

## **NIKE Sponsorship Agreement Compliance Audit**

**Report FY20 - #01  
September 30, 2021**

**Submitted to:**

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# NIKE Sponsorship Agreement Compliance Audit

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## Summary

Our audit of the NIKE Sponsorship Agreement was included in the approved Fiscal Year (FY) 2020 Audit Plan. This was the first time this agreement had been audited. This strategic partnership agreement with NIKE supports the University of Arizona (the University) Institutional Excellence strategic pillar by providing uniforms, athletic gear, and dollar savings to the Department of Intercollegiate Athletics (ICA) to support their mission, athletes, and teams.

**Background:** To reinforce its flagship sports programs, the University entered into the NIKE Sponsorship Agreement in 1998.<sup>1</sup> In 2006, the agreement was fully redrafted and then amended once in 2009 and twice in 2015. The current agreement, managed by ICA, is in effect until June 30, 2025.

On an annual basis, NIKE provides the University a supply of specific apparel and accessories (or footwear only, as appropriate, per sport), and the University agrees to use the products in accordance with the agreement. This enhances the University student-athletes' opportunities by freeing resources that might otherwise be used to purchase apparel, footwear, and other accessories. In exchange, the University provided an acknowledgment of the NIKE brand through the use and display of the NIKE apparel by student-athletes, coaches, and ICA staff.

**Audit Objective:** Our audit objective was to evaluate process controls and compliance with the terms of the executed agreement.

**Scope:** Our audit included controls as of May 2021 for the 2006 NIKE Sponsorship Agreement and the three subsequent amendments.

**Methodology:** Our audit objective was accomplished by performing the following:

- determining if the correct dollar amount of NIKE products was provided;
- reviewing invoice terms;
- testing if products were distributed to the outfitted programs;
- determining if sponsor benefits were delivered;
- reviewing the NIKE Sponsorship Agreement;
- corresponding with representatives from ICA and the Office of the General Counsel;
- gaining an understanding of key processes; and
- reviewing applicable policies and procedures.

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<sup>1</sup> The University also entered into the NIKE Trademark License Agreement at this time. Any use of trademarks was covered under the NIKE Trademark License Agreement audit (Report FY20 - #02).

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**Conclusion:** During the audit we noted several areas that were effectively functioning. First, due to the sheer size and presence of NIKE on campus, overall awareness of the NIKE Sponsorship Agreement by management and staff was strong. They were aware of NIKE sponsoring the University sports teams and the responsibility to only present NIKE logos on the sports fields, in the training camps, and at sporting events. In addition, management had sufficient inventory controls in place to preclude ordering and commingling non-NIKE products with the NIKE inventory, thereby further reducing the chance of non-NIKE inventory being distributed and worn. However, we found that management was unaware of many agreement provisions that contributed to the identified issues that are discussed further beginning on page 4. We also identified several minor issues that were provided to management verbally during the audit.

According to the Institute of Internal Auditors International Professional Practices Framework, an organization is expected to establish and maintain effective risk management and control processes. These control processes are expected to ensure, among other things, that:

- the organization's strategic objectives are achieved;
- financial and operational information is reliable and possesses integrity;
- operations are performed efficiently and achieve established objectives;
- assets are safeguarded; and
- actions and decisions of the organization are in compliance with laws, regulations, and contracts.

Our assessment of these control objectives as they relate to NIKE Sponsorship Agreement compliance is presented on the following page.

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General Control Objectives	Control Environment	Audit Result	
		No.	Page
<b>Achievement of the Organization's Strategic Objectives</b>			
<ul style="list-style-type: none"> <li>Strategic objectives were supported by NIKE supplying products to enhance the educational mission that includes improving student-athlete opportunities and increasing resources.</li> </ul>	Reasonable to Strong Controls in Place		
<b>Reliability and Integrity of Financial and Operational Information</b>	Not Applicable		
<b>Effectiveness and Efficiency of Operations</b>			
<ul style="list-style-type: none"> <li>NIKE products and brands were properly displayed at sporting events, etc.</li> </ul>	Reasonable to Strong Controls in Place		
<ul style="list-style-type: none"> <li>Products were shipped using the correct shipping terms.</li> </ul>	Opportunity for Improvement	5	8
<ul style="list-style-type: none"> <li>Correct dollar amount of NIKE products was received annually.</li> </ul>	Reasonable to Strong Controls in Place		
<ul style="list-style-type: none"> <li>Procedures were in place to accurately track and verify that the sponsor benefits listed in the agreement were provided.</li> </ul>	Opportunity for Significant Improvement	1	4
<ul style="list-style-type: none"> <li>Coaches contract performance was being facilitated.</li> </ul>	Opportunity for Improvement	3	6
<ul style="list-style-type: none"> <li>Product dollar amounts were documented.</li> </ul>	Opportunity for Improvement	4	7
<ul style="list-style-type: none"> <li>NIKE products were distributed to and used only by coaches, staff, and athletes.</li> </ul>	Opportunity for Improvement	6	9
<b>Safeguarding of Assets</b>	Not Applicable		
<b>Compliance with Laws and Regulations</b>			
<ul style="list-style-type: none"> <li>NIKE annual labor basis reports were being obtained and reviewed.</li> </ul>	Opportunity for Significant Improvement	2	5

We appreciate the assistance of ICA employees during this audit.

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## Audit Results, Recommendations, and Responses

### 1. Audit could not verify sponsor benefits provided to NIKE.

**Condition:** ICA was not documenting which sponsor/promotional benefits were requested by, provided to, and/or accepted/declined by NIKE each contract year to allow verification. Testing revealed that ICA could provide evidence for only 1 (11%) of 9 sponsor benefit categories provided to NIKE. Audit also noted that the University had placed a restriction on providing one promotional benefit.

**Criteria:** It is a best practice to document agreement benefits requested, provided, and/or accepted/declined.

2006 NIKE Sponsorship Agreement, NIKE Sponsorship Benefits states: "Each Contract Year, UNIVERSITY shall provide NIKE with the following sponsor benefits at no additional cost to NIKE ..."

Section 7(b)(1) and (2) the "UNIVERSITY shall use best efforts to provide NIKE with the following program-specific promotional benefits" ...

**Cause:** Management advised that they did not realize the benefit of regularly documenting which sponsor benefits were requested by, provided to, and/or accepted/declined by NIKE each contract year.

**Effect:** Potential noncompliance with agreement provisions that could lead to agreement disputes.

### Recommendations:

1. Create a process to document which sponsor benefits were requested by, provided to, and/or accepted/declined by NIKE each contract year.
2. Consider amending the agreement to remove the University-restricted benefit if the restriction is expected to be permanent.

### Management Response:

Target Implementation Date: May 31, 2022.

The ICA Ticket Office and Business Office Staff will work together to create a process to document sponsorships benefits that will be given to NIKE at the beginning of the annual renewal process for the fiscal year 2022 – 2023 Athletics Sporting Events. The process will include written documentation from NIKE accepting benefits received. ICA will review current benefit restrictions to determine if they are permanent and address these restrictions in the annual notification process.

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### 2. Annual labor basis reports were not being obtained by the University.

**Condition:** NIKE did not provide the annual labor basis summary reports to the University in accordance with the agreement. Further, we found no evidence that these reports were provided to the University since 2006.

**Criteria:** The 2006 NIKE Sponsorship Agreement, Paragraph 10, LABOR STANDARDS, states: " ... (iv) NIKE shall furnish to UNIVERSITY on an annual basis summary reports with respect to the implementation and enforcement of the CLC Code, and the monitoring of factories where UNIVERSITY licensed product and/or Special Make-up Apparel is manufactured."

**Cause:** Management advised that they were unaware of this agreement clause.

**Effect:** Licensed products potentially being made in working conditions that do not conform with the Fair Labor Association's (FLA) standards/guidelines and the CLC Code of Conduct could lead to adverse publicity and reputational harm to the University.

#### **Recommendations:**

1. Create a process and assign a person responsible for performing annual reviews.
2. Obtain the latest NIKE labor report and review its contents to verify that the NIKE-produced, University licensed products were made in accordance with FLA standards/guidelines and the CLC Code of Conduct.

#### **Management Response:**

Target Implementation Date: December 31, 2021.

ICA Management will assign the appropriate person to request a copy of the latest NIKE labor report and review it will CLC. The assigned staff member will also request the timing of annual report and work with CLC to determine the best process for annual review.

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### 3. No process existed to facilitate coach's endorsement performance.

**Condition:** Discussion with management revealed a process/procedure was not in place to facilitate each coach's performance under their NIKE endorsement contract.

**Criteria:** The 2006 NIKE Sponsorship Agreement, Paragraph 20(a)(8), states: "Consistent with each Coach's employment obligation to UNIVERSITY, ...UNIVERSITY shall facilitate each Coach's performance under their NIKE endorsement contract...."

**Cause:** Management advised that they were unaware of this agreement clause.

**Effect:** Potential noncompliance with agreement provisions that could lead to agreement disputes.

**Recommendation:** Implement procedures to facilitate each coach's performance under their individual NIKE endorsement contract.

### Management Response:

Target Implementation Date: March 31, 2022.

The ICA Business Office and Human Resources Department will work together to request and maintain a copy of all current coach's endorsement contracts with NIKE. Both internal ICA Departments will work together to create an internal process to review the performance of individual coach's endorsements in order to maintain compliance of their NIKE contracts.

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### 4. No support was created to document the annual NIKE Elite product dollar amount.

**Condition:** ICA did not have documentation to support the agreed upon NIKE Elite annual product dollar amount. The amendment only provided one dollar amount for both NIKE regular and Elite products to be supplied. As such, Audit could not determine the intent of both parties as to the amount of Elite products that should be provided. Also, there was no evidence that the University President reviewed or approved the uses (including marketing uses) of the NIKE Elite products.

**Criteria:** Good business practices suggest that documentation be created, approved, and maintained to support the annual NIKE Elite dollar amounts.

The 2015 NIKE Third Sponsorship Amendment, Paragraph 2, states: "Each Contract Year, representatives of the Athletic Department (to be designated by UNIVERSITY) shall be entitled to order NIKE Products through NIKE's Elite Client Services, formerly known as the "NIKE by Mail" program ("NIKE Elite"), in such amounts as designated by the Athletic Department and for such uses (specifically including for marketing purposes) as approved in writing from time-to-time by the President of the UNIVERSITY consistent with applicable law, UNIVERSITY policy or NCAA or Conference rules."

**Cause:** Management advised that they did not realize that documentation of the Elite allocation was necessary, and they were unaware of the requirement for periodic review by the University President of product uses.

**Effect:** Potential noncompliance with agreement provisions, applicable laws, University policies, or NCAA/Conference rules.

### **Recommendations:**

1. Review and document the annual NIKE Elite product dollars with NIKE to designate the annual amount, as required.
2. Provide the current amount and uses of the NIKE Elite products for review/approval in writing by the University President to ensure the use is consistent with applicable law, University policies, or NCAA/Conference rules.

### **Management Response:**

Target Implementation Date: July 1, 2022.

ICA Management will create a process to periodically review NIKE Elite usage with the President and document the requested amount of NIKE Elite product dollars.



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### 5. Shipping terms did not agree between the invoice and agreement.

**Condition:** The NIKE shipping terms on their purchase orders/invoices (F.O.B Shipping Point) did not match the required shipping terms in the agreement.

**Criteria:** The 2006 NIKE Sponsorship Agreement, second paragraph of Paragraph 3(a) SPONSOR'S SUPPLY OF PRODUCTS, states: "All Products to be supplied by NIKE hereunder shall be delivered F.O.B. to UNIVERSITY."

**Cause:** Management advised that they did not identify the discrepancy on the invoice when NIKE updated their shipping terms to match the 2010 International Commercial Terms.

**Effect:** NIKE transfers its liability at the time the carrier picks up the merchandise rather than when the merchandise is delivered to the University.

**Recommendation:** Discuss the shipping terms with NIKE and consider whether an agreement amendment is necessary.

#### **Management Response:**

Target Implementation Date: December 31, 2022.

ICA Management will contact NIKE regarding shipping terms and determine if an amendment is necessary.

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### 6. NIKE products were distributed to parties not listed in the agreement.

**Condition:** Review of NIKE distribution documentation revealed that NIKE products were being distributed, at no cost, to hotel staff, media people, guest speakers, donors, former athletes, and certain University departments in violation of the agreement.

**Criteria:** The 2006 NIKE Sponsorship Agreement, Paragraph 4 USE OF SPONSOR'S PRODUCTS, subparagraph (a), states: "Throughout the Term, UNIVERSITY shall make NIKE Products available on an exclusive basis to each "Outfitted Program" and "Footwear Program" (as those terms are defined in the Trademark License Agreement), as appropriate, to be worn and/or used (with NIKE trademarks camera-visible as they customarily appear on such product) by Team members, Coaches and Staff during practices, games, exhibitions (including during locker room activities), clinics and/or sports camps."

**Cause:** Management advised that they were unaware of the product distribution requirements.

**Effect:** Potential noncompliance with agreement provisions that could lead to agreement disputes.

**Recommendation:** Discuss the intent of this section with NIKE to clarify and document if giveaways and distributing NIKE products to former athletes, programs/departments, or other persons not defined in the agreement is acceptable to NIKE. Then consider whether an agreement amendment is necessary.

#### **Management Response:**

Target Implementation Date: June 30, 2022.

ICA Management will contact NIKE to discuss this section of the NIKE contract and determine if an amendment is necessary.