

## NIKE USA, INC. ACCOUNT AGREEMENT

NIKE USA, Inc. ("NIKE") offers Nike, Jordan, and Hurley branded goods bearing certain of the NIKE Trademarks, as defined below, ("Product") for sale to persons and entities that have been authorized by NIKE to make purchases of such Product. Wheaton Park District (the "Applicant") has submitted an application (the "Credit Application") requesting that NIKE accept it as a customer and/or permit it to purchase Product, or, if Applicant is already an approved NIKE customer, requesting that NIKE approve of a particular store location ("Store"). To induce NIKE to consider Applicant's Credit Application, Applicant agrees that the following shall apply if approved as an authorized customer (each approved Applicant is referred to as "Customer"). Customer may from time to time submit orders to NIKE for the purchase of Product. Every purchase order it places (each, an "Order") will be governed by the terms and conditions of sale in effect at the time that Order is received by NIKE (the "Terms and Conditions") and those Terms and Conditions are incorporated into each such Order. The Terms and Conditions that are current as of January 1, 2016 are attached as **Exhibit A**. This Account Agreement may be referred to as this "Agreement." NIKE and Customer are referred to as "a Party" and collectively as the "Parties."

1. **TERMINATION:** This Account Agreement may be terminated at any time by either Party, with or without cause, upon written notice to the other Party. The notice will be effective (a) immediately, if termination is for cause, and (b) 10 days after receipt, if termination is without cause. Upon termination (i) Customer will no longer place Orders or purchase Product on credit, for cash or otherwise; and (ii) NIKE may cancel or terminate any Order whether or not it had previously been accepted in writing and (iii) NIKE will not in any event ship any Product or otherwise accept any Orders, whether or not the Orders were placed prior to the effective date of the termination, and (iv) the following provisions of this Account Agreement will survive: Section 1 (Termination); Section 3 (Personal Certification of Customer's Representative); Section 4 (Security Agreement); and Section 6 (Restriction on Assignment). Upon termination, the terms, conditions and representations herein shall remain in full force and effect with respect to all Orders accepted by NIKE prior to the date of termination. In addition, the following provisions of the Terms and Conditions will survive expiration or termination of this Agreement: Section 6 (Customer Covenants); Section 7 (General Restrictions); Section 8 (Customer's General Representations, Warranties and Obligations); Section 9 (Trademarks & Brand Promotions); Section 10 (Limited Remedy; Disclaimer of Implied Warranties); Section 11 (Limitation on Damages and Actions); Section 12 (Consumer Warranty Information); Section 14 (Confidentiality); Section 15 (Severability/Waiver/Construction); Section 16 (Attorney's Fees/Governing Law/Forum Selection); and any other provision that, by its nature, is intended to continue in effect following termination of the relationship.
2. **STORE LOCATIONS:** As stated in Section 6.A of the Terms and Conditions, Customer may resell Product only from approved store locations (inclusive of physical "brick and mortar" stores and digital stores such as websites and mobile applications). NIKE may at any time, with or without cause, withdraw its approval of a particular location, in which case Customer will immediately stop displaying, offering to sell, or selling Product from such location, and this Agreement is deemed amended to omit that address. Similarly, if a store is closed for any reason, this Agreement is deemed amended to omit the address of such store.
3. **PERSONAL CERTIFICATION OF CUSTOMER'S REPRESENTATIVE:** The individual executing the Credit Application and this Agreement on behalf of Customer certifies in his or her individual capacity that: (a) he or she is authorized to do so on behalf of Customer; and (b) that to his or her knowledge after reasonable investigation, the contents of and the financial and other data submitted with the Credit Application accurately represent Customer's business, prospects and financial condition as of the date reflected in that information; and (c) there has been no material change in Customer's business, prospects or financial condition between the dates reflected in that information and the date shown.
4. **SECURITY AGREEMENT:** To secure payment and performance of Customer's current and future obligations to NIKE, Customer grants to NIKE a security interest in all Product and in all related displays, fixtures, equipment and promotional items (the "Promotional Items") provided by NIKE, and in each case whether currently in existence or delivered to Customer in the future, and in all accounts receivable, instruments, documents, returns, general intangibles and other proceeds of the Product and Promotional Items (collectively with the Product and Promotional Items, the "Collateral"), in each case whether currently in existence or delivered to Customer in the future. A copy of the Credit Application may be filed as a financing statement, in which case Customer is the debtor and NIKE is the secured party. If Customer defaults in any of its obligations to NIKE, Customer will, at its sole cost and expense, assemble the Collateral and deliver that Collateral to NIKE at any location in the United States reasonably requested by NIKE.
5. **CREDIT CHECK AUTHORIZATION:** Customer's signature on the Credit Application or this Agreement, or Customer's submission of an Order, constitutes Customer's authorization under the Fair Credit Reporting Act for NIKE to (a) utilize customer credit reporting agencies to obtain reports on Customer and any of its affiliates in order to permit NIKE to appropriately evaluate the extension of business credit to Customer and (b) provide information about Customer's payment history and compliance with these terms to credit reporting agencies.
6. **RESTRICTION ON ASSIGNMENT:** Customer will not assign this Agreement, or any right conferred in this Agreement. A change of control of Customer, by stock sale or gift, by merger, by operation of law, by contract, or otherwise, will be deemed an assignment for purposes of this Section. Any purported assignment of this Agreement will be void; the successor entity will not be an authorized NIKE customer unless it has (a) submitted a new credit application; and (b) been approved by NIKE in writing, in its sole discretion, as a new customer; and (c) executed an account agreement in the then-current form.
7. **AMENDMENT; WAIVER:** No modification of this Agreement (including the Terms and Conditions of Sale) will be binding against NIKE unless it is reflected in a written instrument that: (a) expressly states the intent to amend; (b) refers to the provision(s) of this Agreement to be amended; (c) provides the full text of the amendment; and (d) is signed by an authorized representative of NIKE. A Party's delay or failure to enforce or insist on strict compliance with any provision of this Agreement will not constitute a waiver or otherwise modify this Agreement. A Party's waiver of any right granted under this Agreement on one occasion will not (a) waive any other right; (b) constitute a continuing waiver; or (c) waive that right on any other occasion.

**8. APPROVAL:**

- THE APPLICATION WILL HAVE NO FORCE OR EFFECT UNTIL IT HAS BEEN APPROVED BY NIKE AND UNTIL THIS AGREEMENT HAS BEEN SIGNED BY AN AUTHORIZED REPRESENTATIVE OF NIKE.
- CUSTOMER IS NOT AUTHORIZED TO SELL PRODUCT AT ANY RETAIL OUTLET (WHETHER BRICK-AND-MORTAR LOCATION, DIGITAL STORE LOCATION, WEBSITE OR MOBILE APPLICATION) OTHER THAN THAT OR THOSE IDENTIFIED ON THE DOOR LIST OR LIST OF APPROVED WEBSITES OR MOBILE APPLICATIONS ATTACHED AS EXHIBIT B.
- CUSTOMER MUST SUBMIT A SEPARATE APPLICATION FOR EACH ADDITIONAL STORE (INCLUSIVE OF DIGITAL STORES) AND/OR TEAM, AND EACH SUCH APPLICATION MUST BE APPROVED BY NIKE IN WRITING BEFORE IT BECOMES EFFECTIVE.
- APPROVAL BY NIKE OF ONE STORE LOCATION DOES NOT MEAN OTHER STORE LOCATIONS WILL ALSO BE APPROVED. SIMILARLY, APPROVAL BY NIKE OF AN APPLICATION FOR A STORE DOES NOT MEAN THAT THE CUSTOMER IS AUTHORIZED TO SELL PRODUCT BY CATALOGUE, OR THROUGH A WEBSITE OR ANY OTHER ELECTRONIC MEANS.
- NIKE MAY, IN ITS DISCRETION, APPROVE AN APPLICATION FOR THE PURCHASE OF PRODUCTS BEARING ANY COMBINATION OF THE NIKE, JORDAN, OR HURLEY TRADEMARKS.

<p><i>CUSTOMER IS APPROVED FOR A STORE OR STORES</i></p>	<p>YES <input checked="" type="checkbox"/> NO <input type="checkbox"/></p> <p>If YES is checked, address(es) of approved store(s) is/are listed on <b>Exhibit B</b></p>
<p><i>CUSTOMER IS APPROVED FOR DIGITAL SALES FROM ITS WEBSITE AND/OR MOBILE APPLICATION</i></p>	<p>YES <input type="checkbox"/> NO <input checked="" type="checkbox"/></p> <p>If YES is checked, address(es) of approved URL(s) is/are listed on <b>Exhibit B</b></p>
<p><i>CUSTOMER IS APPROVED AS A TEAM DEALER</i></p>	<p>YES <input type="checkbox"/> NO <input checked="" type="checkbox"/></p>
<p><i>CUSTOMER IS APPROVED FOR A NON-RETAIL ACCOUNT</i></p>	<p>YES <input type="checkbox"/> NO <input checked="" type="checkbox"/></p>

**IN WITNESS WHEREOF**, the Parties have caused this Account Agreement to be executed and effective as of the date signed below by both Parties' duly appointed representatives.

**Wheaton Park District**

By: *Michael J. Benard*  
Name: Michael J. Benard  
Title: Executive Director  
Date: Mar 16, 2018

**NIKE USA, Inc.**

By: *Keith Covington*  
Name: Keith Covington  
Title: Sales Operations  
Date: Mar 16, 2018

**EXHIBIT A**  
**NIKE USA, Inc.**  
**TERMS AND CONDITIONS OF SALE**

NIKE USA, Inc. ("NIKE") offers certain Nike, Jordan and Hurley branded goods bearing NIKE Trademarks (as defined below) (such goods shall be referred to as "Product") for sale to persons and entities that have been authorized by NIKE to make purchases of such Product ("Customers.") By submitting a purchase order to NIKE (each, an "Order"), Customer agrees that such Order will be governed by the terms and conditions of sale in effect at the time the Order is received by NIKE (the "Terms and Conditions"). The Terms and Conditions that are current as of January 1, 2016 are set forth below.

**1. ORDERS:** Orders submitted by Customer are offers and do not form binding contracts unless and until they have been accepted by NIKE. The preparation of a purchase order by NIKE, the submission by Customer of a purchase order to NIKE, or the acknowledgement or confirmation by NIKE of receipt of a purchase order shall not constitute NIKE's acceptance of that Order. NIKE may, in its sole discretion, accept or reject all or any part of an Order or substitute comparable Product for the items that were ordered. NIKE will be deemed to have accepted an Order, or part of an Order, only if and when NIKE ships the Product. NIKE may at any time refuse to ship Product for any reason, even if NIKE has received payment for the applicable Order and/or has confirmed that Order on NIKE.net or otherwise. NIKE will in its sole discretion determine which of NIKE's products are made available to Customer for Orders, and determine how to allocate Product among Customer and NIKE's other customers. Accordingly, NIKE reserves the right to discontinue product lines and to make changes in goods offered at any time. Unless Customer complies with Section 5 regarding returns, Customer will be deemed to have accepted those substitute goods on the terms outlined in NIKE's invoice. NIKE may cancel an Order at any time because the Order contains an incorrect price, Customer requests Product that Customer is not authorized to sell, or for any other reason, even if NIKE has acknowledged or confirmed that Order or has received payment for that Order. In the latter case, NIKE will, at its election, either refund the payment or credit Customer's account. Any Order that conflicts with or that includes provisions (other than item and quantity) in addition to these Terms and Conditions will have no force or effect to the extent it is inconsistent or includes additional terms. NIKE will be entitled to accept any Order and to rely on any other written or telephonic request or notice given by a person that appears to be an employee or agent of Customer. Each Order will be subject to and governed in all respects by (a) these Terms and Conditions, and (b) if applicable, Customer's credit application and account agreement. NIKE has no obligation to accept Orders.

**2. PRICES:** NIKE may correct typographical or other errors in pricing, may reduce or cancel any discounts previously offered to Customer, and may change its prices at any time. Each Order will be invoiced at the prices prevailing at the time that Order is fully recorded into NIKE's central ordering system. Nothing in this Agreement shall be construed as obligating Customer to resell the Product at any particular price or on any specific terms and conditions. Suggested retail prices published by NIKE, if any, are suggestions only, and do not create a requirement that Customer sell Products at such prices. Customer shall, at all times in its sole discretion, determine and control the price at which Products are sold to its consumers.

**3. TERMS OF SALE:** Customer will pay for all Product by the date specified on NIKE's invoice, or if none is specified, within 30 days after the date of that invoice. Any sum not paid when due is subject to a service charge of 1.5% per month or the maximum rate permitted by law, whichever is lower. The amount reflected in each NIKE invoice will be deemed to be an account stated unless Customer disputes the amount of that invoice in writing within 30 days after the date that invoice is due. Customer will pay the undisputed portion of each invoice. NIKE has the right to apply payments it receives from Customer to any of Customer's invoices and to disregard Customer's instructions to apply payment to any specific invoice. In the event Customer is indebted to NIKE or to any NIKE affiliate, that debt may be offset against credits otherwise owing to Customer to reduce or eliminate the credit.

**4. SHIPPING; RISK OF LOSS; TITLE:** NIKE will ship Product FCA (Incoterms 2010), the NIKE Distribution Center or other shipping point. NIKE is not responsible for any loss resulting from any delay in shipping or failure to ship. In the event that NIKE arranges for transportation of Product as agent for, on behalf of, or at the direction of Customer, then NIKE will ship Product FCA (Incoterms 2010), the destination designated by Customer for the applicable Order, and may, at NIKE's election, ship Prepaid & Add, pursuant to which (a) Customer will reimburse freight, insurance and other transportation related costs incurred by NIKE on Customer's behalf, and (b) Customer hereby assigns to NIKE any claim it might have against the carrier for loss, damage, or delay in transit; accordingly, NIKE may pursue a claim against the carrier and may retain any recovery.

**5. RETURNS:** Product may not be returned without prior written authorization from NIKE. Customer may submit to NIKE a request for return of Product; provided, however, that NIKE will not authorize a return and will not issue a credit unless the Product to be returned was either (a) defective or (b) not comparable to the items that were ordered; and (c) the request for return was received by NIKE no more than 30 days after the delivery of Product that is the subject of the requested return. NIKE will issue a credit only if the Product is in the same condition that it was received. The amount credited for returned Product will be the price actually paid by Customer, as reflected in the applicable invoice; the refund will be issued upon arrival of returned Product. Defective Products must be returned in a different transaction from non-defective products. Product sold as close-outs, irregulars, seconds or B-grades may not be returned. Customer will bear all costs associated with returning Product, including, but not limited to, consolidation costs, the cost of repackaging, shipping expenses, and insurance; NIKE will not be liable for reimbursement of any such costs. Customer will retain title and risk of loss until receipt by NIKE at the designated return destination. Restocking fees may apply. Any items that are returned without NIKE's approval will be disposed of by NIKE unless Customer prepays shipping costs for their return.

**6. CUSTOMER'S COVENANTS:**

**A.** *The following applies to Customers that are approved by NIKE in writing to sell Product at one or more physical Stores (a "brick and mortar" store).*

**STORES** – Except as expressly permitted in Section 6.B and/or 6.C below, or when otherwise approved by NIKE in writing, Customer will not:

(a) sell Product under any store name or at any physical Store other than under the store name and at the particular physical store identified in this Credit Application (Exhibit B) or, in the case of multiple Stores, at the location to which the Product was shipped (assuming it was an approved location); or

(b) sell Product other than to retail consumers physically present at such Store who are purchasing for their personal use and not for resale; or

(c) accept orders or sell Product through the Internet, e-mail, mobile applications, or any other electronic channel, except that Customer may advertise Product through those channels to create or enhance consumer awareness of Product performance features and/or indicate the availability of Product at an authorized Store so long as Customer complies with Section 9 below.

Customer will at all times provide clean, modern and adequate retail outlet(s) necessary for the proper merchandising and selling of Product.

**B.** *The following applies if NIKE has indicated in the Account Agreement, or in another writing signed by an authorized representative of NIKE, that Customer is approved to sell Product through digital Stores (as defined below).*

**DIGITAL SALES** – Customer is authorized to sell Product to consumers via the website, websites, or mobile applications identified in Customer’s Credit Application (Exhibit B) or otherwise approved for Customer by NIKE in writing (the “Authorized Digital Store(s)”) and to deliver that Product only to consumers that provide delivery addresses in the United States, its territories and possessions.

- (a) The Authorized Digital Store(s) will not be co-branded with the name or other trademarks of any other person or entity.
- (b) The Authorized Digital Store(s) will have features and functions that are standard in the industry, including the ability to: (i) confirm availability or unavailability of Product at the time the consumer places his or her order, (ii) accept all major credit cards, (iii) ship within standard time frames with a choice of overnight, second day air and ground delivery, and (iv) allow consumers to search the Authorized Digital Store(s) and to navigate to a NIKE “concept” shop in the form of a Web page featuring all Product that Customer sells on the Authorized Website(s) (except for discounted goods, which must be presented on a separate discount page).
- (c) Customer will at all times provide prompt, effective and courteous customer service (e.g. by telephone, web chat and/or email) for consumers purchasing Product from the Authorized Digital Store(s) and for other visitors to that or those Authorized Digital Store(s).
- (d) If at any time an Authorized Digital Store(s) does not meet NIKE’s quality, trademark, image, or sales criteria or is not consistent with industry best practices, NIKE reserves the right to require revisions to the Authorized Digital Store(s) or to revoke its approval for Customer to sell Product on such Authorized Digital Store(s).
- (e) The Authorized Digital Store(s) will not link to, or provide data feeds to, any transactional website or mobile application, or permit any transactional website or mobile application to link to the Authorized Digital Store(s). For purposes of these Terms and Conditions, a “transactional website or mobile application” means a shopping portal, online marketplace, or other website or mobile application which either (i) is capable of accepting orders from consumers, or (ii) creates the perception that orders are accepted on the website or mobile application, even if the consumers are in fact redirected to other websites or mobile applications for order placement.

**C.** *The following applies to Customers that are approved by NIKE in writing for sales to (i) teams, leagues, sports clubs, schools, colleges, or universities (collectively, “Teams”); or (ii) coaches or agents of such Teams; or (iii) Team booster clubs.*

**TEAM SALES.** Customer may screen print, embroider, decorate, or otherwise embellish Product according to the instructions of a particular Team (typically by applying a Team name, logo, or other trademark (a “Mark”) to the Product); provided, however, that Customer will submit to NIKE samples of any such Marks prior to their application, and Customer shall not embellish Product with any Mark unless NIKE has approved in writing. Samples of any embellished product must be approved by NIKE in writing on a case-by-case basis, as described above.

**D.** *The following applies to Customers that are approved by NIKE in writing for a non-retail account.*

**NON RETAIL ACCOUNTS.** Customer will distribute Product at no cost to the teams, players and sports participants, and other groups or individuals specified by NIKE or will sell at no profit (that is, sell at NIKE’s invoice price).

**7. GENERAL RESTRICTIONS:** Customer will not directly or indirectly:

- (a) sell, consign or otherwise transfer Product (i) outside the United States (and, if a “brick and mortar” store, other than at the approved physical Store location or locations to which it was shipped); or (ii) to another retailer, or to an e-tailer, distributor, or broker; or (iii) to any other person under circumstances where it knows or should know, based on the circumstances of the transaction, that the Product is intended for resale or will likely be resold; or
- (b) sell, consign, distribute, or otherwise transfer Product on any transactional website or mobile application, or on any non-Authorized Digital Store(s); or
- (c) purchase or sell, offer to sell, or distribute (including at no cost), counterfeit NIKE goods; or
- (d) purchase authentic NIKE goods from any third party, except, if indicated by NIKE, an approved NIKE licensee; or
- (e) purchase any Product from, or sell or offer to sell Product on behalf of or for the account of, any other third party; or
- (f) if NIKE sets a launch date for a particular Product, display, offer to sell, or sell that Product prior to the date and time stated by NIKE; or
- (g) collect or use any personal data from consumers other than using industry best practices for security standards, and in compliance with applicable law.

**8. CUSTOMER’S GENERAL REPRESENTATIONS, WARRANTIES AND OBLIGATIONS:**

(a) Customer will at all times: (i) use security measures to protect credit card and other personally identifiable information from unauthorized access or use, in a manner consistent with industry best practices and with applicable law; (ii) render full, prompt, effective and courteous service before, during and after the retail sale of Product; (iii) vigorously encourage the retail sale of Product; (iv) meet or exceed any minimum sales volumes established by NIKE from time to time; (v) establish and maintain, independently and in conjunction with NIKE, advertising and marketing policies and methods that emphasize the quality and performance of the Product; (vi) submit to NIKE, at NIKE’s request, certain sell-through data and other point-of-sale information, in the format required by NIKE; and (vii) comply with applicable law in connection with the performance of its obligations under this Agreement.

(b) Customer represents and warrants, and each time Customer submits an Order, Customer will be deemed to have represented and warranted, that (i) it wishes to purchase Product solely for business purposes and not for personal, family or household purposes; and (ii) the most recent financial information provided by Customer is true, accurate and complete as of the dates indicated in that information and that there has been no material adverse change in Customer’s business, prospects or financial condition since those dates; and (iv) it owns and operates each Store for which approval has been granted; for purposes of this Agreement, Customer’s “ownership” of a store means that Customer has an ownership or a leasehold interest in the premises and owns the assets related to the operation of the store; and (v) it has obtained all licenses and other governmental consents and approvals that may become necessary in the performance of its obligations under this Agreement, and it will operate and maintain the stores in compliance with applicable law, including, without limitation, building codes, zoning ordinances, and laws governing safety, health, labor practices, hazardous substances, and sanitation.

(c) Customer has received and reviewed NIKE’s policy regarding Gifts, Gratuities and Other Payments, available from NIKE upon request. Customer shall not take any action that could reasonably be expected to violate the policy or induce a NIKE employee to violate the policy. In particular, but without limiting the preceding sentence, Customer shall not (a) give a cash gift in any amount to a NIKE employee, (b) give a non-cash gift worth more

than \$200 to a NIKE employee, or (c) give a gift of any kind to any relative, friend, associate or charitable organization favored by a NIKE employee if there is any implied expectation of a return favor.

(d) Customer shall at all times conduct its business in an ethical manner in compliance with all applicable laws, rules and regulations, and in accordance with NIKE's Code of Conduct and NIKE's corporate and retail account programs and policies applicable to Customer or any Products made available to Customer, including, without limitation, Product release and launch policies, digital asset usage policies, NIKE Trademark guidelines, and shipping and freight programs and policies.

#### **9. TRADEMARKS & BRAND PROMOTIONS:**

(a) Customer acknowledges NIKE's sole ownership of and exclusive right, title and interest in and to the name "NIKE," the name "Jordan," the name "Hurley," the NIKE Swoosh logo design, the Jordan "Jumpman" logo, the Hurley stylized letter "H" logo and all other trademarks owned by NIKE or its affiliates (the "NIKE Trademarks"). Customer recognizes that the NIKE Trademarks possess substantial goodwill and agrees that it will not use or display NIKE Trademarks in a manner that would disparage or damage them, or represent that it has any ownership in, or attempt to license, the NIKE Trademarks. All goodwill associated with Customer's use of the NIKE Trademarks will be owned exclusively by NIKE. Customer will comply with NIKE's latest trademark usage guidelines, which NIKE may provide and circulate from time to time, as well as any other policies governing the use of (i) NIKE logos and other trademarks, and (ii) product and athlete images and other copyrighted materials.

(b) Upon request by NIKE, Customer will submit to NIKE, for its review, any public statements about NIKE or advertising materials bearing NIKE Trademarks, Product images, athlete images, or Product descriptions. Such materials shall be deemed rejected unless and until NIKE approves of the materials in writing, and Customer shall not use the rejected materials. NIKE's quality standards will apply if Customer advertises, markets or promotes any Product through digital media, including online, social or mobile platforms.

(c) NIKE keeps a library of digital assets ready for use in many forms of media. These assets may be made available by NIKE, in its sole discretion, for Customer's use. To access the library, Customer must first be approved by NIKE in writing. Customer should contact its NIKE Sales Representative to learn more about NIKE's digital asset policy. If Customer's access to the library is approved, the library's assets are approved for Customer use on any Authorized Digital Store(s) or Customer's website only or as otherwise set forth in such written approval by NIKE. Customer shall not scan, copy or use images directly from NIKE printed catalogs, brochures and print ads or anywhere else, in any of Customer's Product-related Internet sales or brand promotions.

(d) Customer will not use any marks confusingly similar to the NIKE Trademarks or use the NIKE Trademarks in combination with other trademarks. Customer will notify NIKE in writing of any infringement or improper use of the NIKE Trademarks that comes to its attention.

(e) Customer acknowledges and agrees that the NIKE Trademarks and the NIKE reputation for quality are extremely valuable to NIKE, and that NIKE does not authorize Customer to sell or otherwise distribute any damaged or defective Product. Accordingly, Customer agrees that Product which may be damaged or defective, for any reason, shall be, at NIKE's sole election, either returned to NIKE or disposed of according to NIKE's instructions. NIKE and its agents shall have the right to witness such destruction.

(f) Customer will not use certain trademarked terms, as designated by NIKE, in metadata; or (i) purchase, bid for and/or broad match certain trademarked terms, as designated by NIKE, as Internet search terms; (ii) use, purchase, bid for and/or broad match any Products as Internet search terms in combination with terms including, but not limited to, "discount", "cheap", or "sale"; or (iii) use any NIKE Trademarks in any domain name or URL address.

**10. LIMITED REMEDY; DISCLAIMER OF IMPLIED WARRANTIES:** If any Product is defective, NIKE's sole and exclusive liability to Customer will be, at NIKE's election, if the defect is material, to either (a) replace that defective Product or (b) refund the amount Customer paid NIKE for that defective Product. AS BETWEEN CUSTOMER AND NIKE, NIKE EXPRESSLY DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES, EXPRESS AND IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NONINFRINGEMENT.

**11. LIMITATION ON DAMAGES AND ACTIONS:** NIKE WILL NOT BE LIABLE FOR ANY LOSS OF PROFIT, INTERRUPTION OF BUSINESS OR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES SUFFERED OR SUSTAINED BY CUSTOMER OR ANY OTHER PERSON. ANY ACTION (OTHER THAN FOR FAILURE TO PAY FOR GOODS DELIVERED) MUST BE COMMENCED WITHIN ONE YEAR FROM THE EARLIER OF THE DATE OF DELIVERY OF THE PRODUCT OR THE DATE OF THE ORDER GIVING RISE TO THE CLAIM. IN NO EVENT WILL NIKE'S LIABILITY TO CUSTOMER EXCEED, FOR DEFECTIVE PRODUCT, THE AMOUNT CUSTOMER PAID NIKE FOR THE PRODUCT GIVING RISE TO THE CLAIM, AND FOR ALL OTHER CLAIMS, THE AMOUNT CUSTOMER PAID NIKE WITHIN THE THREE-MONTH PERIOD PRECEDING THE DATE THE CLAIM AROSE. These limitations will apply regardless of whether the claim arises under contract, tort (including negligence and strict liability), or any other theory of liability.

**12. CONSUMER WARRANTY INFORMATION:** Customer hereby acknowledges that NIKE has made all appropriate information regarding product warranties available to Customer, and that Customer is solely responsible for making such warranty information available to consumers as may be required by applicable law.

**13. MODIFICATION:** NIKE may at any time, in NIKE's sole discretion, modify its Terms and Conditions of Sale. Each Order will be governed by the Terms and Conditions in effect at the time that Order is received by NIKE. Accordingly, Customer will review the then-current version of the Terms and Conditions (available at the NIKE.net website, in the catalogue, or by request from NIKE) before placing each Order. An Order that has been accepted by NIKE may be modified only by a written instrument which expresses an intent to amend, identifies the provision to be amended, and is signed by an authorized representative of NIKE.

#### **14. CONFIDENTIALITY.**

A. *Non-Disclosure.* Customer acknowledges that it may have access to information owned or controlled by NIKE or NIKE's Affiliates, disclosure of which would cause substantial or irreparable harm to NIKE ("Confidential Information"). Confidential Information includes the Terms and Conditions, NIKE's marketing plans, information regarding future releases of Product, and any other non-public material disclosed to Customer or to which Customer gains access. Customer shall protect NIKE's Confidential Information by using the same degree of care with respect to such information that it would exercise with its own confidential information or trade secrets, but in any event no less than reasonable care. Customer shall make Confidential Information available only to those employees of Customer who need to know the information in connection with Customer's business, and shall not disclose Confidential Information to any third party.

B. *Publicity Restrictions.* Customer will immediately notify NIKE in writing if it receives a request from any third party for an interview or statement about NIKE or Product. Customer will not answer questions or give statements about its relationship with NIKE or discuss Product under circumstances where Customer knows or has reason to believe that the purpose of the request is to create content for publication in film, television, radio, print or online media. Customer will not hold itself out as a representative of NIKE in any interview or statement, whether or not it is recorded, and whether or not it is intended for such publication.

C. *Idea Submission.* If Customer chooses to submit to NIKE or share with NIKE any business plans, product or marketing ideas, copyrightable works, or other materials, Customer agrees that (i) NIKE is not subject to any restrictions in using such materials; Customer hereby grants to NIKE an irrevocable license to use such materials, without compensation to Customer; and (ii) NIKE is under no obligation to use such plans, ideas, or other materials, or to commercially exploit them in any territory.

**15. SEVERABILITY/WAIVER/CONSTRUCTION:** If a court of competent jurisdiction determines that any provision of the Agreement (including any provision of these Terms and Conditions) is invalid or unenforceable for any reason, that determination will not affect any other provision unless enforcement of the remaining provisions would be grossly inequitable under the circumstances or would frustrate the primary purpose of the Agreement. A Party's delay or failure to enforce or insist on strict compliance with any of the provisions of the Agreement will not constitute a waiver or otherwise modify the Agreement, and a Party's waiver of any right related to the Agreement on one occasion will not waive any other right, constitute a continuing waiver or waive that right on any other occasion. Customer has had the opportunity to consult with its attorney in connection with these Terms and Conditions and the rest of the Agreement and to have the Agreement reviewed by its attorney; therefore, no rule of construction or interpretation that disfavors NIKE or that favors Customer will apply to its interpretation.

**16. ATTORNEYS' FEES/GOVERNING LAW/FORUM SELECTION:** Customer will pay all costs, collection agency fees, expenses, reasonable attorney fees (whether incurred prior to, at trial or on appeal) incurred by NIKE in connection with the collection of any past due sums. The Agreement, and all disputes arising out of the Agreement or out of the relationship between NIKE and Customer, will be governed by the laws of the State of Oregon. THE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS WILL NOT APPLY. Customer irrevocably consents to the jurisdiction of the state and federal courts located in the State of Oregon in connection with any action arising out of or in connection with the Agreement, and waives any objection that such venue is an inconvenient forum. Customer will not initiate an action against NIKE in any other jurisdiction. NIKE may bring an action in any forum.

**17. FORCE MAJEURE:** If it becomes impossible for either Customer or NIKE to perform its obligations under the Agreement as a result of fire, flood, earthquake, or other natural disaster, or any other event beyond that Party's reasonable control, that Party's performance may be delayed for the duration of the force majeure event, except that nothing in this Section 17 will excuse Customer from its payment obligations.

**18. RESTRICTION ON ASSIGNMENT:** Customer will not assign any right conferred herein by NIKE without the prior written consent of an authorized NIKE representative. A change of control of Customer by stock sale or gift, merger, operation of law, by contract, or otherwise, will be deemed an assignment for purposes of this Section 18. Any attempted assignment or delegation by Customer will be void. NIKE may grant, withhold or condition its consent to assignment in NIKE's sole discretion. If NIKE authorizes an assignment or delegation, that authorization will not release Customer from any of its obligations under the Agreement unless (a) the authorization expressly releases Customer; (b) the assignee or delegate agrees in writing to be bound by the Agreement; and (c) any agreement between Customer and the assignee or delegate states that NIKE has the right to enforce Customer's rights against the assignee or delegate.

**19. SET-OFF:** In the event Customer is indebted to NIKE or to any NIKE affiliate, that debt may be offset against credits otherwise owing to Customer to reduce or eliminate the credit.

**20. TERMINATION:** Nothing in this Agreement or in these Terms and Conditions shall be construed to imply that Customer is required to place Orders or that NIKE is required to accept Orders. Upon termination of the Parties' relationship, the terms, conditions, and representations herein shall remain in full force and effect with respect to all Orders accepted by NIKE prior to the date of termination. Section 6 (Customer Covenants); Section 7 (General Restrictions); Section 8 (Customer's General Representations, Warranties and Obligations); Section 9 (Trademarks & Brand Promotions); Section 10 (Limited Remedy; Disclaimer of Implied Warranties); Section 11 (Limitation on Damages and Actions); Section 12 (Consumer Warranty Information); Section 14 (Confidentiality); Section 15 (Severability/Waiver/Construction); Section 16 (Attorney's Fees/Governing Law/Forum Selection); Section 22 (Post-Audit Policy); and any other provision that, by its nature, is intended to continue in effect following termination of the relationship, shall survive.

**21. RELATIONSHIP:** The relationship of NIKE and Customer established by the Agreement is that of vendor-purchaser and nothing contained herein shall be construed to create a partnership, joint venture or any other relationship.

**22. ENTIRE AGREEMENT:** The Agreement contains the entire agreement and understanding between the Parties with respect to its subject matter and supersedes prior and contemporaneous oral and written agreements, commitments and understandings concerning that subject matter.

**EXHIBIT B  
APPROVED DOORS & URLs**

**Approved Brick & Mortar Retail Locations:**

Street Address
26W151 Butterfield Rd., Wheaton, IL, 60189, USA