

Approaching NIL Opportunities: Contract Review

Carson Thiel – Sports Law Clinic



Road Map

First Steps in Approaching an NIL Opportunity



Key Terms in Standard NIL Agreements

Deliverables

Consideration

Usage Rights

Exclusivity

Force Majeure

Morality
Clauses

Intellectual
Property Rights

Tax
Considerations



Negotiation

You Received an NIL Offer – What to do now



First Step: Consult your school's policy on name, image, and likeness opportunities



Gonzaga Athletics NIL Policy

Gonzaga Athletics NIL Policy: Summarized

Q: May Gonzaga student-athletes receive payment based on athletic performance (i.e. pay for play)?

- A: No. Both the NCAA and Gonzaga University strictly prohibit payment based on athletic performance.

Q: May a prospective student-athlete receive payment, or the promise of a NIL opportunity as an inducement to attend Gonzaga University?

- A: No. Both the NCAA and Gonzaga University strictly prohibit recruiting inducements, including the promise of NIL opportunities upon enrollment. Only Collective and Boosters can do this.

Q: May Gonzaga student-athletes hire an agent?

- A: Yes. Provided the agent's role is limited to NIL marketing activities. Student-athletes are prohibited from hiring an agent to market their athletic ability to secure professional athletic opportunities. Agent relationships must be disclosed to Gonzaga Athletics.

Q: Are student-athletes required to disclose NIL activities?

- A: Yes. Student-athletes must disclose NIL opportunities to Gonzaga Athletics.

Gonzaga Athletics NIL Policy: Continued

Q: May Gonzaga University participate in NIL activities?

- A: No. Gonzaga University, Gonzaga Athletics, and Gonzaga employees may not arrange, facilitate, or participate in NIL activities.

Q: Are there limitations on the types of NIL activities Gonzaga student-athletes may engage in?

- A: Yes. Gonzaga student-athletes may not engage in NIL activities that promote NCAA banned substances or sports wagering activities. In limited circumstances, other NIL opportunities may violate Gonzaga's NIL policy.

Q: May a Gonzaga student-athlete use institutional trademarks during NIL activities?

- A: No. Gonzaga student-athletes may not use institutional trademarks during NIL activities.

Q: May Gonzaga student-athletes engage in NIL activities while participating in mandatory team activities (e.g. competition)?

- A: No. NIL activities must occur outside of mandatory team activities. Additionally, team issued gear and equipment must be used during mandatory team activities.

Screenshots from a commercial featuring Gonzaga's Drew Timme at a roulette table at Northern Quest Resort & Casino in Spokane, Wash.



Drew Timme X Northern Quest Casino: You Probably Couldn't Get Away With This

Next Steps

1

Disclose NIL Opportunity
to your School

2

Once school approves,
read the contract & look
out for:

- Deliverables
- Key Terms

3

Seek Legal Services if:

- Contract terms are confusing
 - You're concerned about negative impacts of signing the NIL agreement

Key Terms



Key Terms: Deliverables



- **Deliverables**: The product or services you are required to perform to receive compensation on an NIL deal
- **Examples of Common Deliverables:**
 - Posting on social media
 - Public appearances
 - Speaking engagements
 - Autograph signings
 - Photoshoots/Commercial shoots





Deliverables: What to Look for



- Is the deal clear on what you must do? Does it ask for something you can provide? Does it have a timeline for completion/payment?
- These terms should be clear and specific.
- Examples:
- How many pictures are wanted in the social media post?
- How often do I have to post? At what date/time?
- Does the brand label need to be showing?
- Where do I have to appear and when?
- How many hours do I sign autographs and/or take photos?





Deliverables: Caution



Failing to meet your required deliverables could be considered a **breach of contract**, which could result in you not getting paid or not receiving future NIL opportunities!



Deliverables: What Not To Do

Agree to pay-for-play deliverables

- "Hit 20 home runs this year and we will buy you a car"



Unrealistic deliverables

- "We need you to shoot 20 commercials for us this semester"



Deliverables that might hurt the reputation of you, your team, or your school

- Examples: Promoting sports gambling, alcohol, tobacco, or pornography



Key Terms: Length of Time

Example Language: “This Agreement shall commence on the date this Agreement is signed and continue for a **period of 1 year** and thereafter terminate.”

Things To Think About

- How much time you can devote?
- Can you complete your deliverables in time?
- Example: You are about to graduate or move away, make sure the time length of the deal does not conflict



What Not To Do: Length of Time

Gervon Dexter
accepted 436K in NIL
money while at
Florida in exchange
for 15% of his pre-tax
NFL earnings for 25
years

Key Terms: Exclusivity

Example Language: “Student grants COMPANY an **exclusive license** to use Student’s name, image, and likeness.”

Effect: Limits the student’s ability to work with more than one Company for NIL deals.

Things You Should Know

- Exclusivity clauses may restrict your ability to enter NIL deals with other companies; Breach may result in litigation
- Avoid agreements that give a Company exclusive NIL access in a broad category



What Not To Do: Exclusivity

If you give a company an exclusive license to use your NIL, you chain yourself to that company and cut yourself off from other potential NIL opportunities

Key Terms: Usage Rights

Example Language: “Athlete hereby grants Company a non-exclusive, worldwide, royalty-free, and perpetual right to use, reproduce, display, distribute, and otherwise exploit the Athlete's name, image, likeness, voice, signature, and biographical information (collectively, "NIL Rights") in connection with [purpose of the campaign]”

Standard Scope of Use: Company may use Athlete NIL for “any and all media.”

What is the Company’s marketing plan?

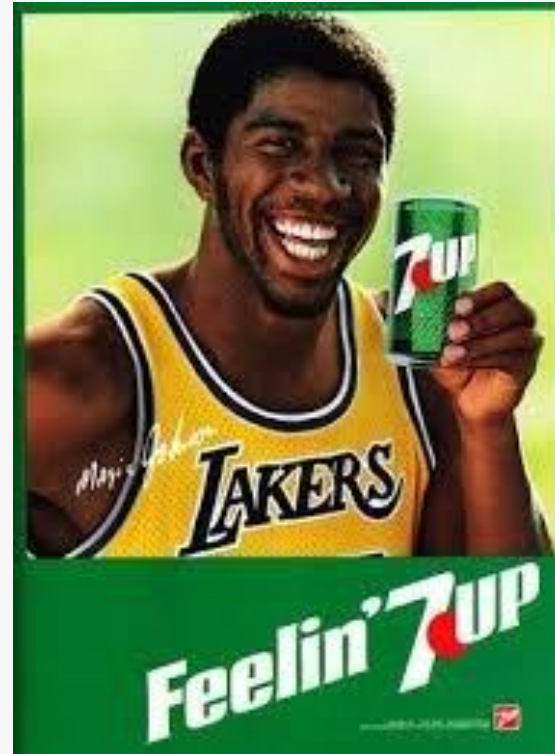
Usage Rights: Continued

Things to Think About:

- Whether the contract allows the Company to use your NIL after the contract ends?
 - **Red Flag:** Perpetuity is usually not in the athlete's best interest
- Whether you want to limit what your NIL can be used for?
- It is illegal for a company to use a student athletes NIL without you expressly granting usage rights
- Parties should negotiate an *exhaustion period clause* in which usage rights expire at a specified point

What Not To Do: Usage Rights

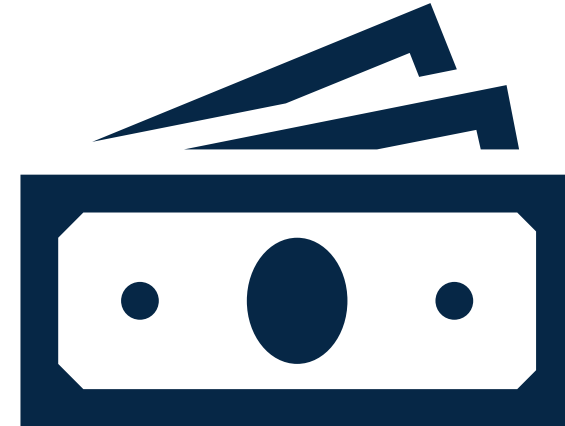
Don't agree to allow
Company to use your NIL
for "any and all media"
until you know exactly
what they want to use it
for



Key Terms: Consideration

This is how you get paid!

- Compensation for services must be present in every NIL contract
- Compensation can be monetary or non-monetary as long as it is “reasonable” and tied to the value of the services



What Not To Do: Consideration

Extreme Example: One million dollars for one autograph signing is going to be deemed "unreasonable" in a court of law



Key Terms: Force Majeure

- **Effect:** Excuses a party from a contract upon the occurrence of specified events, usually outside the control of the parties.
- **Examples:**
 - War
 - Crime
 - Unpredictable Weather Events
- **Importance:**
 - Very important for NIL contracts, especially if your deliverable is a public appearance.



Worst Case Scenario: No Force Majeure

You're heading to an
autograph signing in a
blizzard

Key Terms: Morality Clauses

Effect: Allows Company/Athlete to terminate the agreement based on certain bad conduct by the other party

- Example: UCLA student lost NIL deal because they directed profanity at a fellow student on video

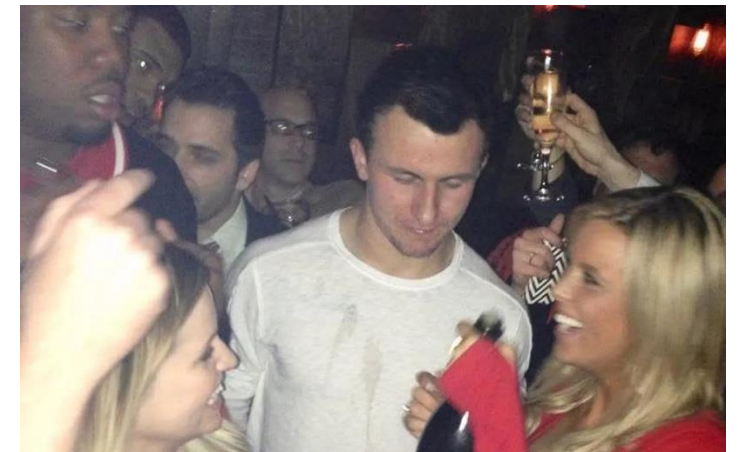
Things You Should Think About

- Some schools prohibit student athletes from engaging with certain types of NIL partners or products
- Negotiate a mutual morality clause
 - If the Company behaves in a way that warrants termination of the Agreement, you have the right to terminate

What Not To Do: Morality Clauses

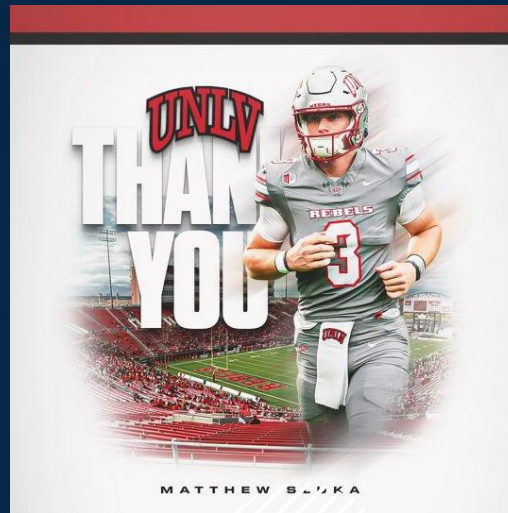
Don't agree to an NIL deal with a company that does not align with your values

Don't act out in a way that could jeopardize your own NIL deal



No Oral Contracts: Get It In Writing

I have decided to utilize my redshirt year and will not be playing in any additional games this season. I committed to UNLV based on certain representations that were made to me, which were not upheld after I enrolled. Despite discussions, it became clear that these commitments would not be fulfilled in the future. I wish my teammates the best of luck this season and hope for the continued success of the program.



- Oral contracts may be enforceable, but it makes things messy:
- Easier to not fulfill obligations/change them down the line
- Your NIL Partner could refuse to pay
- More difficult for a court to enforce



Miscellaneous Terms

Indemnification: Means one party must pay the costs of the other party in the event of a lawsuit.

Independent Contractor: A type of business relationship where the independent contractor does not work directly for Company as an employee.

Perpetuity: A deal term that does not end and could bind student forever.

More Miscellaneous Terms

Termination: Ending a deal before the agreed upon date.

Notice: Describes how the parties must communicate with each other.

Assignment: Allows/prevents a part from transferring their rights in a deal to someone else.

International Student Athletes



International Students: Can You Make NIL Money?

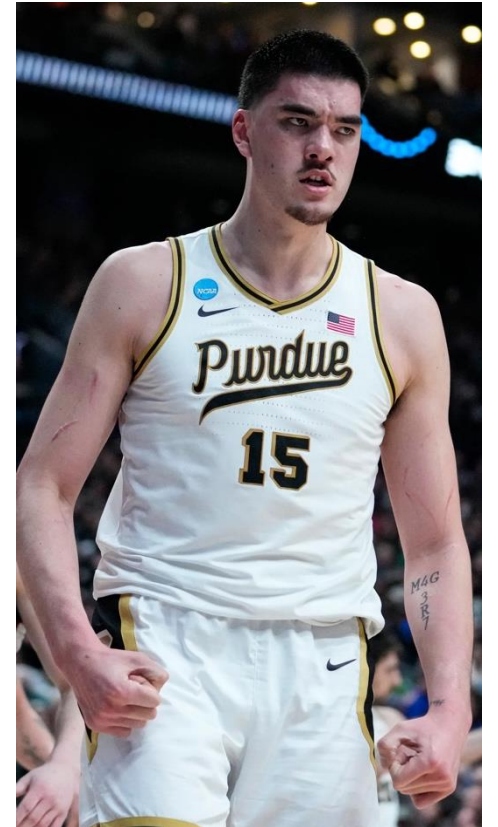
Short Answer: Unfortunately No

F-1 and J-1 Visas limit international students to on-campus and limited off-campus institutional employment

- You can't get paid in exchange for NIL work performed

NCAA bylaws prohibit payment to student athletes for work not performed

- You cannot receive passive income from NIL opportunities either



Zach Edey, a Canadian, made ZERO NIL money in his college career



International Students: What Can You Do?

You can work for the university and receive money through scholarships and grants

You can do NIL deals to get your name out there, you just can't get paid

During the off-season, you can participate in NIL work but only if it can be completed entirely in your home country

Negotiation & Closing Remarks



Negotiation



As a student athlete, you hold more power than you think!



You can advocate for yourself and get the deal that YOU want!



OR you can enlist the services of the Sports Law Clinic

Reach Out to the Sports Law Clinic for Legal Assistance and More NIL Resources



Email: mercado@gonzaga.edu



Phone: 509-313-5242



Website: Gonzaga.edu/school-of-law/clinic-centers/law-clinic/sports-law