage.

(v) Dyehard acknowledges that certain of the Consigned Goods will contain

time and date references, and that University may wish to not offer or sell such Consigned Goods to Customers. Dyehard covenants and agrees that upon University's request, Dyehard will return any unsold Consigned Goods to University.

(vi) Dyehard covenants and agrees that (A) University shall have the sole and exclusive right to set the prices for the Consigned Goods; (B) Dyehard shall defend University's title to the Consigned Goods against claims by Dyehard's creditors and keep records relating to the Consigned Goods as to their disposition; (C) Dyehard shall permit University's representatives, at reasonable times during normal business hours and upon reasonable advance written notice, to inspect the Consigned Goods; (D) Dyehard shall not lease, lend, mortgage, pledge or otherwise encumber the Consigned Goods and shall keep same free from all liens, claims and/or other encumbrances at any time; and (E) upon the expiration or earlier termination of this Agreement, Dyehard will return any unsold Consigned Goods to University at University's sole reasonable expense.

(n) Dyehard covenants and agrees that the Services will be performed consistent with the highest industry standards in the university merchandise and apparel industry, consistent with the range of Licensed Merchandise marketed and sold.

(o) Marketing and Promotions.

(i) In consultation with University, Dyehard will use its commercially reasonable efforts to actively market and promote the sale of Licensed Merchandise and Consigned Goods through the Online Store, including, without limitation, (A) providing printed flyers, banners, branded merchandise bags, and branded merchandise tags to assist with on-campus events or sales; and (B) providing an effective email campaign, marketing flyers, promotions, and other marketing related items to enhance overall sales.

(ii) Throughout the Term, University will reasonably cooperate with Dyehard with respect to marketing and promoting the Online Store and will engage in such marketing and promotional activities as Dyehard may reasonably request from time to time and, in any event, University will continue to market and promote the Online Store in no less than the same manner (in quality and quantity) as marketed and promoted during the two (2) year period prior to the Effective Date.

(iii) Athletics and Alumni have created the marketing plans attached hereto as **Appendix I, II, and III** (the "**Marketing Plans**"), which will be used by University to complement Dyehard's marketing and promotional activities of the Online Store under this Agreement. Dyehard will provide University with Dyehard's promotional and marketing activities planned for the upcoming quarter so University can align its promotional and marketing efforts to avoid over saturation. Dyehard covenants and agrees to provide University all promotional and sales materials that University may request to assist University with the execution of the Marketing Plans. The Marketing Plans are hereby incorporated into this Agreement by this

reference. University agrees to cause its departments and representatives to provide the components within the Marketing Plans attached hereto. Dyehard acknowledges and agrees that the Marketing Plans may be updated by University at any time during the Term after discussion with Dyehard, and that any amended or modified Marketing Plan will be appended to this Agreement and will be incorporated into this Agreement by this reference, provided that such amendments or modifications provide substantially similar marketing support as the Marketing Plans attached hereto and approved by Dyehard, with such approval not unreasonably withheld.

(p) Exclusivity; Exceptions to Exclusivity.

(i) Exclusivity. Except as otherwise provided in this Agreement, Dyehard shall have the exclusive right to offer and sell on behalf of University merchandise traditionally offered and sold online through college and university athletic departments and alumni associations; provided, that such exclusive right will not prohibit any of University's other licensed vendors and retailers from offering or selling products branded with University Trademarks through any brick-and-mortar location or any e-commerce channel other than via promotion or links on the Alumni Site or the Athletics Site; provided, further, that University may sell any good or services, even if competitive with the merchandise offered and sold by Dyehard through the Online Store, through any channel other than through the e-commerce channel, including, without limitation, brick-and-mortar retail stores.

(ii) Exceptions to Exclusivity. Notwithstanding anything to the contrary in this Agreement, the sale and the offering for sale of the following goods and services shall not be deemed a breach of the exclusivity obligations contained in this Agreement: (A) the products and services offered or sold by or on behalf of University through the Official University Bookstore, including all online sales currently conducted through [www.mubookstore.muohio.edu](http://www.mubookstore.muohio.edu), or any replacement or successor URL; (B) the products and services offered and sold on behalf of University from M. LaHart & Co.; (C) the products and services offered and sold on behalf of University from Balfour; (D) the products and services offered and sold on behalf of University from Signature Announcements; and (E) any other future agreements or arrangements approved by Dyehard, such approval not to be unreasonable withheld.

(q) During the Term, and as mutually agreed between the Parties, University will provide Dyehard with certain information regarding potential Customers of the Online Store. For avoidance of doubt, University will not be obligated to provide Dyehard with any information regarding any potential Customers, and any such information will be treated as Confidential Information. Dyehard covenants that such information will constitute Confidential Information and that it will be used exclusively for the promotion and marketing of the Online Store. Any information pertaining to potential Customers provided by University to Dyehard hereunder will be returned to University upon the expiration or earlier termination of this Agreement.

(r) Dyehard shall appoint at least one (1) of its employees to act as a dedicated

representative to field any questions or concerns University has during the Term. If requested by University, Dyehard agrees to promptly remove and replace such representative.

(s) Dyehard may, from time to time, make such changes and alterations to the Online Stores as may be reasonably necessary for Dyehard to comply with any Law or as otherwise agreed to by the Parties.

(t) Dyehard shall ensure that Customers of the Online Store are capable of using various payment methods (e.g. major credit cards, debit cards, checks, etc.). Dyehard shall be responsible for and will pay all merchant charges associated with acceptance of credit and debit cards for purchases made through the Online Stores, provided, however, that such fees shall be accounted for as provided in the definition of Adjusted Gross Revenue Receipts.

(u) Dyehard acknowledges, agrees, and covenants that it will sell only Licensed Merchandise and Consigned Goods on the Online Stores, and will not offer or sell any other goods or services on the Online Stores without University's prior written consent or as provided herein; and (B) not use the Online Stores to promote any other channel for the sale of merchandise.

5. **Term.** The "**Term**" of this Agreement shall be for the period commencing with the Effective Date and ending on June 30, 2025, unless earlier terminated or extended in accordance with the terms hereof. "**Year One**" shall be the period from the Effective Date through June 30, 2021. "**Year Two**" shall be the period from July 1, 2021 until June 30, 2022. "**Year Three**" shall be the period from July 1, 2022 until June 30, 2023. "**Year Four**" shall be the period from July 1, 2023 until June 30, 2024. "**Year Five**" shall be the period from July 1, 2024 until June 30, 2025. Each of Year One, Year Two, Year Three, Year Four and Year Five may be referred to herein as a "**Year**".

6. **Royalty; Payment; Reports.**

(a) Royalty for Licensed Merchandise. Beginning on the Launch Date, Dyehard shall pay to University a quarterly royalty equal to the following (collectively, the "**Royalty**" or "**Royalties**"):

- (i) In Year One of the Term, a royalty of (A) sixteen percent (16%) of Adjusted Gross Revenue Receipts received by Dyehard from the sale of Licensed Merchandise up to \$275,000.00; and (B) twenty-four percent (24%) of Adjusted Gross Revenue Receipts received by Dyehard from the sale of Licensed Merchandise over \$275,000;
- (ii) For all Years after Year One of the Term, a royalty of (A) eighteen percent (18%) of Adjusted Gross Revenue Receipts received by Dyehard from the sale of Licensed Merchandise up to \$300,000.00; and (B) twenty-four percent (24%) of Adjusted Gross Revenue Receipts received by Dyehard from the sale of Licensed Merchandise over \$300,000; and
- (iii) For all Years of the Term, a royalty of eighty percent (80%) of Adjusted Gross Revenue Receipts received by Dyehard from the sale of the Consigned Goods.

(b) Payment of Royalty; Interest. Royalties earned under this Agreement will be paid to University net-fifteen (15) days following the end of each quarter that such Royalty is earned (with such quarterly periods ending September 30, December 31, March 31 and June 30 of each Year). Each Royalty payment shall be sent to the attention of: Trademarks and Licensing, 301 South Campus Avenue, Room

22, Oxford, Ohio 45056. Interest of two percent (2%) per month, or the maximum rate allowed by Law, whichever is greater, shall accrue on any Royalty not paid pursuant to this **Section 6(b)**.

(c) **Reports.** Beginning on the Launch Date, Dyehard will prepare and deliver to University a detailed quarterly report setting forth: (i) Customer Information for purchases made in the preceding quarter; (ii) information regarding Customers who opt out of receiving email communications pertaining to the Online Store (iii) a reasonably detailed description of the Licensed Merchandise and Consigned Goods purchased by Customers, including, without limitation, the quantity of Licensed Merchandise and Consigned Goods sold in the preceding quarter; the sales price for each piece of Licensed Merchandise and Consigned Good; and any discount provided for the purchased Licensed Merchandise or Consigned Good for the preceding quarter; (iv) the quarterly Royalty owed to University, less any set-offs for returns, for the preceding quarter; (v) the quarterly and Year-to-date total revenue and Adjusted Gross Revenue Receipts of Licensed Merchandise and Consigned Goods sold through the Online Stores for the reporting period; (vi) sales of Licensed Merchandise and Consigned Goods by organic search, referral, email, direct, paid search, shopping engines, affiliates, display, and social marketing for the Online Store for University Alumni and University Athletics; and (vii) such additional information as University may reasonably request during the Term. Each quarterly report prepared hereunder will be delivered to University at the same time that each quarterly Royalty is paid to University.

7. **Audit Rights.** During the Term and for two (2) years thereafter, Dyehard shall establish and maintain complete and accurate books and records sufficient to verify the amounts paid or owed under this Agreement. During the Term and for two (2) years thereafter, and upon thirty (30) days' prior written notice from University, subject to the terms of this Section, Dyehard will allow University or its authorized representatives to audit such books and records related to calculation of Royalties at Dyehard's premises during normal business hours. During such audits, University and its authorized representatives shall have a right to examine and make copies of or extracts from all financial and related records (in whatever form they may be kept, whether written, electronic or other) relating to or pertaining to the calculation of Royalties under this Agreement kept by or under the control of Dyehard, including, but not limited to those kept by Dyehard, its employees, agents, assigns, successors, and subcontractors. University will bear the costs of any audits conducted under this **Section 7**, unless the audit identifies that Dyehard has failed to pay Royalties in excess of two percent (2%) of the total amount due and owing for that audit period. Any adjustments and/or payments that must be made as a result of any such audit of Dyehard's records shall be made within a reasonable amount of time, not to exceed thirty (30) days in any event, from presentation of University's findings to Dyehard. If University exercises its right to audit under this Section, such audit may only be with respect to the calculation of Royalties in the twelve (12) most recently completed quarters at the time of notice to Dyehard, and such audit shall be pursued and conducted in good faith.

## 8. **Breach and Termination.**

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

(b) Other Termination Events. This Agreement shall terminate immediately upon written notice by University to Dyehard in the event Dyehard: (i) ceases to do business as a going concern; (ii) makes an assignment of its assets for the benefit of its creditors; (iii) is unable or admits in writing to its inability to pay debts as they become due; (iv) authorizes, applies for, or consents to the appointment of a trustee or receiver of all or a substantial portion of its assets; (v) becomes insolvent or files a voluntary petition under any bankruptcy or insolvency law or filing a voluntary petition under the reorganization provisions of the laws of the United States; (vi) sells, assigns, or liquidates its material assets, or files a certificate of dissolution or similar document with the secretary of state of its then-current state of incorporation or organization; or (vii) if the Online Stores are offline for longer than six (6) continuous hours on three separate occasions in a given twelve (12) month period.

(c) University's Termination for Convenience. Effective at any date after the completion of Year One and during the remainder of the Term, University may terminate this Agreement for any additional reason other than those set out in Sections 8(a) and (b) by providing a minimum of one hundred eighty (180) days written notice to Dyehard of its intent to terminate this Agreement; provided, however, that upon delivery of such written notice, the following additional terms shall apply:

- (i) The effective date of termination shall be set out in the notice of termination from the University to Dyehard;
- (ii) If such termination is effective during Year Two of the Term, University shall pay to Dyehard a fee of Twenty Thousand Dollars (\$20,000) on or before the effective date of termination as partial reimbursement of expenses incurred by Dyehard in the establishment of operations under this Agreement, including without limitation the cost of building out the Online Store platform and establishing warehouse and facilitation operations;
- (iii) If such termination is effective during Year Three of the Term, University shall pay to Dyehard a fee of Ten Thousand Dollars (\$10,000) on or before the effective date of termination as partial reimbursement of expenses incurred by Dyehard in the establishment of operations under this Agreement.

(d) Dyehard's Termination for Convenience. Effective at any date after the completion of Year One and during the remainder of the Term, Dyehard may terminate this Agreement for any additional reason other than those set out in Section 8(a), without further liability to University, by providing a minimum of one hundred eighty (180) days written notice to University of its intent to terminate this Agreement. Notwithstanding the foregoing provisions of this subsection (d), upon such termination, Dyehard shall continue to perform its obligations under this Agreement for the remainder of the Term.

(e) Return of Property. Upon the expiration or earlier termination of this Agreement, each Party in receipt, possession or control of the other Party's intellectual or proprietary property, information and materials or confidential information pursuant to this Agreement must return to the other Party (or at the other Party's written request, destroy) such property, information and materials.

(f) Survival. Sections 4(f), 4(q), 6(b), 6(d), 7, 8(e), 8(f), 8(g), 8(h), 10(a), 11, 13(f), 16(b), 16(c), and 16(l) of this Agreement will survive any such expiration or termination. Notwithstanding the foregoing, the expiration or earlier termination of this Agreement will not relieve either Party from its obligation to pay any monies due to the other Party for any period, full or partial, prior to the effective date of such expiration or termination.

(g) Cooperation upon Expiration or Termination. Upon the expiration of this Agreement, or in the event that this Agreement is terminated for any reason other than for University's breach, Dyehard agrees and covenants that it will (i) use its best efforts to work cooperatively toward the completion of active projects, (ii) promptly communicate and exchange information as reasonably requested by University, (iii) take other actions necessary to ensure an orderly and professional transition to a new e-commerce service provider, (iv) will assist in transitioning any University-specific artwork on the Online Store to University or its designated successor ecommerce merchandise vendor, and (v) provide available contact information regarding all Customers who have purchased any Licensed Merchandise or Consigned Goods via the Online Store in the preceding two Years.

(h) Successor Purchase; Dyehard Selloff.

- (i) Upon the expiration or termination of this Agreement, University shall exercise commercially reasonable efforts to cause its successor ecommerce merchandising vendor ("Successor Vendor") to purchase any existing inventory of undamaged, sellable University Licensed Merchandise (other than Consigned Goods) on hand and purchased or otherwise controlled by Dyehard in connection with this Agreement at (A) 100% of the cost of all pending orders for Licensed Merchandise not yet received where Dyehard has previously placed an order, in reliance on this Agreement, that it is unable to cancel with commercially reasonable efforts, (B) 100% of Dyehard's production or acquisition cost for all products purchased during the Year in which termination is effective, provided that such Licensed Merchandise is either undated or is dated specific to the such Year or a future event, and (C) 50% of Dyehard's production or acquisition cost for all other Licensed Merchandise products. All Licensed Merchandise sold to a Successor Vendor shall be transferred free and clear of any liens, and the applicable purchase price will be paid by the Successor Vendor net-10 days after such vendor's receipt of such Licensed Merchandise. For clarity, any such amount received by Dyehard pursuant to the provisions of this subsection shall not be counted towards the calculation of any royalties based on revenues received for Licensed Merchandise.
- (ii) In the event that University, despite using its commercially reasonable efforts, is unable to cause its successor ecommerce merchandising partner to purchase all of Dyehard's existing Licensed Merchandise inventory in accordance with the foregoing provisions of this subsection, then following termination of this Agreement, Dyehard shall be permitted to sell the inventory of Licensed Merchandise (other than Consigned Goods) previously purchased or committed via purchase orders in the normal course as of the termination date by selling the Licensed Merchandise via any channel of distribution (other than through the Alumni Site/Alumni Shop URL or Athletics Site/Athletics Shop URL) or to any retailer or consumer. For clarity, any such amount received by Dyehard pursuant to the provisions of this subsection shall not be counted towards the calculation of any royalties based on revenues received for Licensed Merchandise.
- (iii) In the event that less than all of the existing Licensed Merchandise is

purchased by a Successor Vendor, the Parties may mutually agree upon any alternative arrangements with respect to inventory (other than Consigned Goods) remaining in Dyehard's possession.

9. **Insurance.** During the Term, Dyehard will maintain, at its own cost and expense, the following types and amounts of insurance coverage and provide University, upon request, with certificates of insurance confirming such coverages: (a) Workman's Compensation in accordance with statutory coverage required by applicable Law, (b) Employers Liability, Bodily Injury, \$1,000,000 each accident, and Bodily Injury by Disease, \$1,000,000 each employee, (c) Comprehensive General Liability written on an occurrence basis with limits of \$1,000,000 per occurrence and \$3,000,000 in the aggregate, including, but not limited to coverage for bodily and personal injury, property damage, advertising, products liability, and contractual liability referring to this Agreement, and (d) if Dyehard will be using a motor vehicle on University's campuses, Commercial Automobile Liability in a minimum amount of \$1,000,000 combined single limit for bodily injury and property damage covering vehicles owned, non-owned, hired, and otherwise used or furnished for the use of Dyehard, its employees, representatives, and agents. Insurance coverage shall be by a company having minimum current A.M. Best rating of 'A'. Dyehard will name University and its Affiliates as additional insureds on such Comprehensive General Liability and Commercial Automobile Liability policies.

10. **Indemnification; Responsibility.**

(a) Dyehard shall at all times during the Term of this Agreement and thereafter, indemnify, defend, and hold harmless University, from and against all liabilities, demands, damages, including expenses or losses including death, personal injury, illness or property damage of any kind whatsoever, including legal expenses and reasonable attorneys' fees (collectively, "Losses") arising directly or indirectly out of any of the following other than Excepted Claims: (i) any breach of this Agreement by Dyehard, its Affiliates, or the Dyehard Personnel during the Term; (ii) the offering or sale of Licensed Merchandise and Consigned Goods by Dyehard through the Online Store, including, without limitation, product liability and warranty claims; (iii) the negligence or willful misconduct or willful omissions by Dyehard, its Affiliates, or the Dyehard Personnel during the Term; (iv) actual or asserted material violations of applicable Laws by Dyehard, its Affiliates, or the Dyehard Personnel; and (v) infringement, dilution, misappropriation, or other unauthorized use of any third party's Intellectual Property Rights. Dyehard shall have no duty to indemnify University to the extent Losses are caused by a breach of this Agreement by University or the negligence or willful misconduct or willful omissions of University, or result from Excepted Claims. Subject to Ohio Revised Code Section 3345.15 and prior written consent from the Ohio Attorney General, University will provide reasonable assistance in the defense of any Losses that trigger Dyehard's obligation to indemnify under this Agreement, and University will not settle or resolve any Losses without Dyehard's prior consent.

(b) Dyehard acknowledges that University is a state assisted institution of higher education established and existing under the laws of the State of Ohio, whose liability only can be determined in the Ohio Court of Claims pursuant to Ohio Revised Code Section 2743.02. To the extent permitted by law, University shall be responsible to Dyehard for claims, injuries, liabilities, and damages arising from University's negligent actions or conduct. Dyehard expressly acknowledges and agrees that nothing in this agreement shall be construed as requiring University and/or the State of Ohio to indemnify or hold harmless Dyehard or any third parties.

11. **Ownership and License of University Furnished Items.**

(a) As between the Parties, University reserves all right, title and interest in and to the University Furnished Items along with all Intellectual Property Rights associated therewith, and no title to

or ownership of any of the foregoing is transferred or, except as expressly set forth in this Agreement, licensed to Dyehard or any other individual or entity hereunder. Dyehard hereby assigns to University all right, title, and interest in and to such items and all associated Intellectual Property Rights, and Dyehard will take, at University's expense, any actions (including execution and delivery of affidavits and other documents) reasonably requested by University to effect, perfect or confirm University's or its designee's right, title and interest therein. Upon the expiration or earlier termination of this Agreement, Dyehard will return all University Furnished Items to University, and Dyehard will have no further rights in such items.

(b) During the Term, University hereby grants to Dyehard a worldwide, royalty free and fully paid up, non-transferable license, free and clear of all liens and encumbrances whatsoever, to use the University Furnished Items in connection with all of Dyehard's rights and obligations under this Agreement related to its print and web-based marketing and promotional activities; provided, that Dyehard first obtain University's prior consent to using University Trademarks.

12. **Payment Card Industry Compliance.** Dyehard acknowledges that it or its applicable vendors will obtain certain personally identifiable financial information that is not publicly available (for example, social security numbers, credit information and payment card information such as account and card numbers, verification numbers, and expiration dates), whether in paper, electronic, or other form ("**Covered Information**") during its performance of this Agreement, and Dyehard covenants and agrees that the Online Store and all e-commerce processing through the Online Store or its applicable vendors will be compliant with the Payment Card Industry Data Security Standard ("**PCI DSS**"). Dyehard agrees that it is responsible for the security of Covered Information, if any, that it possesses, including the functions relating to storing, processing, and transmitting of the cardholder data. If and to the extent Dyehard stores, collects or obtains Covered Information during the Term, Dyehard covenants and agrees that it will be compliant with PCI DSS during the Term, and will perform the necessary steps to validate its compliance with the PCI DSS. If and to the extent Dyehard stores, collects or obtains Covered Information during the Term, Dyehard agrees to supply the current status of Dyehard's PCI DSS compliance status, and evidence of its most recent validation of compliance on or before the expiration of the Transition Period. Dyehard must supply to University a new status report and evidence of validation of compliance at least annually. Dyehard will immediately notify University if Dyehard learns that it or any applicable vendor is no longer PCI DSS compliant and will immediately provide University the steps being taken to remediate such non-compliant status. In no event should Dyehard's notification to University be later than seven (7) calendar days after Dyehard learns that it or its applicable vendor is no longer PCI DSS compliant.

### 13. **Data Security.**

(a) Definition. As used in this Agreement, "**Data**" means any information that Dyehard or any Dyehard Personnel collects, receives, or obtains, from or on behalf of University or, to its knowledge, from any of its students, employees, or Customers that does or can identify a specific individual or by or from which a specific individual may be identified such as the individual's name, address, social security number, card numbers, etc., and any other information relating to an identified or identifiable individual. Data includes, but is not limited to, (i) Covered Information; (ii) a person's financial account number, credit card number, debit card number, or credit report information, with or without any required security code, access code, personal identification number, or password that would permit access to a person's financial account; (iii) all "nonpublic personal information," as defined under the Gramm-Leach-Bliley Act (15 U.S.C. § 6801 et seq.); (iv) "protected health information" as defined under the Health and Insurance Portability and Accountability Act of 1996 (42 U.S.C. § 1320d); and (v) "education records" as defined under the Family Educational Rights and Privacy Act (20 U.S.C. 1232g, et seq.), and all rules and regulations issued under any of the foregoing. To the extent that Provider has access to "education records," it is deemed a "school official" (as such terms are defined under FERPA).

(b) Unauthorized Use of Data. Dyehard agrees to hold Data in strict confidence. Dyehard shall not use or disclose Data received from or on behalf of University except as required by Law, or as otherwise authorized in writing by University. Similarly, Dyehard agrees that any and all Data exchanged shall be used expressly and solely for the purposes enumerated in the Agreement. Data shall not be distributed, repurposed, or shared across other applications, environments, or business units of Dyehard or its Affiliates, or passed to other vendors or interested parties except on a case-by-case basis as specifically agreed to in writing by University.

(c) Protection of Data. Throughout the Term, Dyehard shall protect and safeguard the privacy and confidentiality of all Data with at least the same degree of care as Dyehard would protect its own Data and other sensitive information, but in no event with less than a commercially reasonable degree of care.

(d) Notification of Network or Data Breach.

(i) Dyehard shall immediately report in writing to University any Breach and/or use or disclosure of Data not authorized by this Agreement, including any reasonable belief that unauthorized access to the Data has occurred. Dyehard shall make the report to University not less than two (2) business days after Dyehard reasonably believes there has been such unauthorized use or disclosure. Dyehard's report shall identify: (A) the nature of the unauthorized use or disclosure; (B) the network element(s) and/or Data used or disclosed; (C) who made the unauthorized use or received the unauthorized disclosure; (D) what Dyehard has done, or shall do, to mitigate any negative effect of the unauthorized disclosure; and (E) what corrective action Dyehard has taken, or shall take, to prevent future unauthorized use or disclosure.

(ii) Dyehard shall comply with all Laws that require the notification of individuals in the event of unauthorized release of Data, any other event requiring such notification.

(iii) Dyehard hereby acknowledges its disclosure obligations under Ohio R.C. 1349.19(C), which requires Dyehard to notify University in the event of a "breach of the security of the system" (as defined by Ohio R.C. 1347.12(A)(2)).

(e) Security. During the Term, Dyehard shall maintain complete and accurate records relating to its data protection practices and the security of the Data, including any backup, disaster recovery, or other policies, practices, or procedures relating to the Data and any other information relevant to its compliance with this Agreement.

(f) Return or Destruction of Data. Upon the expiration or earlier termination of this Agreement, Dyehard shall erase, destroy, and render unreadable all Data, including copies, in possession of Dyehard, or in possession of Dyehard's Affiliates, agents, or permitted subcontractors. If requested by University in writing, Dyehard will certify in writing that these actions have been completed.

14. **Accessibility Requirements.** Dyehard hereby covenants and agrees to comply with all federal disabilities Laws and regulations in performing the Services, and that the Online Stores will comply with the accessibility requirements of section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794d), its implementing regulations set forth at Title 36, Code of Federal Regulations, Part 1194, and that

the Online Stores will be compliant with WCAG 2.0 AA guidelines (collectively, the “**Accessibility Requirements**”). Upon University’s request, and at Dyehard’s sole expense, Dyehard will perform testing to ensure that the Online Stores comply in all material respects with the Accessibility Requirements. If the Online Stores fail to meet the Accessibility Requirements during such performance testing, or at any other time during the Term, then Dyehard hereby covenants and agrees that it will promptly resolve the issue at Dyehard’s expense based on a mutually agreed upon timeline (not to exceed thirty (30) business days after Dyehard first becomes aware of such non-compliance). Dyehard acknowledges and agrees that its failure to comply with the Accessibility Requirements shall constitute a material breach of this Agreement, and be grounds for termination of this Agreement by University.

**15. Representations, Warranties, and Covenants.**

(a) Representations, Warranties, and Covenants of Dyehard. Dyehard hereby represents, warrants, and covenants, as applicable, to University as follows.

- (i) Dyehard has the full right, power, and authority to enter into this Agreement and perform its obligations hereunder.
- (ii) Dyehard’s execution, delivery, and performance of this Agreement, and University’s exercise of its rights under this Agreement, will not conflict with or result in a breach or violation of any of the terms or provisions or constitute a default under any material agreement by which Dyehard is bound.
- (iii) When executed and delivered by the Parties, this Agreement will constitute Dyehard’s legal, valid, and binding obligation enforceable against it in accordance with the terms of this Agreement.
- (iv) With regard to all activities or Services performed on the University campus, Dyehard will with, and will cause the Dyehard Personnel to comply with, all applicable University policies and regulations, which are accessible at <https://miamioh.edu/policy-library/index.html>.
- (v) Dyehard has all approvals, licenses, permits, insurance, and other qualifications necessary to conduct business in Ohio and to perform under this Agreement; and if Dyehard becomes disqualified from conducting business in Ohio or performing under this Agreement, for whatever reason, Dyehard shall immediately notify University of such disqualification.
- (vi) Dyehard will utilize the appropriate levels of staff with requisite skills, training, and experience level to effectively and efficiently perform the Services.
- (vii) Dyehard will be solely responsible for disputes arising with Customers relating to the goods, merchandise, and services offered and sold through the Online Stores, other than disputes arising from Excepted Claims.
- (viii) Dyehard will be solely responsible for the quality, quantity, merchantability, guarantee, and warranties with respect of all Licensed Merchandise offered and sold through the Online Stores, other than claims

or matters arising with respect to the Excepted Claims.

- (ix) Dyehard will source all Licensed Merchandise from manufacturers contractually bound to comply with the Worker Rights Consortium and its code of conduct, and University's Code of Conduct.
- (x) Dyehard it is not subject to an "unresolved" finding for recovery under O.R.C. 9.24. If this representation and warranty is deemed to be false, this Agreement is void ab initio and Dyehard must immediately repay to University any funds paid under this Agreement.
- (xi) Except as expressly modified herein, Dyehard will perform its services and operations under this Agreement in compliance with the Response to the RFP, a copy of which response is attached hereto as **Exhibit B**.

(b) Representations, Warranties, and Covenants of University. University hereby represents, warrants, and covenants, as applicable, to Dyehard as follows:

- (i) University has the full right, power, and authority to enter into this Agreement and perform its obligations hereunder;
- (ii) University's execution, delivery, and performance of this Agreement, and Dyehard's exercise of its rights under this Agreement, will not conflict with or result in a breach or violation of any of the terms or provisions or constitute a default under any material agreement by which University is bound;
- (iii) When executed and delivered by the Parties, this Agreement will constitute University's legal, valid, and binding obligation enforceable against it in accordance with the terms of this Agreement; and
- (iv) University shall at all times be in compliance with all applicable Laws with respect to this Agreement.

## 16. Miscellaneous.

(a) Independent Contractors; Performance. The Parties are entering into this Agreement as independent contractors, and this Agreement will not be construed to create a partnership, joint venture or employment relationship between them. Neither Party will represent itself to be an employee or agent of the other or enter into any agreement or legally binding commitment or statement on the other's behalf of or in the other's name.

(b) Confidentiality. Subject to **Section 16(b)(iii)** and **Section 16(c)** of this Agreement, each Party agrees as follows:

- (i) Each Party will protect and keep confidential the Confidential Information of the other Party from misappropriation and unauthorized use or disclosure, and, at a minimum, will take precautions at least as great as those taken to protect its own Confidential Information of a similar nature.
- (ii) Without limiting the foregoing, the receiving Party will (A) use such

Confidential Information solely for the purposes for which it has been disclosed and (B) disclose such Confidential Information only to those of its employees, consultants and agents, and others who have a need to know the same, for the purpose of performing this Agreement and who are informed of and agree to a duty of nondisclosure.

- (iii) The receiving Party may disclose Confidential Information of the disclosing Party to the extent necessary to comply with applicable Law or legal process, provided that the receiving Party gives the disclosing Party reasonable advance written notice thereof.
- (iv) Upon request of the other Party, or in any event upon the expiration or earlier termination of this Agreement, each Party will return to the other all materials, in any medium, that contain, embody, reflect or reference all or any part of any Confidential Information of the other Party; provided, however, that the receiving Party may retain copies of the disclosing Party's Confidential Information for the receiving Party's files to the extent necessary for the receiving Party to comply with legal and/or regulatory requirements. Notwithstanding the return of Confidential Information, each Party will continue to be bound by its obligations of confidentiality under this Agreement.

(c) Public Records Act. Dyehard hereby acknowledges that University is a public university that is subject to the Ohio Public Records Act (Ohio R.C. 149.43 *et seq.*). The Ohio Public Records Act requires University to promptly produce certain of its records when requested by the public. Nothing in the Agreement shall prevent University from fully complying with the Ohio Public Records Act. Dyehard acknowledges and agrees that University is under no obligation to determine whether any of Dyehard's information qualifies for an exemption under the Ohio Public Records Act. If Dyehard seeks a protective order to prevent the disclosure of its information secondary to a public record request received by University, then Dyehard agrees that Dyehard shall bear all costs and expenses associated with such protective order; and Dyehard will indemnify and hold harmless University for any losses, claims, expenses, or costs arising out of or related to third party claims alleging that University has violated the Ohio Public Records Act. **Dyehard hereby authorizes University to disclose copies of this Agreement pursuant to a request made under the Ohio Public Records Act.**

(d) Force Majeure. If either Party is unable to perform any of its obligations under this Agreement due to an event beyond the control of that Party, including natural disaster, acts of God, actions or decrees of governmental bodies, act of war, terrorism, failure or discontinuance of the Internet or failure of communications lines or networks, that Party will use commercially reasonable efforts to eliminate or minimize the effect of such events upon performance of its obligations under this Agreement and to resume performance of its obligations, but will have no liability to the other Party for failure to perform its obligations under this Agreement for so long as it is unable to do so as a result of such event.

(e) Notices. Unless otherwise provided, all notices, consents or other communications required or permitted to be given under this Agreement must be in writing and will be deemed to have been duly given (a) when delivered personally, (b) three (3) business days after being mailed by first class mail, return receipt requested, postage prepaid, or (c) one (1) business day after being sent by a reputable overnight delivery service, postage or delivery charges prepaid, to the Parties at their respective addresses stated on the signature page of this Agreement, or such subsequent address as may be identified for a Party via written notice. Either Party may change its address for notice and the address to which copies must be sent by giving notice of the new addresses to the other Party in accordance with this **Section 16(e)**, except that any

such change of address notice will not be effective unless and until received.

(f) Assignment. Neither Party may assign this Agreement or any of its rights or obligations hereunder, whether voluntarily or involuntarily, without the other Party's prior written consent, such consent not unreasonably withheld. Subject to the foregoing, this Agreement will be binding on and enforceable by the Parties and their respective successors and permitted assigns.

(g) Entire Agreement. This Agreement, together with the Exhibits to this Agreement, represent the entire understanding between the Parties with respect to the subject matter hereof and supersedes all previous oral or written communications or agreements, and all contemporaneous oral communications and agreements, between the Parties and their respective Affiliates regarding such subject matter. No breach of this Agreement by either Party will affect the rights or obligations of either Party under any other agreement between the Parties.

(h) Amendment. This Agreement may be amended, modified or supplemented by the Parties, provided that any such amendment, modification or supplement must be in writing and signed by a duly authorized representative of each Party.

(i) Waiver. No waiver by a Party with respect to this Agreement will be effective or enforceable against a Party unless in writing and signed by that Party. Except as otherwise expressly provided herein, no failure to exercise, delay in exercising, or single or partial exercise of any right, power or remedy by a Party, and no course of dealing between or among any of the Parties, will constitute a waiver of, or will preclude any other or further exercise of the same or any other right, power or remedy.

(j) Counterparts and Transmitted Copies. This Agreement may be executed in any number of counterparts, each of which when executed and delivered will be deemed an original, but all of which taken together will constitute but one and the same instrument, and it will not be necessary in making proof of this Agreement to produce or account for more than one original counterpart hereof. The Parties acknowledge that Transmitted Copies (as defined below) of this Agreement will be equivalent to original documents until such time (if any) as original documents are completely executed and delivered. As used herein, "**Transmitted Copies**" means copies that are reproduced or transmitted via e-mail or another process of complete and accurate reproduction and transmission.

(k) Severability. If any provision of this Agreement is construed to be invalid, illegal or unenforceable, then the remaining provisions hereof will not be affected thereby and will be enforceable without regard thereto.

(l) Choice of Law; Venue. This Agreement, and all matters arising out of or related to this Agreement, whether sounding in contract, tort, statute, or otherwise, shall be (i) governed by and interpreted in accordance with the Laws of Ohio, without regard to its conflicts of laws principles; and (ii) subject to the sole and exclusive jurisdiction of the state and federal courts of competent jurisdiction located in the State of Ohio. The Parties agree that nothing in this Agreement shall be construed as a waiver of the sovereign immunity of University and /or the State of Ohio beyond the waiver provided in Ohio Revised Code Section 2743.02.

(m) Headings, References and Construction. The headings of sections and subsections of this Agreement are for convenience of reference only and are not intended to restrict, affect or otherwise influence the interpretation or construction of any provision of this Agreement. All words used in this Agreement will be construed to be of such number and gender as the context requires or permits. Unless a particular context clearly provides otherwise (a) the words "hereof" and "hereunder" and similar references refer to this Agreement in its entirety and not to any specific section or subsection hereof, and (b) the word

“include” or “including” will mean “include, without limitation,” or “including, without limitation.” The Parties agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting Party will not be applied in the construction or interpretation of this Agreement or any other agreements or documents delivered in connection with the transactions contemplated by this Agreement.

(n) Compliance With Laws. Each Party shall comply, in all material respects, with all applicable Laws and rules and regulations with respect to the performance of its obligations pursuant to this Agreement.

(o) Affiliates and Subcontractors. Each Party (i) shall, to the extent that any rights granted by such Party hereunder are owned or controlled by any other individual or entity, obtain the necessary rights to provide the other Party hereunder such rights or cause such other individual or entity to provide such rights to the other Party hereunder, (ii) in performance of its obligations hereunder, and with prior written notice to the other Party, may utilize one or more Affiliates or subcontractors and provide such Affiliate or subcontractor with any materials or other information necessary to perform any obligation; provided that such Party shall remain liable to the other Party for the performance of such obligations, and any such Affiliate or subcontractor must agree to be bound by the terms and conditions of this Agreement, and (iii) with prior written notice to the other Party, may elect to have such Party’s rights under this Agreement exercised by such Party or by an Affiliate of such Party that is performing any related services or fulfilling any related obligation hereunder.

(p) Non-Discrimination; HB 476. During the term of this Agreement, Company agrees not to discriminate on the basis of religion, race, color, creed, national or ethnic origin, sex, age, disability, political affiliation, gender identity or expression, sexual orientation, pregnancy, or status as a veteran or member of the military. Company acknowledges that it is not boycotting any jurisdiction with whom the State of Ohio can enjoy open trade, including Israel, and will not do so during the term of this Agreement.

(q) Order of Precedence. In the event of a conflict between the terms and conditions contained in this Agreement and the terms and conditions contained in the Response, the terms and conditions contained in this Agreement shall control.

*[Signatures Appear on the Following Page]*

**E-COMMERCE STORE MERCHANDISE SALES AGREEMENT**

*\*Signature Page\**

IN WITNESS WHEREOF, intending to be legally bound, the Parties hereby execute this Agreement on the dates indicated below, to be effective as of the Effective Date.

**DYEHARD FAN SUPPLY, LLC**

By: *Rex Hough*  
Rex R. Hough, President

1/30/2020  
Date

*Notice Address:*

Dyehard Fan Supply  
Attn: General Counsel  
500 West Fifth Street, Suite 1200  
Winston-Salem, NC 27101

**MIAMI UNIVERSITY**

By: *David S Creamer*  
David Creamer, SVP for Finance and Business Services

1-30-2020  
Date

*Notice Addresses:*

Miami University  
Attn: Trademarks and Licensing  
301 South Campus Avenue, Room 22  
Oxford, OH 45056

With copies to:

Miami University  
Attn: University Athletics  
123 Yager Stadium, Equipment Dept.  
Oxford, OH 45056

Miami University  
Attn: General Counsel  
215 Roudebush Hall  
501 East High Street  
Oxford, OH 45056

## EXHIBIT A

### **Defined Terms**

**“Adjusted Gross Sales Receipts”** means the amount equal to all cash consideration derived by Dyehard from the sale of Licensed Merchandise and/or Consigned Goods during the applicable period pursuant to this Agreement, less (or without regard to) the following: (a) amounts returned to customer for refunds on returns, exchanges, or other customer service resolutions, (b) discounts or coupons, (c) credit card/debit card charges or other payment processing fees, (d) sales taxes, excise taxes, ad valorem taxes and other governmental levies (other than income taxes) required by applicable taxing authorities and governing jurisdictions, and (e) the amount of shipping expenses incurred on deliveries to customers and actually passed through to and collected from the paying customer without markup by Dyehard (provided, however, that if and to the extent that Dyehard marks up shipping and handling expenses beyond the actual expense of shipping, any such excess amount above actual shipping expenses shall be included in Adjusted Gross Sales Receipts). Adjusted Gross Sales Receipts shall be calculated without any deduction for inventory purchases or operational expenses. Adjusted Gross Sales Receipts shall be calculated without regard to any sales of products to University or its Affiliates at a discount.

**“Affiliate(s)”** means, as to any Person, any other Person that, directly or indirectly, is controlled by, is under common control with, or controls such Person, but only as long as such control exists. For this purpose, “control” means ownership of or voting rights over at least 50% of the outstanding voting or equity interests or securities of the Person in question or the power to direct or cause the direction of management or policies of such Person, whether through voting securities, by contract, or otherwise.

**“Alumni Shop URL”** means the uniform resource locator accessible at <http://www.miamialum.org/>, or any successor or replacement URL.

**“Alumni Site”** means the official alumni website and digital platform of University Alumni, currently accessible via <http://miamialum.org/>, or such other successor website or digital platform of the University where it provides content, engagement, and communications materials intended for University’s alumni.

**“Athletics Shop URL”** means the uniform resource locator accessible at [www.shop.miamiredhawks.com](http://www.shop.miamiredhawks.com), or any successor or replacement URL.

**“Athletics Site”** means the official athletic website and digital platform of University Athletics, currently accessible via <https://miamiredhawks.com/index.aspx?path=athletics>, or such other successor website or digital platform of the University where it promotes its athletic teams, media reports of its athletic teams, schedules of its athletic teams, and content of interest to the alumni and fans of the University.

**“Breach”** means the unauthorized access to or disclosure of Covered Information or Data.

**“Confidential Information”** means all nonpublic information relating to a Party or its Affiliates that is expressly designated on the documents or materials as “Confidential” or that, given the nature of the information or the circumstances surrounding its disclosure, reasonably should be considered as confidential. Confidential Information shall also include (a) all nonpublic information relating to a Party’s or its Affiliates’ technology, customers, business plans, agreements, promotional and marketing activities, finances and other business affairs; and (b) all third-party information that a Party or its Affiliates makes known to the other Party in writing that it is obligated to keep confidential. Confidential Information may be contained in tangible materials, such as drawings, data, specifications, reports and computer programs, or may be in the nature of unwritten knowledge. Confidential Information does not include any information that (v) has become publicly available without breach of this Agreement or breach of a contractual

obligation of a Party to this Agreement, (w) can be shown by documentation to have been known to the receiving Party at the time of its receipt from the disclosing Party or its Affiliates, (x) is received from a third party who did not acquire or disclose such information by a wrongful or tortious act, (y) can be shown by documentation to have been independently developed by the receiving Party without reference to any Confidential Information, or (z) is Covered Information and/or Data.

“**Covered Information**” has the meaning set forth in **Section 12** of this Agreement.

“**Customer**” means a person who accesses the Online Store, whether or not a purchase is made.

“**Customer Information**” means a Customer’s name, mailing address, telephone number, e-mail address, and any other personally identifying information obtained through the Online Store.

“**Customer Service**” means the creation, maintenance, and operation of a Customer service center that is branded and available through the URLs, which is staffed with a sufficient number of trained personnel to handle phone, e-mail, and mailed customer inquiries, complaints, and suggestions and to assist with orders of Licensed Merchandise and Consigned Goods.

“**Data**” has the meaning set forth in **Section 13** of this Agreement.

“**Dyehard Personnel**” means Dyehard’s (and its Affiliates’) directors, members, officers, employees, agents, representatives, and subcontractors.

“**Excepted Claims**” means any claims or allegations that the University Trademarks included in or on such Licensed Merchandise infringe upon a third party’s Intellectual Property Rights, any claims or allegations that any other University Furnished Items infringe upon a third party’s Intellectual Property Rights, any other claims arising out of Dyehard’s approved use of any of the University Furnished Items, or any claims or allegations that Dyehard does not have the rights and licenses to use the Licensed Marks as expressly licensed herein during the Term.

“**Facility**” means Dyehard’s warehouse located at 1100 Western Ave, Suite A, Pittsburgh PA 15233, or a subsequent suitable location identified by Dyehard by written notice to University.

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

“**Law(s)**” means any constitution, statute, treaty, code, ordinance, law, rule, regulation, or order of any applicable foreign, federal, state, or local government, including, without limitation, any regulatory body, agency, instrumentality, or commission; any court, tribunal, or judicial body; or any entity exercising regulatory or administrative functions of or pertaining to a governmental or political subdivision thereof.

“**Licensed Merchandise**” means any goods, merchandise, or tangible items bearing the University Trademarks or otherwise designated as licensed by or associated with the University (whether University Athletics, University Alumni, or otherwise) and which are approved by the University (with it being

presumed the products are approved if sourced from an official licensed product licensee of the University and bearing an officially-licensed hologram).

“**Losses**” has the meaning set forth in **Section 10** of this Agreement.

“**Online Store**” means the websites and mobile digital platforms as created and operated by Dyehard pursuant to this Agreement, which is identified by the Alumni Shop URL for University Alumni, and the Athletics Shop URL for University Athletics (and any of their respective successor or replacement websites or uniform resource locators), that is branded with University Trademarks, and that is used exclusively to offer Licensed Merchandise and Consigned Goods for sale by Dyehard via such platform and associated links, including without limitation websites and mobile digital platform linked via the Athletics Site or the Alumni Site. For avoidance of doubt, the term Online Store includes two separate online e-commerce platforms: one for University Alumni, and one for University Athletics.

“**Royalty**” or “**Royalties**” has the meaning set forth in **Section 6** of this Agreement.

“**Services**” means (a) the maintenance and operation of the Online Store; (b) the provision of all required technology necessary and sufficient for the efficient and effective operation of the Online Store (other than the URLs, which are registered to and owned by University); (c) the order processing, fulfillment, payment, and similar services necessary and sufficient for the efficient and effective operation of the Online Store for University Athletics and University Alumni; (d) all Customer Service (unless otherwise directed by University); (e) the creation and execution of the marketing and promotional aspects of the Online Store to promote the sale of Licensed Merchandise and Consigned Goods; and (f) promoting sale of all inventory via a product catalog on the Online Store.

“**Term**” has the meaning set forth in **Section 5** of this Agreement.

“**Transition Period**” has the meaning set forth in **Section 3** of this Agreement.

“**University Alumni**” means the University’s Alumni Association, which is primarily responsible for engaging with University’s alumni for alumni relations purposes.

“**University Athletics**” means University’s Intercollegiate Athletics Department, which is primarily responsible for University’s athletic teams participating at the NCAA Division 1 level at the Oxford (OH) campus.

“**University Furnished Items**” means the content provided by the University and University Trademarks approved for use in connection with the activities contemplated by this Agreement.

“**University Trademarks**” means any and all of the following related to University and owned or controlled by University or its Affiliates, or in which the University or its Affiliates have intellectual property rights or licenses: trademarks, service marks, trade names, URL, domain name, trade dress, proprietary logos, proprietary insignia, or other source or business identifier associated with University or its athletic teams; provided, however, that University Trademarks do not include names or likenesses of any individuals.

“**URLs**” means both the Alumni Shop URL and the Athletics Shop URL.

“**Year**” has the meaning set forth in **Section 5** of this Agreement.

EXHIBIT B

[attach Dychard Response]

## APPENDIX I

### ATHLETIC DEPARTMENT ECOMMERCE SUPPORT PROGRAM/VISUALS

#### **1. Site Integration**

University Athletics shall add defined elements within the asset analysis below to increase traffic to the Athletics Online Store, exact location and display schedule subject to Operator's discretion (examples and arrows are for illustration purposes only). Operator shall provide all assets for the implementation of all integration efforts. Such site integration efforts shall include:

<http://www.miamiredhawks.com/>

- Add shop tab (Visual 1.1)
- Add department links in shop tab (Visual 1.2)
- Add 300x250, 728x90, 970x66, 320x50, 70x42 ROS graphics in remnant inventory (Visual 1.3)
- Add shop graphic 970x66 in footer (Visual 1.4)

#### **2. E-Mail Integration**

University Athletics shall promote the Athletics Online Store through e-mail marketing and authorizes Operator to send marketing emails on behalf of Athletics. Operator shall provide all assets for emails. Such email integration efforts shall include:

##### **Operator E-Mail Marketing**

- Athletics shall provide Operator with approved e-mail databases including, but not limited to, past customers, newsletter signups, and season ticket holders. All data provided to the Operator shall be destroyed upon the expiration of this agreement.

##### **University Athletics E-Mail Marketing**

- Add 'Merchandise/Online Shopping' option to Institution E-Mail signup page
- Send merchandise specific e-mails to Athletics-controlled databases for hot markets

#### **3. Mobile Integration**

Athletics shall promote the Athletics Online Store through mobile apps and mobile browsing. Operator shall provide all assets for the implementation of mobile integration. Such mobile integration efforts shall include:

##### **Mobile Web Site**

- Add shop link to navigation menu
- Add online store product rotator

#### **4. Social Media Integration**

Athletics shall promote the Athletics Online Store through social media marketing channels including, without limitation, Facebook, Twitter and Pinterest. Operator will provide all graphics and posts for social media. Such social media integration efforts shall include:

##### **Facebook**

- Post monthly product mentions on the Facebook wall
- Add a shop icon below the cover image
- Add a shop link in the "More" section

##### **Twitter**

- Post monthly product mentions on Twitter

**Pinterest**

- Pin new products monthly

**Instagram**

- Post top selling products on Instagram

**5. Video/Print/Radio Integration**

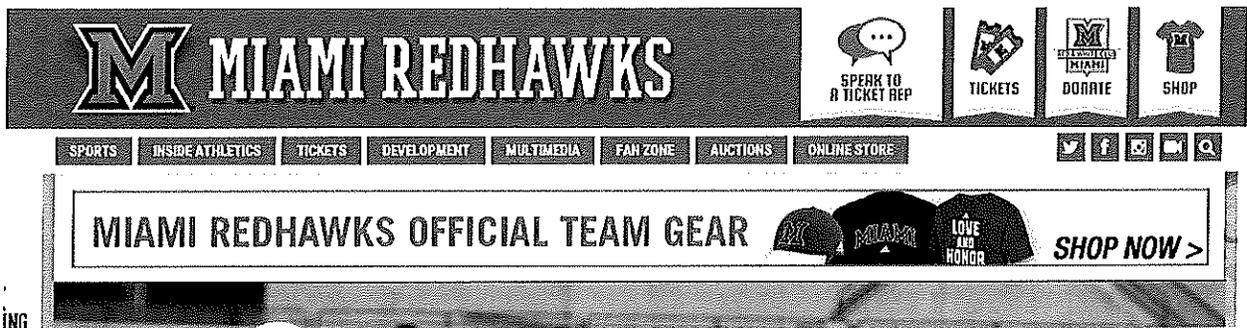
Athletics shall promote the Institution Online Store through video, print and radio channels including, but not limited to, Coaches Shows, athletic site videos, stadium video boards, and PA announcements. Such video/print/radio integration efforts shall include:

**Video**

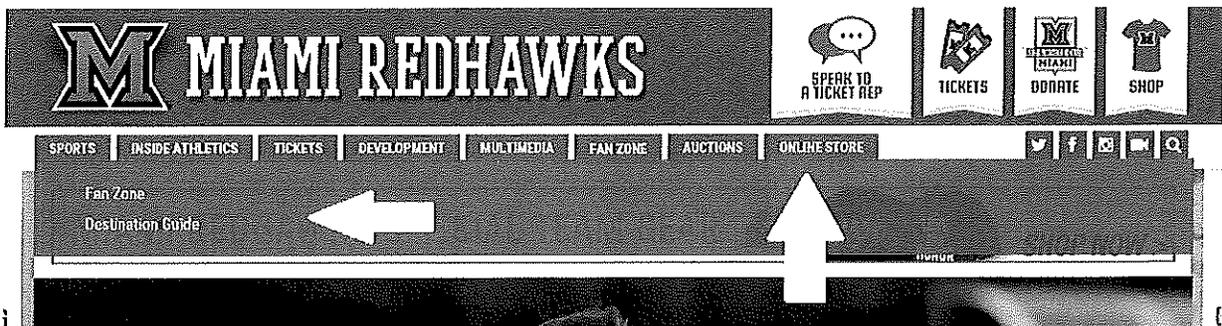
- Add shop videos to Athletics YouTube Channel
- Run shop videos on stadium/arena video boards

**Visuals**

*Visual 1.1:*



*Visual 1.2:*



Visual 1.3:

**NEW SUMMER Styles**

SHOP NOW

SUN AUG 23	FRI AUG 21	FRI AUG 21	FRI AUG 21	SAT AUG 22	TWITTER	FACEBOOK	INSTAGRAM
W VOLLEYBALL at Ohio	FIELD HOCKEY vs. Albany	W SOCCER vs. Valparaiso	W VOLLEYBALL vs. Creighton	W VOLLEYBALL at Ohio	MIAMI ATHLETICS @MIAMIREDHAWKS		

Visual 1.4

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[End of Appendix I]

## APPENDIX II

### **Miami University Athletics Marketing Online Storefront**

#### **1. Social Media**

- Facebook: 15,841 likes
- Twitter: 18,342 followers
- Instagram: 4,181 followers
- One (1) post per month with featured athletics item and click-thru to storefront

#### **2. MiamiRedHawks.com**

- Users (7/15/2018 – 12/31/2018): 375K
- Unique page views (7/15/2018 – 12/31/2018): 2.15M
- Shop button on MiamiRedHawks.com
- Shop button on “Gameday Central” page for all home football games.

#### **3. Email Marketing**

- 30,000 season ticket holders and individual game buyer emails on file
- Inclusion in one (1) email per home game week to each sport season ticket holder (Open rate is averaged at 70% with a click-thru rate of 50%)
- Inclusion in two (2) emails per month to all athletics alumni who live within a 60 mile radius of Oxford, OH

#### **4. Print**

- Inclusion in printed campaigns for ticket sales on a bi-weekly basis
  - Size: 1.75” x 2”
  - Circulation: 1,000 to 10,000 depending on the ticket production

#### **5. Conditions**

- Operator will provide the artwork for the ads per Miami Athletics specs/guidelines. Content is subject to Miami’s brand standards and review by Miami Athletics.
- Product assortment of at least 1,000 products.
- Customer service expectations are met.

*[End of Appendix II]*

## APPENDIX III

### Miami University Alumni Association (MUAA) Marketing Reach for Alumni Storefront

#### 1. Social Media

- Facebook – 28.7k likes
- Twitter – 8,531 followers
- LinkedIn – 36,020 members of MUAA group
- One (1) post per month with featured alumni item and click-thru to alumni storefront

#### 2. MiamiAlum.org

- 291,260 unique visits (2018)
- 1,095,830 unique page views (2018)
- Home page (both sites) ad to click-thru to alumni storefront

#### 3. Email marketing

- 104,690 alumni emails on file
- One (1) post per month with featured alumni item and click-thru to alumni storefront on monthly **all alumni** (with email on file) e-newsletter
- One (1) ad per month with featured item and click-thru on chapter emails (average of 45 emails sent per month with 22% average open rate)

#### 4. Print

- Calendar Ad
  - Full page, color ad for alumni storefront in annual alumni calendar
  - Circulation: Mailed to approximately 23,000 households

All vendor supplied art must be per MUAA guidelines/specs and Miami University branding guidelines. Content is subject to MUAA review and brand standards. A comprehensive email and social marketing plan with strategy and timeline is to be presented by vendor and approved by MUAA.

The proposed MUAA marketing plan is contingent on the following:

1. MUAA will be allowed to continue to work with and promote cross-campus partners, other vendors and its own products/services.
2. If vendor agrees to third party fulfillment of the MUAA ornament, all revenue from the sales of the ornament will come directly to MUAA and are not part of revenue share agreement.
3. MUAA will only promote the alumni storefront in marketing messaging and materials. Vendor will create a direct URL to the alumni storefront.

*[End of Appendix III]*