

## MASTER PROFESSIONAL SERVICES AGREEMENT

This Master Professional Services Agreement ("**Agreement**") is made effective as of October 27, 2014 (the "**Agreement Effective Date**"), between NIKE, Inc., an Oregon corporation, with a principal office located at One Bowerman Drive, Beaverton, Oregon, 97005-6453 United States of America ("**Purchaser**"), and The Gunter Group LLC, an Oregon limited liability company, with a principal office located at 205 SE Spokane Street, Suite 300, Portland, OR 97202 United States of America ("**Contractor**").

### RECITALS

- A. Purchaser and its Affiliates (as defined below) design, market and sell footwear, apparel, accessories, athletic equipment, and related products in more than 100 countries around the world.
- B. Contractor is in the business of providing creative, consulting or other professional services to its customers.
- C. Contractor and Purchaser contemplate that Contractor will provide creative, consulting or other services to Purchaser and its Affiliates under one or more Work Orders (as defined below). The purpose of this Agreement is to set forth the terms and conditions that will govern the rights and obligations of Purchaser, Purchaser's Affiliates and Contractor during the term of this Agreement and as Contractor performs services under Work Orders.

### TERMS AND CONDITIONS

Purchaser and Contractor agree as follows:

#### 1. Definitions.

When used in this Agreement, the following capitalized terms will have the meanings assigned to those terms in this Section.

- 1.1. "**Affiliate**" means, as to either Party, any corporation or other entity that directly, or indirectly through one or more intermediaries, Controls, is Controlled by, or is under Common control with that Party. The term "**Control**" means the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.
- 1.2. "**Business Day**" means Monday through Friday, excluding legal holidays observed by the United States Government.
- 1.3. "**Deliverables**" means any tangible property, and any information inscribed on a tangible medium or stored in an electronic or other medium, that Contractor creates, develops or provides, or is to create, develop or provide, under this Agreement, including images, text, software, user manuals, instructions,

specifications and requirements, project plans, and other documentation and materials.

- 1.4. **"Fixed Price"** means a compensation arrangement whereby Contractor is to be paid an agreed amount for a Project based on the Milestones achieved.
- 1.5. **"Milestone"** means, in the case of a Fixed Price Work Order, the occurrence of an event or date (such as the beginning, completion or acceptance of the Services or the delivery or acceptance of a Deliverable) that triggers Purchaser's obligation to make a payment to Contractor.
- 1.6. **"Parties"** means Contractor and Purchaser or any Purchaser Affiliate that enters into a Work Order, and **"Party"** means any of them individually.
- 1.7. **"Project"** means the delivery of the Deliverables and the performance of the Services to be provided by Resources under a Work Order.
- 1.8. **"Resource"** means each of Contractor's employees, temporary workers and approved individual subcontractors who performs Services or works on Deliverables, and each such individual working for one of Contractor's approved subcontractors.
- 1.9. **"Services"** means all creative, development, consulting or other services that Contractor provides or is to provide under this Agreement and any Work Orders.
- 1.10. **"T&E"** stands for "time and expense" and means a compensation arrangement whereby Contractor (a) is to be paid for a Project on the basis of productive hours actually worked by its Resources and, unless otherwise specified in a Work Order, (b) is to be reimbursed for certain expenses actually incurred by Contractor and its Resources in connection with that Project, as set forth in this Agreement.
- 1.11. **"Warranty Period"** means, as to any Deliverable that is delivered pursuant to a Fixed Price Work Order calling for acceptance testing, the 180-day period beginning on the date the Deliverable is accepted by Purchaser pursuant to Section 7.2.
- 1.12. **"Work Order"** means a written addendum to this Agreement that (a) describes (i) the Services and Deliverables required to be provided by Contractor in connection with a Project; (ii) the work schedule, including delivery and completion dates for those Services and Deliverables; (iii) the fixed price or estimate for the Project, as applicable; (iv) any assumptions or conditions upon which the price (or estimate) is based; (v) whether or not acceptance testing is required, and (vi) any additional terms such as detailed functional and technical specifications, payment terms, delivery dates, acceptance criteria, or special warranty terms; and (b) has been executed by both Parties. A sample form of Work Order is attached to this Agreement as **Exhibit A**.

## 2. Overview

- 2.1. **Scope.** This Agreement sets forth the terms that apply to each Work Order issued to Contractor for Deliverables or Services. Each Work Order is subject to the terms and conditions of this Agreement. In the event of any conflict or inconsistency between the terms or conditions of this Agreement and any provisions in a Work Order, the conflicting or inconsistent provision in the Work Order will have no force or effect unless it constitutes an enforceable amendment meeting the requirements of Section 29 ("Amendments"). Any Purchaser Affiliate may issue a Work Order under this Agreement, and in that case, (a) all references to "Purchaser" in this Agreement will refer to the Purchaser Affiliate executing that Work Order; and (b) only the Purchaser Affiliate executing that Work Order will incur any obligation or liability to Contractor under that particular Work Order.
- 2.2. **No Volume Commitment.** This Agreement does not obligate Purchaser or any of its Affiliates to order any Deliverables or Services, and neither Purchaser nor any of its Affiliates will become obligated in any way to Contractor until Purchaser or its Affiliate places a Work Order with Contractor, and Contractor accepts that Work Order.

## 3. Services.

- 3.1. **Issuance and Acceptance of Work Orders.** Purchaser may issue a draft Work Order to Contractor at any time. Each Work Order will be numbered sequentially (i.e., Work Order No. 1, Work Order No. 2, Work Order No. 3, and so on). Purchaser may revoke a Work Order at any time before Contractor accepts that Work Order and Purchaser counter signs it. Contractor is not obligated to accept any Work Order. Contractor may accept a Work Order only by executing that Work Order and returning it to Purchaser.
- 3.2. **Effect of Work Orders.** Upon Contractor's acceptance of a Work Order in accordance with Section 3.1 and Purchaser's countersignature of that document, Purchaser will be bound to purchase, and Contractor will be bound to provide, the Deliverables and Services described in that Work Order, subject to the terms and conditions of this Agreement and the Work Order.
- 3.3. **Performance Standards.** Contractor will complete the Project (a) in a professional, competent and reasonably efficient manner in accordance with the prevailing standards in Contractor's industry; and (b) in the case of a Fixed Price Work Order, in accordance with the work schedule and for the price set forth in that Work Order, subject only to the change control provisions of Section 5.
- 3.4. **Additional and/or Inconsistent Terms.** Contractor acknowledges and agrees that its acceptance of a Work Order is limited to the terms of that Work Order and this Agreement, and both Parties acknowledge and agree that any inconsistent, additional, or different terms in any other document, including in any prior, contemporaneous, or subsequent proposal, bid, purchase order, invoice,

acknowledgement, confirmation, or other document, will not have any force or effect unless such terms have been incorporated into an amendment meeting the requirements in Section 29 ("Amendments").

#### 4. Fees.

- 4.1. **T&E Payments.** If a Work Order provides for compensation on a T&E basis, Contractor will invoice Purchaser for that Project (a) for productive hours actually worked by each Resource, at the hourly rates appropriate for that Resource's job classification, provided those rates do not exceed the rates for that classification set forth in Exhibit B, and (b) for expenses to the extent permitted under Section 4.3 below. Contractor will not charge Purchaser for time Resources spend performing administrative activities such as accounting and billing, promotion and publicity, preparation of internal management reports, preparation of change requests, or nonworking travel time. Contractor will promptly notify Purchaser if Contractor has reason to believe at any time that it will not be able to complete the Project for the fees and reimbursable expenses estimated in a Work Order or in accordance with the work schedule set forth in that Work Order. Contractor will not invoice Purchaser under any T&E Work Order for an amount greater than the estimate set forth in that Work Order unless Purchaser's project manager approves a change order under Section 5 below before those additional charges are incurred; however, Contractor will not be required to perform additional work until Purchaser's project manager approves that change order.
- 4.2. **Fixed Price Payments.** If a Work Order provides for payment on a Fixed Price basis, Contractor will invoice Purchaser the agreed payment for each Milestone upon achievement of that Milestone. Contractor will not invoice Purchaser under any Fixed Price Work Order in an amount greater than the fixed price stated in that Work Order unless Purchaser's project manager has approved a change order under Section 5 below; provided, however, that Contractor may invoice Purchaser for expenses to the extent permitted under Section 4.3 if the Work Order expressly calls for reimbursement of expenses in addition to payment of the Fixed Price. Milestone payments will not constitute acceptance of a Deliverable or Service unless the Milestone is defined to include satisfactory completion of acceptance testing.
- 4.3. **Expenses.** Contractor will bear all of its own costs in completing the Project, including labor, overhead, and supplies, except that if performance of a T&E Work Order requires Resources to travel more than 30 miles from the area where they ordinarily work, then, upon Contractor's submission of proper documentation and receipts, Contractor may invoice Purchaser for the Resources' travel-related expenses in accordance with Purchaser's Expense Reimbursement Policy set forth as **Exhibit C**. Contractor will not request reimbursement for travel or any other expenses under a T&E Work Order if the amount invoiced would cause Contractor to exceed the estimate set forth in that Work Order, unless Purchaser's project manager has approved a change order under Section 5 below before those expenses are incurred. As provided in Section 4.2, in the case of a Fixed Price Work Order Contractor may invoice Purchaser for

expenses as described in this Section 4.3 only if the Work Order expressly calls for reimbursement of expenses in addition to payment of the Fixed Price.

**4.4. Invoices.**

**4.4.1. T&E Work Orders.** In the case of a T&E Work Order, Contractor will invoice Purchaser no more often than monthly. Invoices will describe in detail the Deliverables that have been provided and the Services that have been performed, the Resources who performed the Services, and the calculation of the fees and expenses (i.e., actual productive hours multiplied by the agreed rate, plus any itemized reimbursable expenses).

**4.4.2. Fixed Price Work Orders.** In the case of a Fixed Price Work Order, Contractor will invoice Purchaser only upon completion of an agreed Milestone. Contractor may include itemized reimbursable expenses only to the extent authorized by Section 4.2.

**4.5. Payment.** Purchaser will pay Contractor the amount properly invoiced within 45 days after Purchaser's receipt of each undisputed invoice that complies with this Section 4. If Purchaser in good faith disputes a portion of the amount owing, Purchaser will pay the undisputed portion. Unless otherwise provided in the Work Order, fees are payable in the currency indicated in the estimate or fixed price, as applicable.

**4.6. Taxes.** Contractor will include in each Work Order an estimate of all federal, state and local sales and use taxes, ad valorem taxes, value added taxes, tariffs and duties that Contractor is legally required to collect from Purchaser. Contractor will invoice Purchaser for, Purchaser will pay to Contractor, and Contractor will remit to the appropriate governmental authorities, any such taxes, tariffs or duties. If Contractor breaches its obligation under the preceding sentence, Contractor will indemnify, defend and hold harmless Purchaser against any resulting government penalties and interest accruing before Purchaser is notified of any unpaid tax obligation.

**4.7. Recordkeeping and Inspection.** Contractor will keep adequate records of all Services performed, invoices issued and payments received. Once each year Purchaser will have the right, at any time during ordinary business hours, to audit (or to cause its designated representative to audit) Contractor's records with respect to any amount payable to Contractor under this Agreement. Those audits will be conducted at Purchaser's expense. However, if an audit discloses that Purchaser overpaid Contractor, Contractor will refund to Purchaser the amount of that overpayment and, if that audit discloses that Contractor invoiced Purchaser for five percent or more than the amount actually due to Contractor during the period covered by the audit, Contractor will also reimburse Purchaser for the costs of that audit.

**4.8. NIKE FLEX Program.** As a member of the NIKE, Inc. corporate group, Purchaser is, or may become in the future, a participating entity in the NIKE

FLEX program (the "**FLEX Program**"). Under the FLEX Program, NIKE, Inc. and participating NIKE, Inc. Affiliates are adjusting their protocols and processes for the engagement, payment and management of certain categories of service providers (for purposes of this Agreement, "**In-Scope Vendors**"). If Purchaser is or becomes a participating entity in the FLEX Program and designates Contractor as an In-Scope Vendor, the following provisions in this Section 4.8 shall apply:

- 4.8.1. Purchaser's designation of Contractor as an In-Scope Vendor shall become effective only upon written notice to Contractor, and the provisions in this Section 4.8 shall apply only to engagements that are initiated after the date of such notice.
- 4.8.2. From and after the effective date of Purchaser's designation of Contractor as an In-Scope Vendor, the salient details of each Work Order created under this Agreement shall be recorded through Purchaser's creation of an electronic requisition in an electronic tracking system associated with the FLEX Program. This electronic tracking system shall become the system of record for tracking Contractor's performance of Services and delivery of Deliverables under the Work Order, and shall be used by Purchaser to generate payments to Contractor; however, in the event of any conflict or inconsistency between the electronic tracking system and the Work Order, the terms of the Work Order and this Agreement shall govern the contractual rights and obligations of the Parties. For the avoidance of doubt, the requisition is not a substitute for a Work Order signed by authorized representatives of both Parties.
- 4.8.3. After Purchaser's submission of the requisition for Services into the electronic system, the system shall generate a notice to, or Purchaser shall otherwise notify, Contractor, that a requisition has been submitted.
- 4.8.4. Within three (3) business days after receipt of such notice by Contractor, Contractor shall review the requisition for consistency with the Work Order and shall either approve or reject it.
- 4.8.5. Upon Contractor's approval of the requisition for Services, Purchaser's electronic tracking system shall become the system of record for tracking Contractor's performance of the Services and delivery of Deliverables, and Contractor shall make time entries and otherwise record its performance in such system.
- 4.8.6. From and after Contractor's receipt of notice that it has been designated as an In-Scope Vendor under the FLEX Program, and until Purchaser notifies Contractor of the applicability of any new payment processing protocol, Contractor shall submit its requests for payment for both T&E and Fixed Price Services into Purchaser's electronic tracking system. Such submissions shall be in a format specified by Purchaser and may include, without limitation, statements of hours worked, expenses

incurred, and other payment request information required by this Agreement and the relevant Work Order. Contractor shall submit any required supporting information for reimbursable expenses directly to Contractor's primary business contact at Purchaser. Contractor may submit its on-line payment requests as often as it likes, but shall use reasonable efforts to do so at least weekly.

- 4.8.7. Purchaser shall be deemed to have received Contractor's request on the date of its submission into the electronic system, and the time for payment under this Agreement shall commence on the date of such submission. Properly submitted payment requests will have the effect of Contractor invoices and will be fulfilled on or before the date required under this Agreement.
- 4.8.8. Purchaser has engaged a third party to provide the electronic requisitioning and payment request processing system, and to provide management and billing services with respect to payments under this Agreement to In-Scope Vendors. In order to cover the cost of such system and services, Purchaser (or the third party service provider on Purchaser's behalf) shall be entitled to withhold from each payment an administrative fee of one percent (1%) of the amount payable to Contractor. Under current Purchaser policy, this fee will be waived if Contractor has 5 or fewer employees.
- 4.8.9. Purchaser may change the procedures provided for in this Section 4.8 at any time by written notice to Contractor, and will notify Contractor of any such change; provided, however, that such changes shall not, without Contractor's prior written consent, increase the administrative fee set forth above or increase the time for payment to Contractor under this Agreement.

## **5. Change Control.**

- 5.1. **Change Orders Initiated by Purchaser.** Purchaser's project manager may at any time, without invalidating this Agreement or a Work Order that has been accepted by Contractor, direct Contractor to prepare a draft change order that describes any scope-related changes to the Work Order that Purchaser deems desirable, including changes to the description of the Project, any functional or technical requirements or acceptance criteria, or any other scope-related additions, deletions or revisions. Upon receipt of those directions, provided they don't materially change the nature of the Project or exceed Contractor's capacity to perform, Contractor will promptly prepare and submit to Purchaser's project manager a draft change order reflecting Purchaser's requested changes and proposing reasonable adjustments, if any, to the work schedule and delivery dates for each Deliverable and the Services, the date by which each Milestone is to be completed, if applicable, and/or the estimate or fixed price for the Work Order, as applicable.

## **5.2. Change Orders Initiated by Contractor.**

5.2.1. If, during the course of completing a Project on a T&E basis, Contractor reasonably determines that the fees, expenses or time necessary to complete that Project will be greater than those estimated in that Work Order, and if that increase cannot be mitigated through the exercise of reasonable efforts, then Contractor will immediately notify Purchaser and may prepare and submit to Purchaser a draft change order describing the new estimate, the reasons for the increase, and proposing reasonable adjustments to any delivery or performance dates for those Deliverables and the Services. If Contractor does not submit a draft change order to Purchaser before incurring those additional costs and expenses, Contractor will not invoice Purchaser for those additional costs and expenses.

5.2.2. If, during the course of completing a Project on a Fixed Price basis, Contractor reasonably determines that its costs, or the time necessary to complete the Project, will be significantly greater as a result of (i) any delays on the part of Purchaser, or (ii) the failure of any of the assumptions and conditions described in the Work Order, and if that increase cannot be mitigated through the exercise of reasonable efforts at no significant additional cost to Contractor, then Contractor may prepare and submit to Purchaser a draft change order describing Purchaser's delay or the failed assumption or condition, and proposing reasonable adjustments to any delivery dates for those Deliverables and the Services, the date by which each Milestone is to be completed, if applicable, and/or the fixed price for that Work Order. If Contractor does not submit a draft change order to Purchaser within 30 days after Contractor becomes aware or reasonably should have become aware of Purchaser's delay or the failure of the assumption or condition, Contractor will be deemed to have waived its right to any adjustment to the work schedule or price related to that delay or failure.

5.3. **Final Change Orders; Contractor's Obligation to Perform.** If Purchaser's project manager accepts a draft change order prepared by Contractor under Section 5.1 or 5.2 above, Purchaser's project manager will sign that change order, and the Work Order to which it relates will be amended accordingly. If Purchaser's project manager does not accept any aspect of a draft change order prepared by Contractor, Purchaser and Contractor will negotiate in good faith to revise the draft change order.

5.3.1. If the Parties are unable to reach agreement regarding a change order initiated by Purchaser under Section 5.1, Purchaser may, at its election, (i) withdraw its request for a change order and enforce the original Work Order, (ii) direct Contractor to proceed in accordance with the changes in the draft change order prepared by Contractor, or (iii) terminate that Work Order for convenience under Section 23. If Purchaser directs Contractor to proceed in accordance with the requested changes in a draft change



order related to a T&E Work Order, Contractor will perform the work and Contractor's proposed changes to the estimated price and delivery schedule will apply. If Purchaser directs Contractor to proceed in accordance with the requested changes in a draft change order related to a Fixed Price Work Order, Contractor will perform the work, and any delivery schedule and price issues will be referred immediately to arbitration in accordance with Section 5.4 below.

- 5.3.2. If the Parties are unable to reach agreement regarding a change order to a T&E Work Order initiated by Contractor under Section 5.2.1, Purchaser may, at its election, either (i) terminate that Work Order for convenience under Section 23; or (ii) direct Contractor to proceed in accordance with the requested changes in the draft change order, in which case Contractor will perform the work and Contractor's proposed changes to the estimated price and delivery schedule will apply. If the Parties are unable to reach agreement regarding a change order to a Fixed Price Work Order initiated by Contractor under Section 5.2.2, Contractor will proceed in accordance with the original Work Order, but any delivery schedule and price issues will be referred immediately to arbitration in accordance with Section 5.4.

#### **5.4. Arbitration.**

- 5.4.1. Any dispute relating solely to a change order request under this Section 5 that cannot be resolved by the Parties will be resolved by arbitration as provided in this Section 5.4. If the dispute relates to any substantive provision in this Agreement other than to this Section 5 (either alone or in connection with any other substantive provision in this Agreement), this Section 5.4 will not apply.
- 5.4.2. Any unresolved dispute will be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules. Arbitration will be conducted in Portland, Oregon. If the total amount in dispute is less than \$500,000, one arbitrator will hear the dispute. If the total amount in dispute is \$500,000 or more, three arbitrators will hear the dispute. Each arbitrator must have a minimum of five years' experience as a state or federal judge, ten years as a lawyer or an accountant, or such alternate qualifications as may be acceptable to both Parties.
- 5.4.3. The Parties have elected to submit their disputes under this Section 5 to arbitration in part to minimize costs and to expedite the resolution of those disputes. Consequently, the arbitrator(s) will allow limited discovery in harmony with those goals.
- 5.4.4. Each Party will submit to the arbitrator(s), and will exchange with each other Party in advance of the arbitration hearing, its last best draft change order. The arbitrator(s) will select only one of the two submitted draft

change orders, and the Work Order that is the subject of the arbitration will be amended as and to the extent expressly provided by the draft change order selected by the arbitrator(s). The decision will be final and binding on the Parties.

- 5.5. **Form of Change Order.** Change orders shall be documented in a form substantively equivalent to **Exhibit D.** In the case of engagements recorded in the electronic tracking system associated with the FLEX Program, the changes documented in the Change Order shall be entered into the tracking system in the manner required by the tracking system.

## **6. Use of and Access to Purchaser's Facilities.**

- 6.1. **Access to Premises.** If both Parties agree that Resources will perform any Services at any location owned or controlled by Purchaser (the "**Site**"), Purchaser will provide adequate office space at, and will arrange for Resources to receive a temporary access to, that Site, subject at all times to Resources' compliance with Purchaser's safety and security guidelines (including both physical and electronic security guidelines) as communicated to Resources from time to time.
- 6.2. **Use of Purchaser's Computer Network.** If any Resources access Purchaser's computer network, Contractor agrees they will (a) do so only for the purpose of providing services to Purchaser and not for any other purpose; (b) not access any information that is confidential or proprietary to Purchaser, its Affiliates or their employees, agents, customers or suppliers unless the Resource has a "need to know" in order to perform Contractor's obligations under this Agreement; (c) not disclose any of that confidential or proprietary information to any other person other than to Purchaser and/or other Resources with a "need to know" in order to perform Contractor's obligations under this Agreement; and (d) not knowingly introduce any viruses, worms, time bombs, time locks, drop dead devices, traps, access codes, trap door devices or any other code that is designed to disrupt, disable, erase, alter, harm or otherwise impair Purchaser or its computer network.

## **7. Evaluation and Acceptance for Fixed Price Work.**

- 7.1. **Acceptance Criteria and Testing.** For Fixed Price Work Orders that require acceptance testing, the Parties will work together to develop acceptance criteria and the acceptance testing methodology and procedures for evaluating whether the Deliverables and Services comply with the functional and technical requirements specified by Purchaser in that Work Order. Purchaser will use its best efforts to begin testing within 10 Business Days after Contractor notifies Purchaser that the Deliverables are ready for testing or that the Services have been completed. Contractor will, at no additional cost to Purchaser, provide any support, assistance and consultation as may be reasonably necessary to facilitate Purchaser's acceptance testing.

- 7.2. **Certification.** Upon completion of the acceptance tests to Purchaser's reasonable satisfaction, Purchaser will issue a certificate of completion or other written documentation of successful testing and will pay Contractor any Milestone payments that become due as a result of successful acceptance testing under that Fixed Price Work Order.
- 7.3. **Failure of Testing.** Until the earlier to occur of (a) completion of the acceptance tests to Purchaser's reasonable satisfaction, or (b) the date specified in the work schedule for completion of the Project, Purchaser will continue to perform acceptance tests, to specify in reasonable detail the areas in which the Deliverables and Services fail to meet the agreed upon acceptance criteria, and to cooperate in good faith with Contractor in addressing any failure of the Deliverables or Services to meet that acceptance criteria. If, in Purchaser's reasonable discretion, the Deliverables or Services fail to pass the acceptance test by the date specified in the applicable Fixed Price Work Order, Purchaser may, at its option, (w) give Contractor additional time to correct the deficiencies; or (x) accept any Deliverables or Services that meet the acceptance criteria and return the nonconforming Deliverables or reject the nonconforming Services for a reasonable refund of amounts paid to Contractor; or (y) accept the nonconforming Deliverables and Services, subject to a reasonable price adjustment; or (z) terminate the applicable Work Order or this Agreement and seek its available remedies.

## 8. **Ownership Rights.**

### 8.1. **Definitions.**

- 8.1.1. The term "**Contractor Property**" means (i) all Inventions and Works of Authorship that (A) were in existence and owned by Contractor before the Agreement Effective Date or (B) were made or discovered by Contractor after the Agreement Effective Date other than in connection with a Project, (ii) any Works of Authorship, whether or not owned by Contractor, that are licensed by Contractor to Purchaser pursuant to a separate written license or other agreement, including but not limited to software and related documentation ("**Contractor Licensed Works**"), (iii) derivative works of any Works of Authorship described in item (i) or (ii) of this Section 8.1.1, and (iv) all Intellectual Property Rights associated with items (i), (ii) or (iii) of this Section 8.1.1.
- 8.1.2. The term "**Developments**" means all Inventions and Works of Authorship that are made, created, discovered or reduced to practice after the Agreement Effective Date in connection with a Project, including all Deliverables, and all related Intellectual Property Rights; except that the term "Developments" does not include any Contractor Property.
- 8.1.3. The term "**Intellectual Property Rights**" means all intellectual property rights, including patent rights, copyrights, moral rights, trademark rights,

trade name rights, service mark rights, trade dress rights, trade secret rights, proprietary rights, privacy rights, and publicity rights, whether or not those rights have been filed or registered under any statute or are protected or protectable under applicable law.

8.1.4. The term **"Inventions"** means any invention, idea, design, pattern, specification, prototype, concept, process, method, algorithm, formula, technique, know-how or other discovery, whether or not patentable and whether or not made, conceived or reduced to practice alone or jointly with others.

8.1.5. The term **"Works of Authorship"** means any works of authorship fixed in a tangible medium of expression, including software, designs, patterns, plans, text, graphics, photographs, drawings, and all other architectural, literary, pictorial, graphic, sculptural, audio visual, collective, and other works described in Section 101 of the United States Copyright Act of 1976, as amended, and all adaptations, modifications, improvements, enhancements, revisions and derivative works of any of the preceding, whether or not registered.

## 8.2. **Ownership.**

8.2.1. Contractor will promptly disclose to Purchaser all Inventions and Works of Authorship developed by any Resources in connection with any Project.

8.2.2. Subject to Section 8.3 below, Contractor will own all right, title and interest in and to the Contractor Property.

8.2.3. Purchaser will own all right, title and interest in and to all Developments, and Contractor hereby assigns and agrees to assign to Purchaser exclusively, without any compensation other than that set forth in the Work Order, all present and future right, title and interest in and to the Developments, and the Developments and their related benefits will immediately and automatically be the sole and absolute property of Purchaser. Upon Purchaser's request and at Purchaser's cost, Contractor will execute and deliver to Purchaser all documents necessary to perfect, document or evidence Purchaser's right, title and interest in and to each Development, both domestically and abroad. Contractor hereby irrevocably designates and appoints Purchaser and its duly authorized agents as Contractor's attorney-in-fact, to act for and in its behalf to execute and file those documents if Purchaser is unable, after reasonable effort, to secure Contractor's assistance for any reason.

8.3. **License.** Unless expressly provided otherwise in a Work Order, Contractor hereby grants to Purchaser a nonexclusive, royalty free, perpetual, irrevocable, sub-licensable, world-wide license to make, have made, use, sell directly or through one or more tiers of distributors, market, have marketed, import, have imported, copy, have copied, modify, have modified, publicly display and perform

or have publicly displayed or performed, to the extent necessary to use the Deliverables and Services for Purchaser's business purposes: (a) any of the Contractor Property that is incorporated into any of the Deliverables; and (b) any Developments that Purchaser at any time fails or ceases to own for any reason.

- 8.4. **Employees and Subcontractors.** Contractor will require all Resources engaged in the provision of Services under this Agreement, whether employees, temporary workers, subcontractors, agents or otherwise, to execute appropriate agreements to ensure that those individuals do not have ownership claims in the Deliverables or the Developments and to require those individuals to cooperate with Contractor and Purchaser in connection with Contractor's obligations under Section 8.2 and Section 8.3.

## 9. Personnel.

- 9.1. **Staffing.** Contractor will ensure that the Resources assigned to work on each Project (a) will, in the case of a T&E Work Order, perform the Services in a reasonably cost-efficient manner; and (b) have all permits or licenses required to perform the Services.
- 9.2. **Selection and Replacements.** Contractor will select and supervise the performance of the Resources who will perform Services under this Agreement or a particular Work Order, and may reassign Resources as necessary. If Contractor has to replace any of its personnel before completion of a Project under a T&E Work Order for any reason, Contractor will, at no cost to Purchaser, ensure an effective transition so that each replacement has a thorough knowledge of the purpose, status, issues and requirements of the Project before Contractor begins charging for the services of that replacement. If a Resource ceases to perform due to illness, resignation or any other reason, Contractor will promptly provide a substantially equivalent replacement.
- 9.3. **Subcontracting.** Contractor will not retain a subcontractor to perform all or any part of its obligations under this Agreement without Purchaser's prior written approval, which Purchaser may grant, withhold, or condition in Purchaser's sole discretion. If Purchaser authorizes Contractor to retain a subcontractor, that authorization will not release Contractor from any of its obligations under this Agreement.
- 9.4. **Background Checks.** Prior to initial placement, and before re-engagement in the event of a break in service of thirty days or more, Contractor will perform, at its expense, background check services on any Resource who is not a Contractor employee and who (i) will work at any Site operated by Purchaser or a Purchaser Affiliate or (ii) will work on a Project from a location outside the United States. Background check services Contractor will provide include (subject to local law and availability): (i) social security trace and seven year criminal background check for U.S.-based workers; (ii) credit history and investigation (when requested by Purchaser); (iii) driving record (when requested by Purchaser); (iv) prohibited parties check; and (v) e-verify check or verification of

right to work in the U.S. for U.S. based workers. Contractor warrants that any worker placed at a Purchaser Site will at the time of placement satisfy Purchaser's background check policy requirements/adjudication guidelines or will otherwise have been approved for acceptance by Purchaser. Contractor further agrees to retain records of background checks performed under this Agreement for Purchaser's audit for a period of 6 years following the termination of the individual's placement with or engagement to perform services for Purchaser.

## **10. Representations, Warranties and Covenants.**

Contractor represents, warrants and covenants that:

- 10.1. Performance of Accepted Deliverables.** During the Warranty Period, any Deliverable that is delivered pursuant to a Fixed Price Work Order and accepted pursuant to Section 7 will conform to and perform in accordance with all functional, technical and other specifications and descriptions in the applicable Work Order and this Agreement. In the event of any breach of this warranty, Contractor will, at its own expense and within a reasonable time after notice, repair, replace, cure, re-perform, or correct the defective or non-conforming Deliverables and any related Services. If Contractor fails to replace or correct those Deliverables or Services to Purchaser's reasonable satisfaction within 30 days after notice of a defect, or such longer period of time as the Parties may agree on a case-by-case basis (even if such period extends beyond expiration of the Warranty Period), then Purchaser may, at its option, return the defective Deliverables to Contractor, and Contractor will refund all fees paid to Contractor under the applicable Work Order. In no event will Contractor's obligations under this Section 10.1 be interpreted to limit Purchaser's rights or remedies should a Deliverable under a Fixed Price Work Order, including software, fail to qualify for acceptance under Section 7.
- 10.2. Liens, Claims and Encumbrances.** All Deliverables will be free from all liens, encumbrances or claims of any other person; Contractor's performance of its obligations under this Agreement and each Work Order will not breach or violate the rights of any other person; and Purchaser may use the Deliverables and accept the Services without payment other than as set forth in a Work Order.
- 10.3. Compliance with Law and Third Party Contracts.** Contractor has complied, and will in the future comply, with all applicable laws in connection with the execution, delivery, and performance of this Agreement, and Purchaser's use of the Deliverables in the form delivered by Contractor for the purposes contemplated by this Agreement or in the Work Order will not violate any law, regulation, or order of any national, provincial, state, or local governmental authorities, whether domestic or foreign, or interfere with any third party contracts.
- 10.4. No Surreptitious Code.** Contractor (a) has and will run a commercially available anti-virus scan on all Deliverables that consist of software code; and (b) Contractor has no actual knowledge that those Deliverables contain any viruses,

worms, time bombs, time locks, drop dead devices, traps, access codes, trap door devices or any other code that is designed to disrupt, disable, erase, alter, harm or otherwise impair any software, unless clearly and conspicuously disclosed in the applicable Work Order.

- 10.5. **Disclaimer of Implied Warranties.** Except for the warranties expressly included in this Agreement or the Work Orders, Contractor disclaims all other warranties, express and implied, including the implied warranties of merchantability and fitness for a particular purpose.
11. **Injunctive Relief.** Contractor acknowledges that its breach of Sections 8, 14, 15 or 16 will irreparably harm Purchaser, and that such harm will not be susceptible to accurate measurement for the purpose of calculating money damages. Accordingly, Purchaser, in addition to seeking and recovering money damages and other remedies available at law, will have the right to obtain an injunction or other equitable relief to prevent a breach or threatened breach of such Sections, without the necessity of posting a bond or other security.
12. **Limitation of Damages; Limitation of Liability.**
- 12.1. **Limitations.** Subject to the exceptions in Section 12.2, neither Party will be liable to the other Party for any indirect, consequential, special, punitive, exemplary or incidental damages of any kind, however caused, arising out of or related to this Agreement or the Deliverables or Services to be provided under this Agreement, even if it has been advised of the possibility of those damages, and neither Party's liability for money damages, however caused, arising out of or related to this Agreement or the Deliverables or Services to be provided under this Agreement will exceed the greater of (a) \$2 million or (b) one and one-half times the total fixed price or estimate set forth in the Work Order or Work Orders to which the claim relates. These limitations will apply regardless of the legal theory of liability, whether under contract, tort (including negligence and strict liability), or any other theory whatsoever.
- 12.2. **Exceptions.** The limitations in Section 12.1 will not apply to any claim arising out of (a) fraud, gross negligence or willful misconduct; (b) infringement, misappropriation or violation of any patent right, trademark right, copyright, trade secret right, or other Intellectual Property Right of a Party; (c) Losses (as that term is defined in Section 13.1 below) that are recoverable by any Indemnitee under Section 13 ("Indemnification"); or (d) breach of Section 14 of this Agreement ("Confidentiality").
- 12.3. **Relationship with Other Agreements.** The limitations in Section 12.1 apply only to claims arising under this Agreement and the Work Orders entered into under this Agreement and will not apply to any claims by either Party under any other agreement between the Parties.

### 13. Indemnification.

- 13.1. **Definitions. "Loss" or "Losses"** means (a) all reasonable attorney fees paid or payable by an Indemnitee (as defined in Section 13.2 below) in defense of any claim subject to indemnification under this Section 13, whether prior to, at trial or any other proceeding and in any appeal or other post judgment proceeding; and (b) all sums paid or payable to any other person, including all direct losses and damages (including property damage and all incidental, consequential, punitive and exemplary damages), injuries (including personal injury, sickness and death), interest, costs, fines, taxes, premiums, assessments, penalties, expenses, attorney fees (whether incurred prior to, at trial or any other proceeding and in any appeal or other post judgment proceedings) and other liabilities of any kind or nature.
- 13.2. **Indemnification Obligations.** Each party (the "**Indemnitor**") will defend, indemnify and hold harmless the other party, its Affiliates and their respective officers, directors, shareholders, employees and agents (jointly and severally, the "**Indemnitees**") from and against all claims and Losses asserted directly or indirectly by any other person arising out of any actual or alleged: (a) fraud, gross negligence or willful misconduct by the Indemnitor or its officers, employees or agents; (b) negligent act or omission of the Indemnitor or its officers, employees or agents; (c) infringement, misappropriation or violation of any patent right, trademark right, copyright, trade secret right, right of privacy, right of publicity, name or likeness, or any other Intellectual Property Right of that other person, by the Indemnitor or any Deliverables, goods or services provided by the Indemnitor; or (d) violation of any applicable law, rule or regulation by the Indemnitor; in each case, whether arising from or in connection with a demand, action, regulatory action, lawsuit, proceeding (including proceedings under the US Bankruptcy Code), judgment, settlement, appeal or other post judgment proceeding and whether asserted in contract, tort, strict liability or otherwise.
- 13.3. **Exceptions.** The Intellectual Property Right indemnification obligations described above will not apply to a Loss to the extent that Loss was caused by: (a) the Indemnitor's compliance with specifications or detailed instructions submitted by an Indemnitee, but only if the Loss would not have arisen but for that compliance; (b) the Indemnitees' modification of the Deliverables, goods or services provided by the Indemnitor without the Indemnitor's consent (other than those modifications contemplated by the Parties); (c) the Indemnitees' use of Deliverables, goods or services provided by the Indemnitor in combination with goods or services that were not provided or recommended by the Indemnitor or contemplated by the Parties, except that this exception will apply only if (i) there are other commercially reasonable non-infringing alternative uses for the Deliverables, goods or services provided by the Indemnitor; and (ii) the Loss would not have arisen but for that combination; or (d) the Indemnitees' use of any Deliverables, goods or services after the Indemnitor has furnished to the Indemnitees, at no additional cost, a noninfringing version of those Deliverables, goods and services that provide the same or greater functionality and performance as the original Deliverables, goods and services.



13.4. **Procedures.** The Indemnitor's duty to defend, indemnify and hold harmless the Indemnitees under this Section 13 is subject to the Indemnitees' compliance with each of the following conditions:

13.4.1. **Notice.** The Indemnitees promptly notify the Indemnitor of the claim or Loss (except that the Indemnitees' failure to promptly notify the Indemnitor of a claim or Loss will not limit, impair or otherwise affect the Indemnitees' rights under this Section 13 unless the Indemnitor is prejudiced by that failure, and then only to the extent of the prejudice); and

13.4.2. **Authority.** The Indemnitees give the Indemnitor full and complete authority (including settlement authority) and reasonable assistance (including reasonable access to information in the Indemnitees' possession) for the defense. However, the Indemnitor's rights to such authority and assistance are contingent on its agreement that it will not settle any claim without the Indemnitees' prior written consent unless that settlement includes a full and final release of all claims against the Indemnitees and does not impose any obligations on the Indemnitees.

13.5. **Additional Remedies.** If any Deliverables or Services are held in any infringement suit to infringe the Intellectual Property Right of another person, and their use is enjoined, or if in Contractor's reasonable opinion those Deliverables or Services are likely to become the subject of such a claim, Contractor will, at its own expense, and in the order provided here: (a) immediately obtain a license for Purchaser and its Affiliates to continue using those Deliverables and accepting those Services and pay any fee that may be charged in connection with that license; and (b) modify, replace or re-perform the Deliverables and Services so they become noninfringing while giving substantially equivalent performance, along with training that is functionally equivalent with the original training. If neither of the preceding is commercially feasible, Purchaser may elect to terminate this Agreement or the applicable Work Order, either in full or only as to the infringing Deliverables or Services, and Contractor will refund all development, consulting, license, training, maintenance, support and other fees paid to Contractor for those Deliverables and Services.

14. **Confidentiality.** The Non-Disclosure Agreement attached as **Exhibit E** to this Agreement will govern the exchange of all confidential, proprietary, and other similarly sensitive information under this Agreement. Contractor will cause its employees (and, if permitted in the Non-Disclosure Agreement, its independent contractors) to sign an instrument agreeing to be bound by confidentiality, restricted use, and other obligations substantially similar to those in the Non-Disclosure Agreement.

15. **Publicity Restrictions.** Contractor will not (a) disclose to any other person the existence or monetary value of this Agreement; (b) make any public announcement regarding Contractor's association with Purchaser; (c) use Purchaser's name or any Purchaser trademark, service mark, logo or copyright protected work (whether or not registered) in

any of Contractor's promotional materials, marketing activities or elsewhere; (d) identify Purchaser on Contractor's customer list or website (or on any other person's website that identifies Contractor) or in any metatags or key words for those websites; or (e) include a hyperlink from any website maintained by Contractor to any Purchaser website.

- 16. Exclusivity.** While any Work Order is in effect under this Agreement, Contractor will not accept any engagement with, agree to supply goods to, or agree to perform services for, any person that makes, markets, or sells products bearing any of the brands listed on **Exhibit F**. The preceding restriction will not prevent Contractor from providing goods or services to any retailer or distributor that sells products bearing any of the brands listed on **Exhibit F**, as long as the gross sales made by that retailer or distributor during the preceding calendar year from products bearing such brands do not exceed 30% of that retailer's or distributor's total gross sales.
- 17. Independent Contractor.** Nothing contained in this Agreement will create a joint venture or partnership, establish a relationship of principal and agent, establish a relationship of employer and employee, or any other relationship of a similar nature between the Parties. Neither Party will represent the other Party in any capacity, bind the other Party to any contract, or create or assume any obligation on behalf of the other Party for any purpose whatsoever, except as expressly authorized by this Agreement. Nothing in this Agreement creates or is intended to create any relationship between Purchaser and any of the Resources. Contractor acknowledges that neither Contractor nor the Resources will be eligible to participate in or receive any benefit from any benefit plan or program available to Purchaser's employees. Purchaser will not provide workers' compensation coverage for Contractor or its Resources, and will not withhold or pay any federal, state or local income taxes (domestic or foreign), FICA, Medicare, unemployment insurance, workers' compensation insurance, or other taxes or assessments on account of Purchaser's payments made pursuant to this Agreement. Contractor will have sole responsibility for the payment of all applicable taxes and withholdings with respect to payments made to Contractor and its Resources. Except as expressly required by this Agreement, Contractor retains sole and absolute discretion as to the manner and means of carrying out its obligations under this Agreement, and Purchaser will have no right or obligation to direct or control Contractor's working conditions or activities.
- 18. Insurance.**
- 18.1. General Requirements.** Without limiting Contractor's obligation to indemnify Purchaser, or any other obligations under this Agreement, Contractor will, at its sole cost and expense, procure and maintain in effect at all times during the term of this Agreement, and for the statutory period for which Contractor may be liable for defects or other liabilities arising out of the Services, insurance policies with at least the limits of insurance as described below and that strictly comply with the requirements of this insurance section. In addition, Contractor will ensure that each of its subcontractors procures and maintains in effect at all times during the same period of time, insurance policies complying with this insurance section with at least the limits of insurance as described below. All policies (a) will be

written by insurers that are licensed to do business in the jurisdiction where the Services are to be performed; (b) will be written by insurers which are S&P A rated or higher; and (c) will be primary and non-contributory with respect to any insurance policies Purchaser or its Affiliates (including NIKE, Inc.) carry or any self-insurance programs maintained by Purchaser or its Affiliates. All policies except workers compensation will include a waiver of subrogation in favor of NIKE, Inc. and its subsidiaries, officers, directors and employees. The limits specified below may be achieved through a combination of primary and umbrella policies. Contractor shall ensure that Purchaser receives written notice of cancellation, non-renewal or a material change in coverage with respect to any of the policies listed below. Contractor is responsible for (and shall pay) all deductible payments and self-insured retentions that are applicable to Contractor's insurance policies.

- 18.2. **Certificates of Insurance.** Upon execution of this Agreement, and thereafter as the insurance policies renew, Contractor and its subcontractors shall furnish Purchaser with certificates of insurance evidencing the insurance coverage required herein and attaching endorsements evidencing compliance with these insurance requirements. Renewal certificates of insurance shall be delivered to Purchaser no later than thirty days after the expiration of any policy.
- 18.3. **Request for Copies of Policies.** Contractor shall upon request provide Purchaser with copies of any insurance policies required to be maintained by Contractor.
- 18.4. **Contractor's Minimum Insurance Coverages and Limits.** Each policy shall be written on an occurrence form (excepting Errors & Omissions "**E&O**"). All policies, except for Workers Compensation, E&O, and Employer's Liability, will name NIKE, Inc. and its subsidiaries as additional insureds with respect to the negligence of the Contractor, its subsidiary and affiliated companies, directors, officers, subcontractors of each and every tier, employees, and agents. Contractor shall also ensure that each of its subcontractors names NIKE, Inc. and its subsidiaries as additional insureds with respect to the negligence of the subcontractor and its subsidiary and affiliated companies, directors, officers, subcontractors of each and every tier, employees, and agents. Contractor shall maintain the following coverages and meet the following limits:
- 18.4.1. **Commercial General Liability.** Commercial general liability insurance, applicable to liability arising out of premises, operations, products, completed operations, contractual liability including tort liability of another assumed in a business contract, including bodily injury (including death) property damage, independent contractors, personal injury and advertising injury, along with associated defense costs, as well as any of Purchaser's property in the care, custody or control of Contractor, with a limit of not less than one million US dollars (\$1,000,000) each occurrence and two million US dollars (\$2,000,000) aggregate. This commercial general liability policy shall (i) be written on Insurance Service Office (ISO) form CG 001 (or a substitute form providing equivalent coverage)

and (ii) name NIKE, Inc. and its subsidiaries as additional insureds using ISO form CG 20 33 (Ongoing Operations) and CG 20 37 (Completed Operations) or substitute forms providing equivalent coverage as respects the negligence of Contractor, its directors, officers, employees, and agents.

18.4.2. **Umbrella or Excess Liability.** An Umbrella or Excess liability policy with a minimum policy limit of two million US dollars (\$2,000,000) each occurrence and in the aggregate.

18.4.3. **Workers Compensation.** Workers compensation coverage with statutory limits, as required by applicable law. If applicable, the requirement for workers compensation insurance may be satisfied through a government sponsored and certified employee health scheme or program, and Contractor shall, to Purchaser's reasonable satisfaction, provide evidence of its compliance with such government sponsored program. Alternate Employer endorsement WC00 03 01A showing Purchaser as the alternate employer is required if Contractor employees will be providing Services at Purchaser facilities and collaborating directly with Purchaser employees.

18.4.4. **Employer's Liability.** Employer's liability insurance with a limit of not less than one million dollars USD (\$1,000,000) per accident, one million dollars USD (\$1,000,000) for each employee by disease, and one million dollars USD (\$1,000,000) policy limit by disease.

18.4.5. **Business Automobile.** Business automobile liability insurance for any vehicle licensed for public road use, including without limitation, owned, non-owned and hired autos, with a one million dollar (\$1,000,000) combined single limit per accident on vehicles owned, leased, or rented by Contractor or by its subcontractors while performing under this Agreement. The automobile liability insurance policy shall (i) be written on ISO form CA 00 01 (or a substitute form providing equivalent coverage) and (ii) include physical damage coverage.

18.4.6. **Professional Liability (Errors & Omissions).** Errors & Omissions shall be written on a claims made or project specific basis with a limit of not less than five (\$5,000,000) million US dollars per claim. Such insurance will include coverage for all errors, omissions or negligent acts in the delivery of Services and Deliverables contemplated under this Agreement, including but not limited to, contingent bodily injury and property damage liability, non-owned intangible property of others (such as data that could be damaged, lost, stolen or inappropriately disclosed by Contractor), degradation, nonperformance and infringement of any proprietary right of any third party, including copyright, trade secret, and trademark infringement as related to Contractor's performance under this Agreement and defense costs. The policy shall cover the liability of Purchaser by reason of any actual or alleged error, omission, or other

negligent act or willful misconduct of Contractor committed in rendering or failing to render any Services and Deliverables in accordance with this Agreement. The Professional Liability and Errors & Omissions Liability Insurance retroactive coverage date will be no later than the first day work is performed for a Project. This coverage shall be maintained until the termination of this Agreement, and thereafter Contractor will maintain an active policy, or purchase an extended reporting period providing for claims first made and reported to the insurance company within six years after final payment for the Services.

## **19. Notices.**

Each notice, consent, request, or other communication required or permitted under this Agreement will be in writing, will be delivered personally or sent by certified mail (postage prepaid, return receipt requested), by email (with confirmation of receipt by return email), or by a recognized US overnight courier, and will be addressed as follows:

If to Purchaser:	NIKE, Inc. Attention: One Bowerman Drive Beaverton Oregon 97005-6453 United States of America
With a copy to:	NIKE, Inc. Attention: General Counsel One Bowerman Drive, DF-4 Beaverton, Oregon 97005-6453 USA
If to Contractor:	The Gunter Group, LLC 205 SE Spokane Street, Suite 300 Portland, OR 97202 United States of America
With a copy to:	The Gunter Group, LLC Attention: General Counsel 205 SE Spokane Street, Suite 300 Portland, OR 97202 United States of America

Each notice, consent, request, or other communication will be deemed to have been received by the Party to whom it was addressed (a) when delivered if delivered personally; (b) on the fifth Business Day after the date of mailing if mailed; or (c) on the date officially recorded as delivered according to the record of delivery if delivered by overnight courier. Each Party may change its address for purposes of this Agreement by giving written notice to the other Party in the manner set forth above.

20. **Force Majeure.** Neither Party will be liable for a delay in performing its obligations under this Agreement to the extent that delay is caused by insurrection, war, riot, explosion, nuclear incident, fire, flood, earthquake, or other catastrophic event beyond the reasonable control of the affected Party, provided the affected Party immediately notifies the other Party and takes reasonable and expedient action to resume operations. Nothing in this Section will relieve a Party from liability for failure to have back-up systems that are expressly required by this Agreement or that are standard in its industry. During the period of delay, the Party that is not affected by the catastrophic event may suspend its own performance pending resumption of performance by the affected Party.
21. **Term.** The term of this Agreement (the "**Term**") will begin on the Agreement Effective Date, and continue until this Agreement is terminated as provided in Section 22 or 23 below.
22. **Termination of this Agreement and/or Work Order(s) for Cause.** Either Party may terminate this Agreement and/or any Work Order(s), effective immediately, by giving the other Party notice if the other Party has breached a material provision of this Agreement or such Work Order(s) and that breach (a) is not capable of being cured; or (b) if it is capable of being cured, that breach remains uncured for 30 days after the breaching Party receives notice of that breach. For purposes of this Section, any breach of Section 14 ("Confidentiality"); Section 15 ("Publicity Restrictions"); or Section 16 ("Exclusivity") shall, without limitation, constitute a material breach that is incapable of being cured.
23. **Elective Termination.** Either Party may elect to terminate this Agreement at any time without cause by delivering written notice of termination to the other Party, which termination shall be effective upon receipt of the notice or, if a later termination date is specified in the notice, upon such date. Any such elective termination of this Agreement under this Section 23 shall have no effect on (a) the rights or obligations of either Party that arose under this Agreement prior to the effective date of termination, or (b) the rights or obligations of either Party under this Agreement as they relate to any Work Order accepted by Contractor before the effective date of termination, which rights and obligations shall continue after such elective termination unless the Work Order is terminated as provided in Section 22 or in the following sentences of this Section 23. Purchaser may at any time elect to terminate a Work Order, without liability to Contractor, by notifying Contractor of the effective date of that termination. In such event, Contractor will invoice Purchaser and Purchaser will pay Contractor for the Services satisfactorily performed and the Deliverables accepted through the effective date of the termination as follows: (a) for T&E Work Orders, Purchaser will pay for productive hours actually worked through the effective date of termination; and (b) for Fixed Price Work Orders, Purchaser will pay a pro-rated amount based on the Milestones completed or the percentage of Services completed as of the effective date of the termination.
24. **Survival.** Section 8 ("Ownership Rights"); Section 10 ("Representations and Warranties"); Section 12 ("Limitation of Damages; Limitation of Liability"); Section 13 ("Indemnification"); Section 14 ("Confidentiality"); Section 15 ("Publicity Restrictions"); Section 17 ("Independent Contractor"); Section 18 ("Insurance"); Section 19 ("Notices");

Section 24 ("Survival"); and Sections 27 ("Governing Law; Jurisdiction and Venue") through Section 33 ("Integration"), and each other provision of this Agreement that expressly or by its nature provides for rights, obligations or remedies that extend beyond the termination of this Agreement, will survive and continue in full force and effect after this Agreement is terminated.

- 25. Assignment.** Except as expressly permitted in Section 9.3 ("Subcontracting") above, Contractor will not assign any right or delegate any duty under this Agreement, without the consent of an authorized Purchaser representative. A change in the Control (voting or otherwise) of Contractor will not be deemed an assignment for purposes of this Section. Purchaser may grant, withhold, or condition its consent to assignment or delegation in its sole discretion. If Purchaser authorizes an assignment or delegation, that authorization will not release Contractor from any of its obligations under this Agreement unless: (a) that authorization expressly releases Contractor; (b) the assignee or delegate agrees in writing to be bound by this Agreement; and (c) any agreement between Contractor and the assignee or delegate states that Purchaser has the right to enforce Contractor's rights against the assignee or delegate. Any attempted assignment or delegation by Contractor without Purchaser's consent will be void, and Purchaser may, but need not, terminate this Agreement or any Work Orders immediately notwithstanding any notice requirement that would otherwise apply. Purchaser may assign its rights and delegate its duties under this Agreement to any third party at any time without Contractor's consent.
- 26. Succession.** This Agreement will bind and inure to the benefit of each Party and its permitted successors, assigns, and delegates.
- 27. Governing Law; Jurisdiction and Venue.** This Agreement will be interpreted under, and any disputes arising out of this Agreement will be governed by, the laws of the State of Oregon, without reference to its conflicts of law principles. The United Nations Convention on Contracts for the International Sale of Goods will not apply to the interpretation or enforcement of this Agreement. Contractor irrevocably consents to the jurisdiction of the courts located in the State of Oregon, USA, in connection with all actions arising out of or in connection with this Agreement, and waives any objections that venue is an inconvenient forum. Contractor further agrees that it will not initiate any action against Purchaser in any other jurisdiction. Contractor agrees that a final judgment in any such action or proceeding will be conclusive and may be enforced in any other jurisdiction (including the appropriate courts of the jurisdiction in which Contractor is resident or in which any property or an office of Contractor is located) by suit on the judgment or in any other manner provided by law. This Section does not override and will be interpreted in a manner consistent with any provision of this Agreement that requires disputes to be arbitrated.
- 28. Waiver.** 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.

- 29. Amendments.** The Parties may amend this Agreement only by a written instrument that: (a) expressly refers to the provision(s) of this Agreement to be amended; (b) provides the full text of the amendment; and (c) is signed by an authorized representative of each Party. Contractor acknowledges and agrees that any "shrink-wrap" agreement, invoice, or other standard form which purports to govern the acquisition of goods or the provisions of Services will be ineffective to modify this Agreement unless it is executed by the Parties as required by this Section. Any amendment to this Agreement that is contained in a Work Order will be effective only with respect to the Services and Deliverables described in that Work Order.
- 30. Interpretation.** Section and paragraph headings are for convenience only and do not affect the meaning or interpretation of this Agreement. The words "includes" and "including" are not limited in any way and mean "includes or including without limitation." The word "person" includes individuals, corporations, partnerships, limited liability companies, co-operatives, associations and other natural and legal persons. The term "and/or" means each and all of the persons, words, provisions or items connected by that term; i.e., it has a joint and several meaning. The word "will" is a synonym for the word "shall." All exhibits attached to or referenced in this Agreement are a part of and are incorporated in this Agreement. To the extent a Work Order is inconsistent or conflicts with Sections 1 through 34 of this Agreement, Sections 1 through 34 of this Agreement will govern unless the Work Order expressly refers to the provision(s) to be modified and provides the full text of the provision(s) as modified. Both parties have had the opportunity to have this Agreement reviewed by their attorneys. Therefore, no rule of construction or interpretation that disfavors the Party drafting this Agreement or any of its provisions will apply to the interpretation of this Agreement. Instead, this Agreement will be interpreted according to the fair meaning of its terms.
- 31. Severability.** If any court, arbitrator, or arbitration panel finds any provision of this Agreement to be invalid or otherwise unenforceable, that provision will be void to the extent it is contrary to applicable law. However, that finding will not affect the validity of any other provision of this Agreement, and the rest of this Agreement will remain in full force and effect unless enforcement of this Agreement without the invalidated provision would be grossly inequitable under all of the circumstances or would frustrate the primary purposes of this Agreement. Alternatively, if a court, arbitrator, or arbitration panel determines that any provision of this Agreement is not enforceable as expressly written, it is the intention of the Parties that those provisions be modified by the court, arbitrator, or arbitration panel only as is necessary for them to be enforceable.
- 32. Counterparts and Delivery.** This Agreement may be executed in counterparts. Each counterpart will be considered an original, and all of them, taken together, will constitute a single Agreement. Facsimile and electronic signatures will be deemed original signatures for all purposes under this Agreement. When properly signed, this Agreement may be delivered by facsimile or electronically, and any such delivery will have the same effect as physical delivery of a signed original.



**33. Integration.**

This Agreement is the entire agreement between the Parties concerning its subject matter and supersedes all prior and contemporaneous oral and written agreements, commitments, and understandings concerning its subject matter.

**34. Consent and Agreement.**

Whenever and wherever in this Agreement the consent or approval of either Party is required, each Party agrees not to unreasonably withhold, condition or delay its consent or approval.

THE GUNTER GROUP  
LLC

NIKE, Inc.

By: Michael B. Gunter

By: [Signature]

Name: Michael B. Gunter

Name: Dan Keschak

Title: Founding Member

Title: VP Tech Ops

Date: 10/27/2014

Date: 10/30/14

**NOTICE**

THE EFFECTIVE DATE OF THIS WORK ORDER WILL BE THE DATE ON WHICH IT IS SIGNED BY AN  
AUTHORIZED PURCHASER SIGNER.  
PURCHASER WILL NOT PAY FOR WORK PERFORMED PRIOR TO THAT DATE.

**Exhibit A**

**FORM OF WORK ORDER**

**WORK ORDER NO. \_\_\_\_\_**

**UNDER**

**MASTER PROFESSIONAL SERVICES AGREEMENT**

This Work Order ("**Work Order**") is made effective as of \_\_\_\_\_ (the "**Order Effective Date**"), between \_\_\_\_\_, located at \_\_\_\_\_ ("**Purchaser**") and \_\_\_\_\_, located at \_\_\_\_\_ ("**Contractor**"). This Work Order is incorporated into, forms a part of, and is in all respects subject to the terms of, a Master Professional Services Agreement between \_\_\_\_\_ and Contractor dated \_\_\_\_\_ (the "**Agreement**").

1. **Description of Services.** Contractor will provide the following Services under this Work Order:
  
2. **Description of Deliverables.** Contractor will provide the following Deliverables under this Work Order:
  
3. **Work Schedule.** Contractor will provide the above Services and Deliverables in accordance with the following work schedule:
  
4. **Price.** The price for the Services and Deliverables is as follows:
  
5. **Assumptions/Conditions.** The price provided above is subject to the accuracy of the following assumptions and/or the satisfaction of the following conditions:
  
6. **Acceptance Testing.** *Select one:*

- ☐ Required.
- ☐ Not Required.

If acceptance testing is required, the parties will (i) apply acceptance criteria and follow the testing methodology attached to this Work Order, or (ii) if there are no such attachments, develop the criteria and methodology in the manner required by the Agreement, or (iii) if the acceptance criteria and methodology are not attached or provided for in the Agreement, develop them in a manner that is reasonable under the circumstances, taking into account the nature of the Services and Deliverables mentioned above.

7. **Additional Terms.** This Work Order includes the following additional terms and conditions:

PURCHASER:

CONTRACTOR:

\_\_\_\_\_

\_\_\_\_\_

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

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

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

**Exhibit B**

**CONTRACTOR'S RATES**

***Intentionally Omitted.***

## **Exhibit C**

### **Travel Expense Reimbursement Policy**

#### **PART I GENERAL POLICY**

Subject to the additional limitations described in Part II below with respect to specific geographic locations, Purchaser will reimburse Contractor for reasonable travel-related expenses incurred by Contractor in connection with the travel of Contractor's employees while engaged to perform Services for Purchaser, as set forth below. Purchaser shall not be liable for reimbursement of any travel-related expenses in excess of those set out below unless Contractor obtained the express written consent of Purchaser for such additional costs before they were incurred.

Reimbursement is limited to the actual costs incurred. Purchaser will reimburse only expenses that are properly documented by copies of receipts and other supporting documentation.

The following sets forth the maximum recovery for travel-related expenses:

#### **Flights**

- Economy Class air fare.
- Travelers must take advantage of discounted fares whenever possible and must book flights at least fourteen days in advance whenever reasonably possible. Purchaser may withhold reimbursement of any amounts in excess of the fare that would have been available had flights been booked in advance.
- With respect to Contractors whose employees are traveling within the 48 contiguous US states on a project more than two weeks in duration, Purchaser will reimburse airfare (in accordance with this policy) for return flights each weekend (i.e., one round trip per week per individual).

#### **Rental Cars**

- Purchaser will, in its discretion, reimburse the costs of a rental vehicle, up to the cost of a compact vehicle for individuals and a mid-size vehicle for two or more persons traveling together.
- Where taxicabs or other local transportation is less expensive, reimbursement shall be limited to the cost of such alternate transportation.
- Purchaser will not reimburse refueling charges (rental vehicles must be refilled with gas prior to return).

### **Parking**

Reasonable parking expenses will be reimbursed.

### **Hotel**

Purchaser's reimbursement of lodging costs is limited to the price of a standard room (single occupancy) in a cost-effective hotel of reasonable quality.

### **Restaurant**

If a service charge is included in the meal cost or in the total, gratuities will not be reimbursed. Otherwise, tips are reimbursable, up to a maximum of 20% of the cost of the meal.

### **Additional General Limitations**

Limitation of Liability. Purchaser does not assume any liability of any type in connection with travel by Contractor's employees or contractors, including in connection with rental vehicles reserved or operated by such individuals.

- a) Loss or Damage to Property or Personal Injury. In no event shall Purchaser be liable for loss of or damage to property or personal injury sustained by Contractor's principals or employees or contractors arising from or during travel or arising in connection with occupancy of lodging, the cost of which may be reimbursable hereunder. Contractor shall inform all supplier personnel of these terms and conditions and of these limitations of liability.
- b) Expense Restrictions. Expenses incurred for personal entertainment while traveling on Purchaser business are NOT reimbursable. Personal entertainment includes, but is not limited to, in-room movie charges, sightseeing, attendance at sporting events, reading materials, gifts, and haircuts.
- c) Cancellation. Purchaser will not reimburse charges that result from cancellation of a non-refundable ticket (in the case of air travel) or from late arrivals or "no-shows," (in the case of lodging or other transportation) unless Purchaser specifically requested postponement of the trip or cancellation of the trip in writing.
- d) Purchaser Travel. Purchaser may elect to require Contractor to make travel arrangements through Purchaser's travel agency (Purchaser Travel) and/or may pay Contractor's travel expenses directly. Contractor shall not be entitled to reimbursement for any expenses directly paid by Purchaser.

## **PART II**

### **SPECIFIC POLICY REGARDING COSTS OF TRAVEL TO CERTAIN LOCATIONS**

Contractor shall not be entitled to any expense reimbursement when Travel Expenses are already included in the engagement rates, fees or prices as provided under the Agreement or applicable work order. In addition to the general travel policies set forth in Part I above,

expense reimbursement for travel to any of the destinations listed below shall be subject to one of the following limitation options which shall be selected by Purchaser in its sole discretion:

**Option 1:**

Daily per diem: \$225 per day, excluding transportation. Transportation is defined as: rental cars, coach airfare, mileage to and from airport, and taxi or bus service. Unused daily per diem amounts may not be applied to other day expenses under any circumstances

OR

**Option 2:**

Daily Limitations as described below:

The daily limitations set forth in the tables below apply to each full work day (i.e., each day in which Contractor's personnel works at least five billable hours). Contractor is only entitled to lodging reimbursement for actual nights spent in a hotel. If Contractor works a full day and returns home that day, no lodging reimbursement shall be granted. Likewise, if Contractor arrives on a Sunday or holiday at Purchaser's request and no work is performed, Contractor is entitled to reimbursement up to Lodging and Rental car limits and a reasonable pro rata of Meals, Parking and Incidental Expenses/day based on portion of day traveling on Purchaser's behalf. Unused daily limitation amounts may not be applied to other day expenses under any circumstances. Unless otherwise specified in this Exhibit or the Agreement, all invoices must be submitted no later than thirty (30) days after the end of the engagement. To the extent the specific limitations in this Part II conflict with the general limitations in Part I, the limitations in this Part II will govern.

**I) Purchaser World Headquarters, Beaverton, Oregon, USA 97005**

**Daily Limitations:**

	<b>Lodging/day</b>	<b>Rental Car/day</b>	<b>Meals, Parking &amp; Incidental Expenses/day</b>
<b>WHQ</b>	\$135	\$50	\$55

**Possible Accommodations:**

Below is a list of accommodations located near the Purchaser World Headquarters campus. The Contractor may arrange for its personnel to stay at alternative locations, but Purchaser will not reimburse expenses over the stipulated daily limit.

<b>Lodging</b>	<b>Notes</b>
<b>Homewood Suites Hotel-Beaverton</b> 15525 NW Gateway Court Beaverton, OR 97005 P- (503) 614-0900 F- (503) 533-2276	1-bedroom suite (King) 2-line phone, date port, voicemail in guestroom, fully equipped kitchen with refrigerator, complimentary continental breakfast, light dinner weekdays, newspaper, transportation within 5-mile radius. Outdoor pool, workout room. 2 miles from WHQ campus.
<b>Hilton Garden Inn Beaverton</b> 15520 NW Gateway Court Beaverton, OR 97006 P- (503) 439-1717 F- (503) 439-1818	King 2-line phone, data port and voicemail in guestroom, complimentary American breakfast, newspaper, use of fitness center, indoor pool. 2 miles from WHQ Campus.
<b>Fairfield Inn by Marriott</b> 15583 NW Gateway Court Beaverton, OR 97005 P - (503) 972-0048 F - (503) 972-0049	Standard Voicemail, data port in guestroom, complimentary local phone calls, extended continental breakfast, fitness center, indoor pool, newspaper 2 miles to WHQ campus.
<b>Marriott Courtyard Nimbus</b> 8500 SW Nimbus Drive Beaverton, OR 97008 P – (503) 641-3200 F – (503) 641-1287	Standard Data port, voicemail, 2-line phone in guestroom. Complimentary breakfast, parking, daily newspaper. 6 miles from Campus.
<b>Phoenix Inn Suites</b> 15402 NW Cornell Road Beaverton, OR 97006 P: (503) 614-8100 F: (503) 614-0352	Complimentary area shuttle; wireless high speed internet access; extended continental breakfast buffet; local phone calls; outdoor parking; newspaper; Complimentary coffee and tea; business center; 4 miles from WHQ Campus



## II) Memphis, Tennessee, USA 38118

### Daily Limitations:

	Lodging/day	Rental Car/day	Meals, Parking & Incidental Expenses/day
Memphis	\$142	\$50	\$55

### Possible Accommodations:

Below is a list of accommodations located near the Memphis Purchaser location. The Contractor may stay at alternative locations, but Purchaser will not reimburse expenses over the stipulated daily limit.

Lodging	Notes
<b>Hampton Inn &amp; Suites Memphis-Wolfchase Galleria</b> 2935 North Germantown Road Bartlett, TN 38133 P – (901) 382-2050 F – (901) 382-2050 E - <a href="mailto:MEMHS_Hampton_Suites@hilton.com">MEMHS_Hampton_Suites@hilton.com</a>	Standard Complimentary parking, use of fitness center, buffet breakfast, local phone calls and high speed internet access. Data ports, voice mail in guest rooms. Near Apparel facility.
<b>Courtyard by Marriott - Lenox</b> 3076 Kirby Parkway Memphis, TN 38115 P - (901) 365-6400 F - (901) 368-9865 E -	King Data port with high-speed internet access in guestroom. Complimentary daily newspaper, use of fitness center, and daily parking. 5 miles to Memphis Footwear on Winchester. 4 miles to Memphis Apparel on Shelby Dr.
<b>Hampton Inn – Southwind</b> 3579 Hacks Cross Rd. Memphis, TN 38125 P- (901) 382-2050 F- (901) 382-2523	Standard Data port in guestroom. Complimentary local calls, continental breakfast, use of fitness center, transportation to/from local Purchaser offices. 5 minutes from Memphis Footwear on Winchester.
<b>Fairfield Inn Germantown</b> 9320 Poplar Pike Germantown, TN 38138 P- (901) 757-9100 F- (901) 312-0559	King Data port, 2 – line phone, and voice mail in guestroom. Complimentary local phone calls, daily newspaper, continental breakfast, daily parking, and use of fitness center. 2 miles from Memphis Footwear on Winchester Road.

<b>Lodging</b>	<b>Notes</b>
<b>Homewood Suites Southwind</b> 3583 Hacks Cross Road Memphis, TN 38125 P – (901) 758-5018 F – (901) 758-5015	Standard 2-line phone, date port, voicemail in guestroom, fully equipped kitchen with refrigerator, complimentary continental breakfast, light dinner weekdays, newspaper.
<b>Hampton Inn &amp; Suites</b> 962 S. Shady Grove Road Memphis, TN 38120 P - (901) 762-0056 F – (901) 762-0033	Standard Data port, 2-phone lines, voicemail in guestroom. Complimentary daily newspaper, use of fitness center, and daily parking.

### III) Portsmouth, New Hampshire, USA 03840

#### Daily Limitations:

	<b>Lodging/day</b>	<b>Rental Car/day</b>	<b>Meals, Parking &amp; Incidental Expenses/day</b>
<b>NH</b>	\$140	\$50	\$55

#### Possible Accommodations:

Below is a list of possible accommodations located near the Bauer and Cole Haan Offices. The Contractor may stay at alternative locations, but Purchaser will not reimburse expenses over the stipulated daily limit.

<b>Lodging</b>	<b>Notes</b>
<b>Fairfield Inn</b> 650 Borthwick Avenue Portsmouth, NH 03801 P- (603) 436-6363 F- (603) 436-1621 E - <a href="mailto:smckenney@paramounthotelgroup.com">smckenney@paramounthotelgroup.com</a>	King Complimentary continental breakfast, newspaper, use of fitness center, parking, local phone calls, internet access. 2 miles to Bauer & Cole Haan offices
<b>Hampton Inn Portsmouth</b> 99 Durgin Lane Portsmouth, NH 03801 P- (603) 431-6111 F- (603) 431-6222	Standard Data port in guestroom. Complimentary continental breakfast, daily newspaper, local phone calls, use of fitness center, transportation to/from local Purchaser office 3 miles to Bauer & Cole Haan offices

<b>Lodging</b>	<b>Notes</b>
<b>Residence Inn Portsmouth</b> 1 International Drive Portsmouth, NH 03801 P – (603) 436-8880 F – (603) 422-0888 E – <a href="mailto:ri.psmri.gm@marriott.com">ri.psmri.gm@marriott.com</a>	Standard Complimentary parking, use of fitness center, local phone calls, continental breakfast. Data ports in room. 3 miles to Bauer & Cole Haan facilities. Near Redhook
<b>Sheraton Harborside</b> 250 Market Street Portsmouth, NH 03801 P- (603) 431-2300 F- (603) 433-5649	Standard Data port, voicemail, 2-line phone in guestroom. 10 miles to Bauer & Cole Haan offices

**IV) Purchaser Headquarters for Europe, Middle East, and Africa Regions– Hilversum, Netherlands**

**Daily Limitations:**

	<b>Lodging/day</b>	<b>Rental Car/day</b>	<b>Meals, Parking &amp; Incidental Expenses/day</b>
<b>European Headquarters</b>	€190	€95	€140

**Possible Accommodations:**

Below is a list of accommodations located near the Purchaser European Headquarters campus in the Hilversum area. The Contractor may stay at alternative locations, but Purchaser will not reimburse expenses over the stipulated daily limit.

<b>Lodging</b>	<b>Notes</b>
<b>Hotel Lapershoek</b> Utrechtseweg 16 1213 TS Hilversum, Netherlands P: +35 623 1341 F: +35 628 4360 E - <a href="http://www.lapershoek.nl">www.lapershoek.nl</a>	Comfort Complimentary daily parking and toll free calls; restaurant; data port in rooms; room service 7 am – 10 pm; express check-in & check-out 45 km from Schiphol Airport, 3 minutes by car to Purchaser EHQ
<b>Hotel Newport</b> Labradorstroom 75 1271 DE Huizen, Netherlands P: +35 528 9600 F: +35 528 9611 E - <a href="http://www.hotelnewport.nl">www.hotelnewport.nl</a>	Deluxe Complimentary toll free calls and daily parking; 2 restaurants; data port in rooms; spa services; room service 7 am – 11 pm 40 km from Schiphol Airport, 18 km to Purchaser EHQ

Lodging	Notes
<b>nH Jan Tabak</b> Amersfoortsestraatweg 27 1401 CV Bussum, Netherlands P: +35 695 9911 F: +35 695 9416 E - <a href="http://www.nh-hotels.com">www.nh-hotels.com</a>	Standard Complimentary daily parking and toll free calls; 2 restaurants; express check-in & check-out; 24-hr room service; free parking; data port in rooms; business center; upgrade upon availability 32 km from Schiphol Airport, 8 km to Purchaser EHQ
<b>Hilton Royal Parc Soestduinen</b> Van Weerden Poelmanweg 4-6 3768 MN Soestduinen Netherlands P: +31 35 603 8383 F: +31-35 603 8300 E - <a href="http://www.hilton.com">www.hilton.com</a>	Guestroom Complimentary fitness center and daily parking; restaurant; express check-in & check-out; sauna; 9-holes golf course; 24-hr room service; data port in rooms 45 km from Schiphol Airport, 17 km to Purchaser EHQ
<b>Residence Hoogh Heem</b> (EXTENDED STAY ONLY) Hoge Naarderweg 28 1217 AE Hilversum, Netherlands P: +31 35 623 9145 F: +31 35 640 0302 E - <a href="http://www.hooghheem.com">www.hooghheem.com</a>	Junior Suite Senior Suite Royal Suite  Fully equipped apartments; free parking; room service; data port in rooms; upgrade upon availability 45 km from Schiphol Airport, 3 km to EHQ

**Exhibit D**

**FORM OF CHANGE ORDER**

**CHANGE ORDER NO. \_\_\_\_\_**

**TO**

**WORK ORDER NO. \_\_\_\_\_**

This Change Order ("**Change Order**") is made effective as of \_\_\_\_\_  
(the "**Change Order Effective Date**"), between \_\_\_\_\_, located at \_\_\_\_\_  
("Purchaser") and \_\_\_\_\_, located at \_\_\_\_\_  
("Contractor"). This Change Order modifies the terms of the above-referenced Work Order (the "**Work Order**") issued under the Master Professional Services Agreement between \_\_\_\_\_ and Contractor dated \_\_\_\_\_ (the "**Agreement**").

The parties agree that the Work Order is hereby amended, supplemented or otherwise modified effective as of the Change Order Effective Date as follows (check as applicable and provide details):

- ☐ **Description of Services.** The Services in the Work Order are modified as follows:
  
- ☐ **Description of Deliverables.** The Deliverables in the Work Order are modified as follows:
  
- ☐ **Work Schedule.** The work schedule in the Work Order is modified as follows:
  
- ☐ **Price.** The price in the Work Order is modified as follows:
  
- ☐ **Other Terms.** Other terms in the Work Order are modified as follows:

Except as expressly amended, supplemented or otherwise modified in this Change Order, the terms of the Work Order shall remain unchanged, and the Work Order (as modified herein) and the Agreement are in all respects hereby ratified and confirmed.

PURCHASER:

CONTRACTOR:

\_\_\_\_\_

\_\_\_\_\_

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

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

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

**Exhibit E**

**NON-DISCLOSURE AGREEMENT**

[See attached.]

**Exhibit F**

**COMPETITORS SUBJECT TO EXCLUSIVITY RESTRICTION**

Adidas  
Asics  
New Balance  
Puma  
Reebok  
Under Armour