



SOFTBALL GAME AGREEMENT

THIS SOFTBALL GAME AGREEMENT (this "Agreement") is made and entered into as of January 25, 2021 by and between the Arizona Board of Regents for and on behalf of Arizona State University and its Department of Sun Devil Athletics ("ASU") and University of New Mexico ("UNM").

In consideration of the promises and mutual covenants contained in this Agreement, the parties agree as follows:

1. Playing Date(s). The parties agree that their respective varsity SOFTBALL teams will play each other in the game(s) to be held on the dates and at the locations set forth below:

<u>Date</u>	<u>Location</u>	<u>Home Team / Visiting Team</u>	<u>Start Time</u>
February 28, 2021	Alberta B. Farrington Stadium	ASU/UNM	11:00 AM

The right to change the time of the game as required by national or regional television broadcast of the game is reserved by the Home Team pursuant to Section 6 hereof.

2. Compensation. In consideration of participation in the above described games, the parties agree upon the following financial arrangements: None.

3. Tickets. All ticket prices shall be set by the Home Team. The Visiting Team will have the option of purchasing up to 0 tickets at face value. In addition, the Visiting Team will receive 0 complimentary tickets. The Visiting Team will return all unsold tickets to the Home Team no later than two weeks prior to the game unless a sellout has been declared by the Home Team. If a sellout is declared by the Home Team two weeks or more prior to the game, the Visiting Team will have 24 hours to return all remaining unsold tickets it does not wish to purchase to the Home Team. Notwithstanding the foregoing, the parties acknowledge and agree that the Home Team may be required to limit or altogether prohibit ticket distribution to the Visiting Team based on COVID-19-related state or local orders, directives, or mandates.

4. Expenses. Except as otherwise provided in this Agreement, the Visiting Team will be responsible for defraying any and all of its own costs related to its participation in the game, including but not limited to, transportation, meals and lodging.

5. Media Rights. Radio and television rights will be retained by the Home Team and/or the conference of the Home Team. The Visiting Team will be provided space for one radio broadcast outlet for the non-exclusive regional terrestrial radio and satellite radio broadcast by the Visiting Team's flagship station and additional terrestrial distribution on the Visiting Team's regional network of terrestrial radio stations. The Home Team will not be required to make any alteration to or expansion of existing facilities in its home stadium for the purposes of this Agreement.

6. Officials. Game officials shall be assigned by the Home Team and/or the conference of the Home Team. The costs for the officials of each game will be the responsibility of the Home Team.

7. Rules. Each game will be governed in all respects, including the eligibility of the players, by the rules of the National Collegiate Athletic Association (NCAA) in effect on the date of the game, the rules and regulations of the respective intercollegiate conferences of ASU and UNM and the institutional rules of ASU and UNM in effect on the date of the game.

8. Cancellation. The parties agree that if one party cancels, forfeits, unilaterally delays or postpones, or fails to appear at, any of the above described games (these and similar actions hereafter referred to as "Cancel"), actual damages — including those relating to public relations, radio and television broadcasts, lost profits, and other consequential damages — would be difficult or impossible to calculate. The parties further agree that processes, including litigation, to determine damages would be both unnecessarily expensive and time-consuming. Therefore, the parties agree that if one party Cancels (hereafter, the "Canceling Party") any game or games, the Canceling Party will pay as liquidated damages to the other party \$15,000 for each canceled game, to be paid no later than thirty (30) days following the scheduled date for the game, regardless of whether alternate arrangements can be or are made for a replacement game. Moreover, the Canceling Party shall not be entitled to any guaranteed payment, and it shall pay all attorneys' fees and/or collection costs the other party incurs in collecting the liquidated damages to the extent awarded by a court of competent jurisdiction.

Notwithstanding anything else in this Agreement, a party may Cancel any game if the Canceling Party Cancels because of: (i) a Force Majeure Event; (ii) the failure of either party to meet COVID-19 or other medical testing requirements or safety precautions imposed by the NCAA, conferences (including the Pac-12 Conference Return To Play And Testing Summary, a copy of which will be provided to UNM 30 days before the game), government authorities, or either of the parties in advance of each game; (iii) a COVID-19-related quarantine or other pandemic-related restriction on the Canceling Party's ability to travel or participate in the game, including without limitation, if a significant number of the Canceling Party's team tests positive for COVID-19; (iv) a change in conference scheduling of the Canceling Party that requires the Canceling Party to reduce the number of non-conference Softball games during a season in which a game is scheduled, which the Canceling Party communicates to the other party no later than 2 months prior to each respective game; or (v) a mutual agreement in writing by the parties to Cancel a game or the games. In the event that a party Cancels a game pursuant to this Section, the Canceling Party will not owe or be entitled to any guaranteed payment under Section 2 or liquidated damages under this Section 8, nor will the Canceling Party be responsible for any other actual damages due to the Canceled game. The Cancellation of any game will not affect the remainder of this Agreement, which will remain in effect, including the obligation to play any remaining games specified in Section 1 of this Agreement; provided, however, that Cancellations for the reasons listed above in clause (iii) must apply to both games (or, if one of the games has already been played, the parties agree to schedule the remaining game in another year on a mutually agreeable date).

For purposes of this Agreement, a "Force Majeure Event" shall mean an event or circumstance that is beyond the reasonable control and without the fault or negligence of the party impacted, and that could not have been prevented by the reasonable diligence of the party. Without in any way limiting the foregoing, a Force Majeure Event may include, but is not restricted to, acts of God or of a public enemy, acts of the government in either its sovereign or contractual capacity, war, riots, fires, floods, epidemics or pandemics, mass health issues or disease, quarantine restrictions, strikes or labor difficulties, civil tumult, freight embargoes, natural disasters, unusually severe weather, a failure or disruption of utilities or critical electronic systems, acts of terrorism, mass shootings or other emergencies that may disrupt the operations of a party's campus or facility.

9. Authority. Each party acknowledges that it has read and freely signed this Agreement. The individuals executing this Agreement on behalf of the respective parties hereby warrant that they are duly authorized and empowered by the parties to so execute.

10. Entire Agreement; Waiver. This Agreement represents the entire agreement between the parties pertaining to the matters referred to herein and supersedes all prior and contemporaneous agreements, representations and understandings of the parties relating to the subject matter hereof. 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.

11. Assignment; Severability. Neither party may assign any of its rights or obligations under this Agreement without the prior written consent of the other party; any purported assignment without that consent is void *ab initio*. Any provisions of this Agreement found by a court to be void or unenforceable shall not affect the validity or enforceability of any other provisions.

12. Relationship of the Parties. The parties are independent contractors, and this Agreement will not be construed in any way to create an agency, employment, partnership, or joint venture relationship between the parties for any purpose whatsoever. Neither party shall have, or hold itself out as having, power or authority to bind or create liability for the other by its negligent or intentional act or omission.

13. Notices. All notices, consents, requests, demands or other communications between the parties must be given 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; (iii) delivery by U.S. first class certified or registered mail, postage prepaid; or (iv) transmittal by email, to the last known addresses or facsimile numbers of the parties. Either party may change its address or facsimile number by written notice to the other party in any manner set forth in this Section.

Notices to ASU:
Arizona State University
Sun Devil Athletics
P.O. Box 872505
Tempe, AZ 85287-2505
Attention: Trisha Ford
Email: Trisha.Ford@asu.edu

Notices to UNM:
University of New Mexico
1 University of New Mexico MSCO4 2680
Albuquerque, NM 87131
Attention: Paul Congleton & David Williams
Email: pcongleton@unm.edu; davidwilliams@unm.edu

14. State of Arizona Provisions.

a. Nondiscrimination. The parties will comply with all applicable state and federal laws, rules, regulations and executive orders governing equal employment opportunity, immigration and nondiscrimination, including the Americans with Disabilities Act.

b. Conflict of Interest. ASU's participation in this Agreement is subject to Arizona Revised Statutes ("A.R.S.") Section 38-511, which provides that this Agreement may be cancelled if any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of ASU is, at any time while this Agreement or any extension thereof is in effect, an employee or agent of the other party to this Agreement in any capacity or a consultant to any other party with respect to the subject matter of this Agreement.

c. Notice of Arbitration Statutes. Notice is given of A.R.S. Sections 12-1518 and 12-133.

d. Failure of Legislature to appropriate. If ASU's performance under this Agreement depends upon the appropriation of funds by the Arizona Legislature, and if the Legislature fails to appropriate the funds necessary for performance, then ASU may provide written notice of this to UNM and cancel this Agreement without further obligation of ASU. Appropriation is a legislative act and is beyond the control of ASU.

15. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument, and photocopy, facsimile, electronic and other copies shall have the same effect for all purposes as an ink-signed original.

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

**THE ARIZONA BOARD OF REGENTS
for and on behalf of
ARIZONA STATE UNIVERSITY**

University of New Mexico

Ken Landphere

David Williams

PRINT NAME

Kenneth C Landphere

Kenneth C Landphere (Feb 15, 2021 10:10 MST)

PRINT NAME

David Williams

David Williams (Feb 15, 2021 10:07 MST)

SIGNATURE

Feb 15, 2021

SIGNATURE

Feb 15, 2021

DATE

Sr. Assoc. Athletic Director

DATE

Deputy Athletic Director

TITLE

TITLE

Home/ASU Head Coach Initial

DS
PC

Visiting/UNM Head Coach Initial

PLEASE SIGN WHERE INDICATED. ASU REPRESENTATIVES WILL BE NOTIFIED THROUGH THE SIGNING SOFTWARE