



## MARKETING SERVICES AGREEMENT

This Marketing Services Agreement is made effective as of the date set forth on the signature page ("Effective Date") between Paciolan, LLC ("Paciolan") and Texas A&M University System, an agency of the State of Texas, a member of The Texas A&M University System, ("Client or TAMU") regarding the Services (as defined below).

**1. Services.** Client hereby retains Paciolan to perform certain services as needed by Client from time to time as agreed to by the parties via email ("Services"). The Services may be provided via Paciolan's affiliate, Mogo Marketing and Media, LLC ("Mogo"). The parties generally contemplate that the Services to be rendered by Paciolan will consist of Paciolan acting as advertising, media planning/buying agency and online ad network for Client. Data derived from use of the Services may be used by Paciolan and its Services providers in aggregated and anonymized form.

**2. Google Terms.** Paciolan's delivery of the Services to Client via Google shall be subject to the Google Inc. Advertising Program Terms available at <https://adwords.google.com/select/adsfinder> or otherwise available at [google.com](https://www.google.com/policies/terms) and all applicable Google and Google Partner policies referenced therein, including without limitation the Google Privacy Policy, Advertising Cookies Policy, and Trademark Guidelines, and Google and Partner ad specification requirements (collectively, "Google Terms"). Client agrees and acknowledges that the Google Terms may be modified from time to time by Google. Client shall be responsible for regularly reviewing the Google Terms and becoming familiar with any such modifications. Client's use of the Services after the Google Terms have changed constitutes Client's acceptance of the new Google Terms. Client authorizes Paciolan to accept and agree to the Google Terms online on behalf of Customer. Client agrees to comply with all applicable terms and conditions of the Google Terms applicable to "Advertiser" and, as applicable, "Client", under the Google Terms. Client hereby agrees to be bound by the Google Terms. Client agrees to undertake and agrees to all applicable obligations and representations contemplated by the Google Terms in order to enable Paciolan to facilitate the provision of the Services for the benefit of Client via Google pursuant to the Google Terms. Client agrees to the foregoing section to the extent permitted by the Constitution and laws of the State of Texas.

**3. Facebook Terms.** Client shall comply with the following Facebook terms, conditions, agreements, policies and guidelines, which shall govern delivery of the Services to Client ("FB Terms"): Facebook Statement of Rights and Responsibilities (<https://www.facebook.com/legal/terms>); Facebook Pages Terms ([https://www.facebook.com/page\\_guidelines.php](https://www.facebook.com/page_guidelines.php)); Advertising Policies (<https://www.facebook.com/policies/ads/>); and the FB Terms referenced therein. Client agrees to the foregoing section to the extent permitted by the Constitution and laws of the State of Texas.

**4. Compensation.** Client agrees to pay Paciolan the agreed upon fees and charges outlined in the campaign media plan approved by Client via email. All fees and charges are due and payable based upon due date(s) reflected on invoice(s), to be sent upon confirmation of the approved plan. For any other fees or charges, payment is due no later than the 15th of the month following invoicing. Paciolan may suspend the provision of Services under this Agreement without notice if the account is overdue. Paciolan has the option of resuming Service or terminating the Agreement with written notice after payment of overdue balances and late fees. Client agrees to compensate Paciolan for any remaining balance due.

**5. Campaign Budgets.** Paciolan purchases advertising inventory and provides comprehensive ad serving Services on Client's behalf across dozens of display, video, social, search and mobile advertising marketplaces. The pricing model is based on real-time bidding auction environments common to ad networks. These highly complex marketplaces are in a constant state of fluctuation based on supply, demand, seasonality and audience targeting criteria. Paciolan's programmatic buying platform provides visibility as to spend; however, it can be difficult to deliver planned media budgets to the exact dollar. When Paciolan overspends, there is no expectation for Client to pay the overage, but any overage will be factored into the unspent amount during the reconciliation process.

**6. Privacy.** Client will ensure that visitors to its websites (including e.Venue) are provided with clear and comprehensive information about, and consent to, the storing and accessing of cookies or other information on the visitors' devices where such activity occurs in connection with the Services and where providing such information and obtaining such consent is required by law. Client will ensure that each of its web sites contains a privacy policy that (a) discloses (i) the usage of third-party technology and (ii) the data collection and usage resulting from the

Services and use of Client's websites and (b) complies with all applicable privacy laws, rules and regulations. Client shall comply with all applicable laws, rules and regulations in connection with its use of the Services. To the extent Client receives any retargeting Services, Client represents that Client's website (i) contains a privacy policy that (a) permits the operation of a retargeting consumer marketing program, including, but not limited to, the provision of anonymous consumer information and/or consumer email addresses to third party partners and (b) provides a link to the Network Advertising Initiative's consumer opt-out page located at [www.networkadvertising.org/managing/opt\\_out.asp](http://www.networkadvertising.org/managing/opt_out.asp) allowing the consumer to opt-out of such retargeting programs and (ii) provides clear and conspicuous disclosure regarding such retargeting practices. Client understands that the technology required to operate the retargeting Services utilizes a pixel ("Pixel") placed on the Client's websites (which may include its e.Venue website) to set a cookie on the browser of visitors to the Client's website (which may include its e.Venue website). Client will place the Pixel on its website in accordance with Paciolan's instructions and Client agrees that it shall not remove, modify or move the Pixel.

**7. Client Obligations.** Client agrees to comply with all reasonable requests of Paciolan and to provide access to all documents and social media properties reasonably necessary to the performance of Paciolan's duties under this Agreement. Client grants Paciolan full rights and authority to undertake advertising and media buying Services on behalf of Client and to solicit introductions to Client and its product(s) from any online media outlets. Client represents that Client has all rights, licenses, consents and agreements necessary for use of any creative content provided by Client for use with the Services (the "Client Creative"). Client represents that the Client Creative shall not infringe upon or violate the rights of any third party or any applicable law. For the avoidance of doubt, Client shall hold all right, title, and interest in and to the Client Creative that are used to create the advertisements to be used in connection with the Services. Certain Services may require Client's provision of, or access to, its customers' (i.e. consumers) email addresses and other non-financial personally identifiable information ("Client Information"). Client represents that Client has provided and will continue to provide all notices and has and will continue to have all rights, consents and approvals under all applicable laws and in compliance with its privacy policy, to provide the Client Information to Paciolan to be used in connection of provision of Services hereunder, including but not limited to, the provision of proper notice to, and consent obtained from, the individuals whose email addresses are included in the upload for the purpose of certain Services.

**8. Indemnity.** Client agrees to defend, indemnify and hold Paciolan and its affiliates and their respective members, directors, officers and employees (the "Indemnified Parties") harmless against any loss, cost or expense the Indemnified Parties may sustain or incur as the result of any claim, suit or proceeding made, brought or threatened against any Indemnified Party arising out of or related to this Agreement. Client agrees to the foregoing section to the extent permitted by the Constitution and laws of the State of Texas.

**9. Disclaimers and Limitation of Liability.** TO THE EXTENT PERMITTED BY THE CONSTITUTION AND LAWS OF THE STATE OF TEXAS, THE SERVICES ARE PROVIDED "AS IS" AND PACIOLAN DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. TO THE EXTENT PERMITTED UNDER APPLICABLE LAW, UNDER NO CIRCUMSTANCES WILL PACIOLAN BE LIABLE TO CLIENT OR ANY OTHER PERSON OR ENTITY FOR LOSS OF PROFIT, BUSINESS OR DATA, OR FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE DAMAGES OR EXEMPLARY DAMAGES OF ANY KIND OR NATURE ARISING FROM THIS AGREEMENT. TO THE EXTENT PERMITTED UNDER APPLICABLE LAW, PACIOLAN'S AGGREGATE LIABILITY ARISING UNDER THE AGREEMENT WILL BE LIMITED TO THE TOTAL AMOUNT PAID BY CLIENT TO PACIOLAN UNDER THE AGREEMENT

DURING THE 12 MONTHS BEFORE THE DATE OF SUCH LIABILITY.

**10. Term and Termination.** This Agreement shall continue in effect from the Effective Date until terminated as set forth herein. Either party may terminate this Agreement for convenience upon written notice to the other party. Paciolan may terminate this Agreement with written notice to Client upon termination of the ticketing relationship between Client and Paciolan. The Agreement may be terminated by a party with written notice, if a party materially breaches the Agreement and does not cure such breach within thirty (30) days following written notice thereof from the non-breaching party. All payments due under this Agreement at time of termination shall be due and payable at the time of termination. The provisions of the Agreement, which expressly or by implication are intended to survive termination or expiration, will survive and continue to bind the parties after termination, including but not limited to, the confidentiality, limitations of liability, disclaimer, payment and indemnification provisions.

**11. General Provisions.** The relationship of the parties shall be solely that of agency and independent contractor. This Agreement does not create any partnership, joint venture, single business entity, or employment relationship between the parties. Any notices required to be given under this Agreement by either party to the other shall be in writing and may be given either by personal delivery (including, but not limited to, delivery by messenger) or courier service with proof of delivery. Notices delivered personally or via courier shall be deemed effective upon actual delivery. This Agreement supersedes any and all prior or contemporaneous agreements, either oral or written, between the parties with respect to the rendering of Services by Paciolan for Client and contains all of the representations, covenants, and agreements between the parties with respect to the rendering of those Services. Each party to this Agreement acknowledges that no representations, inducements, promises or agreements, oral or otherwise, have been made by any party, or by anyone acting on behalf of any party, which are not contained in this Agreement, and that, except as expressly contemplated by this Agreement, no other agreement, statement or promise not contained in this Agreement shall be valid or binding. Any modification or amendment of this Agreement must be made in writing and signed by both parties. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall continue in full force and effect without being impaired or invalidated in any way. The venue where any dispute shall be maintained is Brazos County, State of Texas. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas. A party may submit an electronically executed counterpart via PDF, which will be treated as an originally signed document.

**12. State Contracting Requirements.**

**Delinquent Child Support Obligations.** A child support obligor who is more than 30 days delinquent in paying child support and a business entity in which the obligor is a sole proprietor, partner, shareholder, or owner with an ownership interest of at least 25 percent is not eligible to receive payments from state funds under an agreement to provide property, materials, or services until all arrearages have been paid or the obligor is in compliance with a written repayment agreement or court order as to any existing delinquency. The Texas Family Code requires the following statement: "Under Section 231.006, Texas Family Code, the Paciolan or applicant certifies that the individual or business entity named in this contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate."

**Payment of Debt or Delinquency to the State.** Pursuant to Sections 2107.008 and 2252.903, Texas Government Code, Paciolan agrees that any payments owing to Paciolan under this Agreement may be applied directly toward certain debts or delinquencies that Paciolan owes the State of Texas or any agency of the State of Texas regardless of when they arise, until such debts or delinquencies are paid in full.

**Prohibited Bids and Agreements.** A state agency may not accept a bid or award a contract that includes proposed financial participation by a person who received compensation from the agency to participate in preparing the specifications or request for proposals on which the bid or contract is based. The Texas Government Code requires the following statement: "Under Section 2155.004, Texas Government Code, Paciolan certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate."

**Public Information.** Paciolan acknowledges that TAMU is obligated to strictly comply with the Public Information Act, Chapter 552, Texas Government Code,

in responding to any request for public information pertaining to this Agreement, as well as any other disclosure of information required by applicable Texas law. Upon TAMU's written request, Paciolan will provide specified public information exchanged or created under this Agreement that is not otherwise excepted from disclosure under Chapter 552, Texas Government Code, to TAMU in a non-proprietary format acceptable to TAMU. As used in this provision, "public information" has the meaning assigned Section 552.002, Texas Government Code, but only includes information to which TAMU has a right of access. Paciolan acknowledges that TAMU may be required to post a copy of the fully executed Agreement on its Internet website in compliance with Section 2261.253(a)(1), Texas Government Code.

**Dispute Resolution.** The dispute resolution process provided in Chapter 2260, Texas Government Code, and the related rules adopted by the Texas Attorney General pursuant to Chapter 2260, shall be used by TAMU and Paciolan to attempt to resolve any claim for breach of contract made by Paciolan that cannot be resolved in the ordinary course of business. Paciolan shall submit written notice of a claim of breach of contract under this Chapter to the University Contracts Officer of Texas A&M University, who shall examine Paciolan's claim and any counterclaim and negotiate with Paciolan in an effort to resolve the claim.

**Access by Individuals with Disabilities.** Paciolan shall request that its third party providers of the Services (as defined in the Contract) deliver all services and products in a format which complies with the accessibility guidelines of Section 508 of the Rehabilitation Act of 1973, as amended, the Americans with Disabilities Act of 1990, as amended, and Level AA of the Web Content Accessibility Guidelines 2.0 ("WCAG 2.0 AA") (<http://www.w3.org/TR/WCAG20/>) published by the Web Accessibility Initiative of the World Wide Web Consortium ("W3C") [[www.w3.org](http://www.w3.org/)] ("Accessibility Guidelines"). If, despite such request to Service Provider's third party provider of the Services, the products and services do not comply with the requirements above, TAMU shall have a right to terminate the Contract for such failure with thirty (30) days' notice, as its sole and exclusive remedy for such failure.

**Franchise Tax Certification.** If Paciolan is a taxable entity subject to the Texas Franchise Tax (Chapter 171, Texas Tax Code), then Paciolan certifies that it is not currently delinquent in the payment of any franchise (margin) taxes or that Paciolan is exempt from the payment of franchise (margin) taxes.

**Loss of Funding.** Performance by TAMU under this Agreement may be dependent upon the appropriation and allotment of funds by the Texas State Legislature (the "Legislature"). If the Legislature fails to appropriate or allot the necessary funds, TAMU will issue written notice to Paciolan and TAMU may terminate this Agreement without further duty or obligation hereunder. Paciolan acknowledges that appropriation of funds is beyond the control of TAMU.

**Prompt Payment Act.** Payment from TAMU will be due thirty (30) days from the date TAMU receives the invoice. All past due amounts will be subject to a finance charge in accordance with the Texas Prompt Payment Act, Chapter 2251, Texas Government Code.

**State Auditor's Office.** Paciolan understands that acceptance of funds under this Agreement constitutes acceptance of the authority of the Texas State Auditor's Office, or any successor agency (collectively, "Auditor"), to conduct an audit or investigation in connection with those funds pursuant to Section 51.9335(c), Texas Education Code. Paciolan agrees to cooperate with the Auditor in the conduct of the audit or investigation, including without limitation, providing all records requested.

**Non-Waiver.** Paciolan expressly acknowledges that TAMU is an agency of the State of Texas and nothing in this Agreement will be construed as a waiver or relinquishment by TAMU of its right to claim such exemptions, privileges, and immunities as may be provided by law.

**Paciolan Certification regarding Boycotting Israel.** Pursuant to Chapter 2270, Texas Government Code, Paciolan certifies Paciolan (1) does not currently boycott Israel; and (b) will not boycott Israel during the Term of this Agreement. Paciolan acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.

**Paciolan Certification regarding Business with Certain Countries and**

Organizations. Pursuant to Subchapter F, Chapter 2252, Texas Government Code, Paciolan certifies Paciolan (I) is not engaged in business with Iran, Sudan, or a foreign terrorist organization. Paciolan acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.

Conflict of Interest. By executing and/or accepting this Agreement, Paciolan and each person signing on behalf of Paciolan certifies, and in the case of a sole proprietorship, partnership or corporation, each party thereto certifies as to its own organization, under penalty of perjury, that to the best of their knowledge and belief, no member of The Texas A&M University System ("TAMUS") or TAMUS Board of Regents, nor any employee, or person, whose salary is payable in whole or in part by TAMU or TAMUS, has direct or indirect financial interest in the award of this Agreement, or in the services to which this Agreement relates, or in any of the profits, real or potential, thereof.

Notices. Any notice required or permitted under this Agreement must be in writing, and shall be deemed to be delivered (whether actually received or not) when deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address set out below. Notice may also be given by regular mail, personal delivery, courier delivery, facsimile transmission, email, or other commercially

reasonably means and will be effective when actually received. TAMU and Paciolan can change their respective notice address by sending to the other party a notice of the new address. Notices should be addressed as follows:

TAMU:

Address: 1228 TAMU  
Athletic Department  
College Station, TX 77843-1228  
Attn: David Roubion  
Assistant Athletic Director  
Office: 979-862-5407  
Cell: 979-229-7638  
Email: [roubion@athletics.tamu.edu](mailto:roubion@athletics.tamu.edu)

Paciolan:

Address: 5171 California Ave, #200  
Irvine, Ca 92617  
Attention: Kim Boren, CFO  
Phone: (866) 722-4652  
E-mail: [kboren@paciolan.com](mailto:kboren@paciolan.com)

IN WITNESS WHEREOF, each party has caused this Agreement to be executed by its duly authorized representative.

Effective Date: 7/31/18

Paciolan, LLC:

Client: Texas A&M University

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

Name: Kim Boren

Title: CFO

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

Name: Robert C. Bounds

Title: Director, Procurement Services

8.15.2018