

AGREEMENT

This Agreement is entered into between the University of Notre Dame du Lac ("Notre Dame") and University of New Mexico ("UNM") on the 10 day of August, 2015.

1. **PURPOSE:** The purpose of this Agreement is to confirm the arrangements and conditions under which Notre Dame and UNM will compete in the following game of intercollegiate football (the "Game") to be played on the following date at the following location:

DATE

HOST @ LOCATION

September 14, 2019

Notre Dame @ Notre Dame, IN

The host as identified above is referred to herein as the Host Institution, and the other party (the visitor) is referred to herein as the Visiting Institution.

2. **OFFICIALS:** The Host Institution shall appoint officials, including Instant Replay crews, for the Game.

3. **ELIGIBILITY:** The Game shall be governed by the rules of the NCAA and applicable conference(s) (if any) in effect on the date of the Game. The eligibility of players to participate in the Game shall be determined by the rules of the NCAA, applicable conference(s) (if any), and the respective institutions in effect on the date of the Game.

4. **GAME MANAGEMENT:** The Host Institution shall be responsible for managing the Game, at its own cost, including but not limited to procurement of the facility (if applicable), and shall be responsible for arranging and conducting ticket sales, advertising, security and all of the other details customarily attendant to hosting a Division I intercollegiate football game, and paying all expenses associated therewith, except for the expenses of the Visiting Institution. The Host Institution shall retain all revenue associated with the Game unless otherwise set forth herein.

5. **GUARANTEE:** The Host Institution shall pay to the Visiting Institution a guaranteed sum of \$1,100,000 for the Game. The first \$50,000 of such guaranteed sum shall be paid by the Host Institution to the Visiting Institution within sixty (60) days of the execution of this Agreement. The remaining balance of the guaranteed sum shall be paid by the Host Institution to the Visiting

institution no later than sixty (60) days following the date of the Game. Notwithstanding any term to the contrary herein, in the event that the Visiting Institution cancels the Game such that the Visiting Institution owes liquidated damages to the Host Institution in accordance with Section 6, the Visiting Institution shall be obligated to return to the Host Institution the initial \$50,000 payment of the guaranteed sum in addition to the liquidated damages owed to the Host Institution.

6. CANCELLATION:

A. Neither party shall be considered to have breached this Agreement for cancelling the Game on any of the following grounds: (i) an act of God, national emergency, natural disaster, war, terrorism, civil unrest, or court order; (ii) the discontinuance of the NCAA in its current form such that the parties are either no longer members of the same athletic association or no longer members of the same division of a common athletic association; (iii) the party becomes obligated, as a condition of athletic conference membership or affiliation (for football), to play a greater number of regular season football games against conference-designated opponents than it is currently obligated to play against conference-designated opponents in the regular season of the cancelled Game, where Notre Dame is currently obligated to play 5 football games each regular season against conference-designated opponents as a condition of its affiliation with the Atlantic Coast Conference for football; or (iv) any other cause beyond the control of the party.

B. If either party is prohibited from appearing in a televised broadcast of the Game by virtue of a sanction imposed by the university, the university's conference, or the NCAA ("the sanctioned party"), then the non-sanctioned party shall have the right to cancel the Game. The non-sanctioned party shall notify the sanctioned party of its intent to cancel under this provision within thirty (30) days of learning about the sanction that prohibits the sanctioned party from appearing on television. In the event of such a cancellation by the non-sanctioned party, the cancellation will constitute and be construed for the purposes of Section 6.C as a cancellation by the sanctioned party as of the date the sanctioned party receives the notice of cancellation, such that the sanctioned party shall pay to the non-sanctioned party the applicable liquidated damages under Section 6.C and such that the non-sanctioned party shall have no financial liability to the sanctioned party for the

cancellation. Each party hereby agrees that, if the party is prohibited from appearing in a televised broadcast of the Game by virtue of a sanction, the party forfeits any and all legal rights relative to a cancellation of the Game, including but not limited to any claim for liquidated damages from the other party. In the event that both parties are prohibited from appearing in a televised broadcast of the Game by virtue of a sanction, both parties forfeit any and all legal rights relative to a cancellation of the Game, including but not limited to any claim for liquidated damages from the other party; in this event, neither party shall be considered to have breached this Agreement if it cancels the Game.

C. If for any reason other than those set forth in Section 6.A a party cancels the Game, the party cancelling the Game must pay to the other party as liquidated damages:

- The sum of \$250,000 if notice of cancellation is received two years or more before the scheduled date of the cancelled Game;
- The sum of \$500,000 if notice of cancellation is received more than one year but less than two years before the scheduled date of the cancelled Game; or
- The sum of \$1,000,000 if notice of cancellation is received one year or less before the scheduled date of the cancelled Game.

D. Payment of the applicable liquidated damages amount, as set forth in this Section 6, shall be the sole remedy for damages incurred because of cancellation of the related Game. The parties agree that each liquidated damages amount represents a reasonable approximation of actual damages likely to be suffered in the event of cancellation of the Game under the related circumstances and is not a penalty, and they further agree that actual damages would be difficult to calculate accurately in light of the uncertainties of attendance, revenue, costs and expenses resulting from a Game between these two parties. The liquidated damages must be paid in full within sixty (60) days of notice of cancellation of the Game.

7. ^{de} **TICKETING:** The Visiting Institution shall have the option of purchasing from the Host Institution up to 5,000 tickets for the Game. The Visiting Institution shall notify the Host Institution of the number of tickets it shall purchase no later than 6 months prior to the date of the

Game. The Visiting Institution shall return all unsold tickets to the Host Institution in sufficient time to ensure their sale prior to the Game. In the event the Visiting Institution does return tickets, the following limitations shall apply: (a) no more than 1,000 tickets may be returned in total; (b) during the period from 120 days prior to the Game to 90 days prior to the Game, no more than 500 tickets may be returned; (c) during the period from 89 days prior to the Game to 60 days prior to the Game, no more than 100 tickets may be returned; (d) during the period from 59 days prior to the Game to 30 days prior to the Game, no more than 50 tickets may be returned; and (e) no tickets may be returned during the period from 29 days prior to the Game through the date of the Game. Tickets must be purchased for the Visiting Institution's band, and such tickets shall count toward the Visiting Institution's ticket purchase allotment. No ticket purchase shall be required for the Visiting Team's cheerleading squad and mascot. Unless otherwise agreed to by the parties, the limitation on the size of the Visiting Institution's band and cheerleading squad is as follows: 400 band members; 12 cheerleaders; and 1 mascot.

8. **RADIO:** Each party shall be permitted to provide its audio broadcast of the Game only to its ordinary institutional radio broadcast network and/or normal recurring set of stations/outlets, which broadcast also may be distributed to an institutional satellite radio carrier and an institutional website. Neither party may resell or grant Game audio broadcast rights to any other third party networker. In addition, a single student radio station from each the Host Institution and the Visiting Institution shall be permitted to produce a radio broadcast of the Game. There shall be no sharing of radio revenue between the parties.

9. **TELEVISION:** If a crossover agreement applies to any Game played subject to this Agreement, such crossover agreement shall govern in the event of any conflict between the crossover agreement and this Section 9.

A. UNM acknowledges and agrees that (a) all rights to telecast or distribute (live or delayed, whole or condensed (including highlights), throughout the universe, in any and all markets, in any and all languages and via any and all forms of media and methods of distribution and distribution technology) the Game belong to Notre Dame, (b) Notre Dame shall have the exclusive right to enter into agreements with certain third parties for the telecast or distribution of the Game, (c) Notre Dame has no ability to grant UNM any

rights for the telecast or distribution of the Game, and (d) Notre Dame shall have the exclusive right to retain all revenues derived from the telecast or distribution of the Game.

B. Both the Host Institution and the Visiting Institution shall have the right to produce films and/or videotapes of the Game for internal use by the football coaches and student-athletes and for evaluation by professional personnel only and for no other purpose. The Host Institution agrees to provide facilities for such cameras as may be reasonably required by the Visiting Institution to produce such films and/or videotapes. In addition, the Visiting Institution shall be allowed to use up to eight minutes (8:00) of footage originating from the live telecast of the Game, subject to any timeframe restrictions present in the Host Institution's television contract, as part of a weekly coaches' show, and up to three minutes (3:00) of footage originating from the live telecast of the Game, subject to any timeframe restrictions present in the Host Institution's television contract, for use on the Visiting Institution's official athletics website. Any other usage by the Visiting Institution of footage originating from the live telecast of the Game shall be governed by a separate agreement between the Visiting Institution and the applicable broadcast partner. In no event shall the Visiting Institution interfere with the filming of the Game by the television network camera crew or the Host Institution.

C. The Host Institution agrees to provide accommodations for the origination of any of the programs described herein and to provide adequate accommodations for telecast origination if no other television feed is available.

10. **CORPORATE CONTRACTS:** Subject to the limitations imposed by any third party venue, the Visiting Institution shall have the right to control its use of the equipment and supplies that are customarily within a team's control in connection with that team's participation in a collegiate football game, which equipment and supplies shall include without limitation player and coach apparel, uniforms, coach headsets, player equipment, footballs for team use, cups, coolers, ice chests, squeeze bottles, sideline carts, and towels. The Visiting Institution's right of control shall extend to the display of sponsorship recognition on such equipment and supplies, which may include without limitation the display of sponsor names, logos, and/or trademarks.

11. MISCELLANEOUS PROVISIONS:

A. The headings used in this Agreement are for convenience only and shall not affect the interpretation of this Agreement.

B. By executing this Agreement, the undersigned parties represent and warrant that they are each authorized to act on behalf of the educational institution they represent and the terms of this Agreement shall bind each institution and their respective officers, trustees, employees, agents, servants, affiliates and successors. The parties further acknowledge that they may have crossover agreements with independent entities, which may have terms that are substantially different than those set forth herein, and that the existence of such other agreements shall have no effect on the rights and obligations of the parties under this Agreement except as expressly set forth in Section 9.

C. This Agreement shall be construed in accordance with, and governed by, the law of the State of Indiana. Any legal proceedings arising hereunder shall be filed and adjudicated in the courts of the State of Indiana, and the parties consent to jurisdiction in Indiana.

D. All notices, consents, requests, demands or other communications to the respective parties shall be in writing and shall be effective for all purposes upon receipt in the case of: (i) personal delivery; (ii) delivery by messenger or overnight carrier; or (iii) delivery by U.S. first class certified or registered mail, postage prepaid. Either party may change its address by written notice to the other party in any manner set forth in this Section 11.D.

E. This Agreement may not be assigned in whole or in part by either party without the prior written consent of the other party.

F. No amendment, modification, supplement, or waiver of any obligations under this Agreement shall be binding unless set forth in a writing signed by the party against which enforcement is sought. No delay or failure to require performance of any provision

of this Agreement shall constitute a waiver of that provision as to any other instance. Any waiver granted shall apply solely to the specific instance expressly stated.

G. This Agreement constitutes the entire agreement between the parties pertaining to the matters referred to herein, and supersedes and renders null and void all prior and contemporaneous agreements, representations, understandings, correspondence, discussions, exchanges, and other communications to the extent such concern football games to be played between the parties in 2019 and/or any year thereafter.

H. Each party shall execute and deliver all such documents and do all such acts as the other party may reasonably request for accomplishing the purposes of this Agreement.

I. This Agreement does not, and is not intended to, create a joint venture, partnership, association or other entity or create a fiduciary or principal/agency relationship between the parties to this Agreement.

J. None of the provisions of this Agreement shall be for the benefit of or be enforceable by any third party, including the creditors of any party hereto.

K. If any portion of this Agreement is declared null, void, invalid, or unenforceable, such provisions shall be stricken from the Agreement. All of the provisions of this Agreement not so stricken shall remain in full force and effect and shall be binding upon the parties.

IN WITNESS WHEREOF, the undersigned parties have executed this Agreement as of the date first set forth above.

UNIVERSITY OF NEW MEXICO:

UNIVERSITY OF NOTRE DAME DU LAC:

By: 

By: 

Title: *VP Athletics*

Jack Swarbrick

Title: Vice President and Director of Athletics

