

**THE UNIVERSITY OF MONTANA
VIRTU CONSULTING**

USE AGREEMENT

THIS LETTER OF INTENT sets forth our understanding with respect to Virtu Consulting, LLC's ("Virtu") installation and operation of two new video and scoring systems at The University of Montana ("University"). Prior to entering into the final agreement between the parties, the University agrees not to use any services or information provided to the University from Virtu for its benefit or the benefit of any third party. In connection with the transaction, we have the following understandings and shall enter into an agreement including the following provisions (any provision below providing "to be determined by parties" shall be determined prior to the execution of the final agreement).

1. RELATIONSHIP OF THE PARTIES

The relationship between Virtu and the University is that of independent contractors and shall not be construed as a joint venture, partnership or principal-agent relationship, and under no circumstances shall any of the employees of one party be deemed to be employees of the other party for any purpose. This Agreement shall not be construed as authority for either party to act for the other in any agency or any other capacity or to make commitments of any kind for the account of or on behalf of the other, except as expressly set forth in this Agreement.

2. SCOPE OF SERVICES

(a) Virtu shall provide to the University two new video and scoring systems ("Systems") to be installed at Washington Grizzly Stadium and at Adams Center ("Stadiums"), respectively, at no cost to the University. The University agrees to allow Virtu to install the Systems in the Stadiums as the Stadiums' scoring systems. During the term of this Agreement, all right, title, and interest in the Systems shall be retained by Virtu.

(b) Virtu shall provide, through sponsorship, all equipment, installation, maintenance and operation of the Systems at no cost to the University. The Systems' design and equipment shall meet with the approval of the University.

(c) Virtu shall use its best efforts to install one System in Washington Stadium on or before September 1, 2001 and use its best efforts to install the other System in Adams Center on or before November 1, 2001.

(d) Virtu estimates that the aggregate costs of the Systems, including installation, shall be between \$2.1 million and \$2.5 million. If such costs are more than \$2.5 million, this Agreement shall terminate and the parties shall enter into good faith negotiations in order to re-negotiate another agreement mutually acceptable to both parties. In addition, if at any time during the term of this Agreement the net sponsorship revenue generated by Virtu by the sale of advertising on the Systems is insufficient to cover the Debt Service (as defined below) obligation, this Agreement shall terminate and the parties shall enter into good faith negotiations in order to re-negotiate another agreement mutually acceptable to both parties.

- Options for financing of the project include the possibility of a State of Montana InterCap Loan, amortized over a ten year period with The University of Montana owning the equipment and Virtu providing management services; or,
- Virtu will obtain financing at a rate not to exceed 1% over the Prime rate, amortized over a fifteen year term; or
- Virtu will work with the vendors to finance the equipment over a term acceptable to both parties.
- Title to the systems shall be determined by the parties when financing has been determined.

(e) Virtu shall have the exclusive right to solicit and place sponsors (both permanent and spot messages) on the Systems. All sponsor agreements shall be between Virtu and the sponsor. All such agreements shall be consented to by the University and such consent shall not be unreasonably withheld. The University shall use its best efforts to assist Virtu in the solicitation of sponsorships for the Systems.

(f) The University shall not add additional sponsor panels within either Stadium during the term of this Agreement, other than temporary banners for certain events, provided that such temporary banners do not obstruct the visibility of the Systems' sponsor panels and such banners do not conflict with the Systems' sponsor agreements entered into by Virtu; provided, however, that University reserves the right to display such temporary signage as may be necessary to support a short term event (3-5 days). In such instance, the parties agree to work together toward a satisfactory resolution.

(g) The Systems shall be warranted to the extent of the warranties provided by Virtu's suppliers as such warranties relate to the Systems.

3. TERM AND TERMINATION

The term of this Agreement is effective as of the date both Systems are fully installed in the Stadiums ("Effective Date"). This Agreement shall remain in effect for fifteen (15) years from the Effective Date unless it is terminated earlier or extended as provided herein. This Agreement may be terminated:

- (a) by either party, effective thirty (30) days after providing written notice to the other party of a material breach of this Agreement, if the other party fails to cure any such material breach within such thirty-day period after written notice of the breach;
- (b) at any time upon the mutual agreement of both parties; and

(c) by Virtu, if either Stadium ceases to be used by the University in substantially the same manner as the use as of the Effective Date; in addition, if the University ceases to hold events or games at either of the Stadiums for a certain period of time for any reason whatsoever ("No Use Period"), Virtu shall have the option to extend the term of this Agreement by a period equal to the period of time of such No Use Period.

4. COMPENSATION

Revenues received by Virtu on account of sponsorship of the Systems shall be retained and distributed in the following amounts and priority:

- (a) First, a maximum of **\$507,000** of the gross revenues shall be paid annually to the University for the term of this Agreement. Such amount is based on any existing System advertising contracts.
- (b) Second, an amount equal to the monthly Debt Service shall either be retained by Virtu or distributed to the University as agreed to by the parties hereto.
- (c) Third, an annual sponsorship marketing commission amount equal to twenty percent (20%) of the aggregate gross sponsorship revenues for the fifteen (15) year term shall be retained by Virtu.
- (d) Fourth, Virtu shall retain the following amounts in consideration for its operation and maintenance of the Systems:
 - (i) Amounts for operation of the Systems shall be equal to eight percent (8%) of annual Debt Service payments (such percentage shall be increased to eleven percent (11%) commencing four (4) years after the Effective Date); and
 - (ii) Amounts for maintenance of the Systems shall be equal to ten percent (10%) of annual Debt Service payments (such percentage shall be increased to fifteen percent (15%) commencing four (4) years after the Effective Date).
- (e) Fifth, all remaining revenues, if any, shall be equally divided between the parties.

5. COVENANTS

- (a) Both parties shall perform all of their activities, obligations and responsibilities contemplated under this Agreement in compliance with all applicable laws, rules, and regulations.
- (b) Both parties shall provide proof of liability insurance to the other party. Such policies shall be in a form reasonably agreed to by Virtu.

AGREED TO AS OF THE DATE ABOVE:

VIRTU CONSULTING, LLC,
an Arizona limited liability company

THE UNIVERSITY OF MONTANA,
a subdivision of the State of Montana

Terry Pugh, Manager

By: _____
(signature)

(print name)

Its: _____

