

EMPLOYMENT CONTRACT
ADMINISTRATOR

Name: Nuñez Eduardo J.

Contract Type: Multi-Year

Title: Vice President and Director of
Intercollegiate Athletics

Division: Intercollegiate Athletics

This Employment Contract, referred to herein as the "Contract" is entered into between **The Regents of The University of New Mexico ("UNM" or "University")** and **Eduardo J. Nuñez ("Mr. Nuñez" or "Administrator")**. This Contract shall supersede the ADDENDUM TO EMPLOYMENT CONTRACT OF EDUARDO JUAN NUNEZ entered into between the parties on November 16, 2017.

WHEREAS the University desires to obtain the benefits of the services of the Administrator, and the Administrator desires to render such services subject to the terms and conditions set forth herein.

IN CONSIDERATION of the promises made between the parties as set forth herein and other good and valuable consideration (the sufficiency and receipt of which are hereby acknowledged) the parties agree as follows:

1. **Position:** Mr. Nuñez shall be responsible for all duties assigned by and under the direct supervision of the President of the University ("President"). Mr. Nuñez shall devote full-time to the duties and responsibilities of Vice President and Director of Intercollegiate Athletics (VPDIA), including the leadership and direction of all aspects of the University's intercollegiate athletics program; ensuring compliance with all policies and regulations of the University, the National Collegiate Athletic Association ("NCAA") and the Mountain West Conference ("MWC") or to the conference in which the University may participate. During the period of this Contract, Mr. Nuñez agrees that he shall at all times faithfully, industriously, and with the best use of his experience, ability, and talent, perform all the duties required pursuant to the terms of this Agreement and the policies of the University. Mr. Nuñez further agrees that he shall not engage in any other athletics-related employment, except as specifically approved by the President, or as provided below. Mr. Nuñez further agrees that he will not accept other employment which would be inconsistent of his duties and responsibilities under this agreement. The President shall, in her sole direction, determine whether any other employment considered by Mr. Nuñez would be inconsistent with those duties and responsibilities.
2. **Term of Contract:** Mr. Nuñez is a Contract employee in accordance with University Administrative Policy ("UAP") 3240, as may be modified from time-to-time. The Contract Term shall be for the period **November 1, 2021 through June 30, 2025** (the "Contract Term"), which constitutes four (4) separate and distinct contract employment years (each a "Contract Employment Year" or collectively the "Contract Employment Years").
3. **Base Salary and Benefits:** Mr. Nuñez base salary will be **Three Hundred Sixty Thousand Dollars (\$360,000.00)** per Contract Employment Year ("Base Salary"). Payment for the first Contract Employment Year shall be prorated to reflect that the Contract Employment Year runs from November 1, 2021 through June 30, 2022. Mr. Nuñez will not be entitled to salary increases as provided in University Administrative Policy (UAP) 3500, Wage and Salary Administration, Section 4.1. Mr. Nuñez understands and agrees that this Contract does not guarantee or entitle him to any annual increases in Base Salary unless otherwise expressly provided in this Section. Employer-paid fringe benefits shall be paid in addition to the Base Salary consistent with University policies, provided, however, that Mr. Nuñez may accrue up to 168 hours of paid annual leave but will not be entitled to payment for unused annual leave upon separation from employment as provided in UAP 3400, Annual Leave, Section 7.
4. **Other Compensation:** Mr. Nuñez shall be granted the following compensatory benefits during the Contract Term:
 - a. **Car Donor Program/Car Allowance:** At the discretion of the President, Mr. Nuñez will be provided with a courtesy car or an automobile allowance of **One Thousand Dollars (\$1,000.00)** per month.
 - i. At the discretion of the President, if Mr. Nuñez is provided a courtesy car, in accordance with the car donor program and in cooperation with local Albuquerque car and truck dealers, the University may provide a courtesy car for Mr. Nuñez' personal and business use. Mr. Nuñez shall be responsible for obtaining automobile liability insurance in accordance with insurance laws of the State of New Mexico,



and will name the University as a third-party beneficiary of such insurance policies. The University will reimburse Mr. Nunez for the cost of the automobile liability insurance and the fuel costs for the vehicle provided pursuant to this paragraph upon submission of proof of payment by Mr. Nunez and any other supplemental documentation that the University may fairly require to permit such reimbursement. In addition, Mr. Nuñez shall comply with all other federal and state laws, National Collegiate Athletic Association (NCAA) rules, University policies, and any other policies or directives of the Athletic Department applicable to the car donor program. Mr. Nuñez understands and agrees that the provision of a courtesy car is in the exclusive discretion of the President, and that Mr. Nuñez will surrender any courtesy car provided upon request of the President. Mr. Nuñez further understands and agrees that any courtesy car provided pursuant to this Section constitutes taxable compensation to Mr. Nuñez and that he is solely responsible for the tax consequences associated therewith.

- ii. At the discretion of the President, if Mr. Nuñez is provided a monthly automobile allowance, the allowance is subject to withholding as required by law. This automobile allowance is in lieu of the University furnishing Mr. Nuñez with an automobile for official use, and Mr. Nuñez agrees to use his personal automobile for that purpose. Mr. Nuñez understands and agrees that the value of this allowance is likely taxable compensation to Mr. Nuñez, and that he is solely responsible for the tax consequences.
- b. **Travel:** At the President's sole discretion, Mr. Nuñez' spouse may be added to the official University travel party for away games or other events within the continental United States. The University will provide for the cost of air travel transportation for Mr. Nuñez' spouse when added to the official University travel party. At the President's sole discretion, Mr. Nuñez' minor dependent children (together, "Family Members") may be added to the official University travel party for away games and events within the continental United States. Travel costs for Family Members (including but not limited to costs of transportation, lodging, food and incidentals) shall be at Mr. Nuñez' expense, unless determined by the President, in their sole discretion, that funds and logistics allow for the University to provide for any or all of such costs. Mr. Nuñez understands and agrees that any value received by him under this provision may be taxable compensation to him, and that Mr. Nuñez is solely responsible for the tax consequences associated therewith.
 - c. **Country Club Membership:** Mr. Nuñez will be provided one (1) family membership to a country club. The Athletics Department agrees to cover the cost of membership fees, and Mr. Nuñez agrees to pay for all personal expenses incurred in the use of the membership. Membership as contemplated by this Section includes golf and other privileges provided by the club selected, typically but not always including tennis and pool privileges. Mr. Nuñez understands and agrees that the value of this membership may be taxable compensation and that Mr. Nuñez is solely responsible for the tax consequences associated therewith.
 - d. **Media Participation/Fundraising/Personal Appearances/Advocacy:** The University may enter into agreements with radio and/or televisions station(s) under which the University will receive revenue subject to conditions and terms negotiated between the University and third parties. Irrespective of the University entering into any Media Agreements during the Contract Term, the University will, in addition to the foregoing amounts, pay to Mr. Nuñez the additional sum of **Sixty Thousand Dollars (\$60,000.00)** per Contract Employment Year in addition to Mr. Nuñez' Base Salary, to make personal appearances as a representative of the University and which will otherwise fulfill the obligations of the University with regard to those third-party contacts or other arrangements. Mr. Nuñez shall assist the University in obtaining contracts and arrangements as described in this Section, and will not unreasonably withhold or refuse any appearance which is necessary to meet the University's contractual and other obligations under this Section. Mr. Nuñez also will represent UNM's best interests in rapidly changing conditions of conference realignment, student athlete name image and likeness issues, and state resource distribution for athletics programs and understands that it is his responsibility to make himself available for speaking, fundraising, advocacy and other personal appearances on behalf of the University and the Athletics Department with regard to these issues and related subjects. Mr. Nuñez will not enter into any individual agreements which conflict with the rights of the University as described in this Section. The University will pay the amount described in this Section in twelve (12) approximately equal installments during the Contract Employment Year, as part of Mr. Nuñez' monthly compensation but in addition to, not a component of, Mr. Nuñez' Base Salary.
 - e. **Retention Incentive:** In light of Mr. Nuñez' successes in guiding the athletics department through the disruptions associated with the COVID-19 pandemic, conference realignments and changing student athlete rights and benefits, Mr. Nuñez is deemed a key employee whose services would be difficult to replace.



Accordingly, the University will pay Mr. Nuñez a one-time retention incentive of **Twenty-three Thousand, Seven Hundred Fifty Dollars and Zero Cents (\$23,750.00)** upon execution of this contract and no later than November 30, 2021. Mr. Nuñez understands and agrees that this Contract does not entitle him to any additional retention incentive payments if he remains employed at the University as VPDIA through the remainder of the Contract Term. Mr. Nuñez understands and agrees that the payment pursuant to this paragraph may be taxable compensation to him, and that Mr. Nuñez is solely responsible for any and all tax consequences associated with this compensation.

- f. **Mobile Phone:** The University agrees to provide a mobile phone and mobile phone plan, including data, with the carrier and phone device to be selected by the University.
- g. **Tickets:** Mr. Nuñez shall receive up to twelve (12) season tickets to every University home athletic contest and use of the Athletic Director's suite for home games, as appropriate. Mr. Nuñez shall receive upon request, up to twelve (12) tickets for each of the Mountain West Conference (MWC) Tournament and NCAA tournament games in which the University participate. Mr. Nuñez understands and agrees that the payments to him pursuant to this paragraph may be taxable compensation to him, and that he is solely responsible for any and all tax consequences associated with this compensation

All compensatory benefits are subject to compliance with University policies and procedures, the Mountain West Conference (MWC) rules and regulations, and the NCAA policies and procedures.

5. **Incentive Compensation:** In addition to the compensation set forth above, Mr. Nuñez is eligible for incentive payments ("Incentive Compensation") according to the following categories of professional achievement.

- a. **Student Athlete Academic Performance Rating (APR)**
 - i. Academic Performance Rating (APR) 975 or higher \$2,500
 - ii. Academic Performance Rating (APR) 985 or higher \$5,000
 - iii. A maximum of one incentive payment pursuant to subsection 5.a may be earned per Contract Employment Year.
- b. **Student Athlete Academic Performance**
 - i. NCAA Graduation Success Rate (GSR) annual increase from previous year \$5,000
 - ii. Intercollegiate Athletics Grade Point Average (GPA) 3.2 or Higher \$2,500
- c. **Director's Cup National Sports Award**
 - i. Overall Athletics Department Performance for the Director's Cup National Sports Award (NACDA) final year end ranking of 60 or better \$5,000
 - ii. Overall Athletics Department Performance for the Director's Cup National Sports Award (NACDA) final year end ranking of 25 or better \$7,500
 - iii. A maximum of one incentive payment pursuant to subsection 5.c may be earned per Contract Employment Year.
- d. **Athletic Achievement**
 - i. Top Ranked School in the Mountain West Conference (MWC) in the Director's Cup \$5,000
 - ii. Football Team Wins the MWC Championship Game \$5,000
 - iii. Football Team Wins the MWC Regular Season Conference Title \$5,000
 - iv. Football Team Participates in Non-College Football Playoff Bowl Game \$2,500
 - v. Football Team Participate in College Football Playoff Bowl Game \$10,000
 - vi. Men's Basketball Team Wins MWC Regular Season Conference Title \$5,000
 - vii. Men's Basketball Team NCAA Tournament Appearance \$2,500
 - viii. Men's Basketball Team NCAA Tournament Final Four Appearance \$5,000
 - ix. Men's Basketball Team National Champion \$10,000
 - x. Women's Basketball Team Wins MWC Regular Season Conference Title \$2,500
 - xi. Women's Basketball Team NCAA Tournament Appearance \$2,500
 - xii. Women's Basketball Team NCAA Tournament Final Four Appearance \$5,000
 - xiii. Women's Basketball Team National Champion \$10,000
 - xiv. National Champion in any other sport (other than FB/MBB/WBB) \$5,000



e. Fiscal Management

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| i. Develop and administer a fiscally responsible budget plan | \$5,000 |
| ii. 5% increase in revenue generated through the Lobo Club | \$5,000 |

Mr. Nuñez may request that the University pay any portion or all of the Incentive Compensation earned under Section 5.e to one or more Athletic department employees who have been instrumental in helping obtain this achievement. Mr. Nuñez shall inform the President of this request in writing no later than thirty (30) days after the end of the Contract Employment Year in which the Incentive Compensation is earned and shall specify what amounts are to be paid to the individuals, respectively. The President may, in her sole discretion, approve, modify or reject Mr. Nuñez' request. If approved, the University shall pay the Incentive Compensation earned under this Section as requested by Mr. Nuñez.

If earned, Mr. Nuñez will be eligible for a maximum incentive payment of **Sixty Thousand Dollars (\$60,000)** per Contract Employment Year. Mr. Nuñez will be eligible for Incentive Compensation payments after completing the Contract Employment Year in which the incentive is earned. Incentive Compensation, if any, will be paid no later than **ninety (90) days** after the end of such Contract Employment Year. Mr. Nuñez understands and agrees that Incentive Compensation payments, if any, are taxable compensation and that Mr. Nuñez is solely responsible for the tax consequences associated therewith.

The Incentive Compensation contemplated by this section are contingent upon sufficient appropriations being available to fund them. In the event that, in any Contract Employment Year the legislature of the state of New Mexico reduces its appropriation to the University or to the Athletic Department, below the current level as of the effective date of this Contract, Incentive Compensation shall be paid in the reasonable discretion of the President.

6. **Conduct of Athletics Personnel/Coaches:** Mr. Nuñez, hired to administer all facets of the University's intercollegiate athletics department, shall act with honesty and sportsmanship at all times in promoting the honor and dignity of fair play in the context of the high standards associated with collegiate competitive sports. Mr. Nuñez understands and agrees that honesty and sportsmanship at all times, and the promotion of the honor and dignity of fair play in the context of the high standards associated with collegiate competitive sports, are material to this Contract, and that any conduct that undermines these values may be grounds for discipline, which can include termination for cause in accordance with Section 10. Mr. Nuñez understands and agrees that it is essential that he and all athletics personnel/coaches take reasonable steps to maintain the physical and mental well-being and safety of all student athletes.

Mr. Nuñez acknowledges that negative statements concerning the Athletics Department, the University, and the State of New Mexico made to the media or in public may be detrimental to recruiting, fundraising, and the morale of coaches, staff and student athletes and the reputation of the University. Therefore, Mr. Nuñez agrees that he is highly encouraged that whenever appropriate and in a timely manner, will first direct any complaint or criticism that Mr. Nuñez may have of a particular University Sports Program, the Athletics Department or the University to the President before directing the complaint or criticism to anyone else. This shall not prohibit Mr. Nuñez from making communications protected by whistleblower laws. Further, Mr. Nuñez shall make reasonable efforts to project a positive image with respect to the University, Athletics Department, and Sport Program. Any conduct that disparages the Sport Program, Athletics Department or the University may be grounds for discipline, which can include termination for cause in accordance with Section 10.

Mr. Nuñez shall not engage in activities or conduct injurious to the reputation of the University, including without limitation, repeatedly conveying to one person, or conveying to an assembled public group, negative information concerning the University.

7. **Unethical Conduct:** Mr. Nuñez will refrain from unethical conduct. Unethical conduct may include, but is not limited to, the following examples of misconduct:
- a. Refusal to furnish information relevant to an investigation of a possible violation of an NCAA regulation when requested to do so by the NCAA or the University;
 - b. Knowing involvement in arranging for fraudulent academic credit or false transcripts for a prospective or an enrolled student-athlete;



- c. Knowing involvement in offering or providing a prospective or an enrolled student-athlete an improper inducement or extra benefit or improper financial aid;
- d. Knowingly furnishing the NCAA or the University false or misleading information concerning Mr. Nuñez' involvement in or knowledge of matters relevant to a possible violation of an NCAA regulation;
- e. Receipt of benefits by Mr. Nuñez for facilitation or arranging a meeting between a student-athlete and an agent, financial advisor, or a representative of an agent or advisor (e.g., "runner");
- f. Refusal to furnish information relevant to an investigation of a possible violation of federal or state law or University policy when requested to do so by lawfully authorized federal or state agents or University officials or when otherwise required to report under University policy; or
- g. Refusal to comply with regulatory or policy requirements, including but not limited to the reporting requirements imposed by the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, Title IX of the Education Amendments of 1972 (the "Clery Act"), and any and all University policies relating thereto.

Mr. Nuñez' agreement to refrain from unethical conduct is a material term of his employment and this Contract. Mr. Nuñez expressly understands and acknowledges that unethical conduct is sufficient justification for **Termination of Contract for Cause** as described in Section 10.

- 8. Compliance With Laws, Policies, Rules and Regulations:** Mr. Nuñez shall be responsible for being fully knowledgeable of, and being in full compliance with, the policies, rules, and regulations of the University, the MWC, or any other conference with which the University may elect to affiliate, the NCAA (as they are currently in force and as they are amended from time to time), as well as applicable federal laws, including but not limited to the Clery Act; Title IX of the Education Amendments of 1972; applicable New Mexico laws; and University policies regarding crime reporting and sexual harassment, including, but not limited to sexual harassment, sexual misconduct, and sexual violence. Mr. Nuñez shall immediately report any apparent or confirmed violations of the above laws, policies, rules, and regulations occurring in the department to the university's compliance staff or UNM's Division of Human Resources, as well as other University official/departments as may be required by University policy. Upon receiving any information about a person who has experienced sexual misconduct, harassment, sexual assault or other sexual violence, Mr. Nuñez shall also report the information to UNM's Office of Compliance, Ethics and Equal Opportunity (CEEO) within 24 hours, or as soon as reasonably practicable, by calling CEEO at 505-277-5251 or by email at oeounm@unm.edu. Failure by Mr. Nuñez to report immediately to the University's athletics compliance staff and, as appropriate other responsible University official/department, any alleged violations of University, MWC or NCAA policies, rules or regulations by Mr. Nuñez or, upon becoming aware of violations by any coaches, staff members, student-athletes, or other persons under Mr. Nuñez' supervision that become known to Mr. Nuñez, which failure, in the reasonable opinion of the President (i) creates material risk for the University or Program or (ii) negatively affects the University or the Program in a material manner, shall subject Mr. Nuñez to disciplinary or corrective action as set forth in the NCAA enforcement procedure. Such failure to report shall also subject Mr. Nuñez to immediate suspension, at the University's sole discretion, for a period of time without pay, or termination as described in Section 10.

If the University determines that Mr. Nuñez is in violation of MWC or NCAA rules and regulations while employed by the University, or was in violation of NCAA or conference rules and regulations during prior employment at another NCAA member institution, Mr. Nuñez shall be subject to disciplinary or corrective action as set forth in the NCAA enforcement procedure and may be suspended by the University at the University's sole discretion for a period of time without pay, or terminated as described in Section 10. If Mr. Nuñez fails to meet his obligations as stated in this Section or fails to complete any University-required training within six (6) months of the Effective Date of Mr. Nuñez' employment, or otherwise fails or refuses to meet his obligations under any law, regulation, policy or procedure, Mr. Nuñez may be subject to disciplinary action up to and including suspension and/or termination as described in Section 10.

Mr. Nuñez specifically acknowledges and agrees that his compliance with applicable laws, policies, rules, and regulations are material obligations of this Contract.



9. **Non-Applicability of University Employment Policies and Due Process Guarantees:** This Contract creates no expectancy of or property interest in continued employment with the University. Accordingly, no provisions of the University Administrative Policy manual (UAP) addressing or governing separation of employment, discipline and contract employees generally are applicable to Mr. Nuñez. No due process guarantees relating to progressive discipline, suspension, discharge, and appeal processes are accorded to Mr. Nuñez under this Contract. All rights, processes and notices afforded to Mr. Nuñez or required from him are specifically enumerated under sections 10, 11 and 12 of this Contract.

10. **Termination of Contract for Cause:** The University reserves the right to immediately terminate this Contract for cause at any time. Cause includes violation of any material obligation of Mr. Nuñez under this Contract or any amendments hereto. In addition to a material breach of this Contract, the parties agree that the following items constitute cause for termination under this Section:

- a. insubordination;
- b. Mr. Nuñez' neglect of, or failure or refusal to perform, his duties as VPDIA in any material respect after receiving written notice of such failure or refusal from the President.
- c. malfeasance;
- d. Mr. Nuñez' failure to comport himself in a manner consistent with good sportsmanship or the moral, ethical or academic standards specified in this Contract or in University policies and regulations;
- e. failure of Mr. Nuñez or any other person under his supervision and direction to comply with applicable standards or regulations of the MWC or the NCAA, federal or state law, or University rules, regulations or policies, as amended from time to time, regardless of whether such violation results in the imposition of sanctions or other consequences;
- f. Mr. Nuñez' failure to promote an atmosphere of compliance or properly and effectively monitor personnel under his supervision and direction which results in material non-compliance by Mr. Nuñez' personnel with applicable standards or regulations of the MWC or the NCAA, federal or state law, or University rules, regulations, or policies, as amended from time to time, regardless of whether such violation results in the imposition of sanctions or other consequences;
- g. Mr. Nuñez' instruction to any head coach, assistant coach, staff, student or other person to respond inaccurately or incompletely to any request or inquiry concerning a matter relevant to University's athletic programs or other institution of higher learning which shall be propounded by University, the NCAA, the MWC or other governing body having supervision over the athletic programs of University or such other institution of higher learning, or required by law;
- h. Mr. Nuñez' failure to fully cooperate in the enforcement and implementation of any drug testing and/or education program established by the University, the MWC, the NCAA, or pursuant to federal or state law that is applicable to student athletes or other employees of the University;
- i. Mr. Nuñez being charged with, indicted for, or pleading no contest to or being convicted of (i) any felony; or, (ii) any misdemeanor involving gambling, drugs or alcohol. For purposes of termination of this Contract for cause, the parties agree that a conviction or plea will serve as conclusive evidence of the commission of the alleged crime by Mr. Nuñez;
- j. engaging in conduct which either (i) displays a continual, serious disrespect or continual, serious disregard for the mission of the University, (ii) brings Mr. Nuñez into public disrepute (iii) constitutes sexual misconduct, unlawful discrimination or other misconduct that breaches the moral and ethical standards applicable to Mr. Nuñez as a visible representative of the University;
- k. major or repeated minor violation of policies, rules, or regulations of the University; major or repeated secondary infractions of the MWC or NCAA rules; major or repeated minor violation of New Mexico or federal laws, regulations, or policies;



- l. Mr. Nuñez' misconduct, whether or not relating to his employment, which is not in the best interest of the University or which violates the University's mission, interests, policies, or regulations, and which causes material damage to the reputation or dignity of the University or its athletics program;
- m. participating in any (i) gambling, bookmaking, wagering, or betting involving any athletic contest whatsoever wither by soliciting, placing or accepting a bet or wager or through a bookmaker, a pool, or any other method of gambling; or (ii) counseling, instruction, encouraging, or knowingly and intentionally permitting any student-athlete, assistant coach, staff, or other individual under or subject to Mr. Nuñez control, authority, or supervision to participate in such activity;
- n. failure to report to the President and appropriate official in writing any violations or potential violations once known to Mr. Nuñez of University Policies including, but not limited to, those by Mr. Nuñez, head coaches, assistant coaches, staff, student athletes or other persons under the direct control or supervision of Mr. Nuñez;
- o. willful or grossly negligent conduct injurious to the University's Athletic Program or the University;
- p. any other reason constituting adequate cause for termination pursuant to official written employment policies of the University or its Athletics Department;

If this Contract is terminated for cause, the University shall have no further liability except for Base Salary, Media Compensation, and Car Allowance earned and fringe benefits accrued to the date of termination.

Nothing in this Section shall prevent, limit or otherwise interfere with the University's right to terminate the services of the Mr. Nuñez without cause at any time subject to the provisions of Section 12 herein. Therefore, this Section creates no expectancy of or property interest in continued employment and no University Administrative Policy addressing or governing progressive discipline, discharge or the appeal process for discharge shall be applicable to Mr. Nuñez.

11. Termination by Request of Administrator: Mr. Nuñez may terminate this Contract at any time upon 10 working days written notice to the President. In the event that Mr. Nuñez terminates this Contract pursuant to this Section, the University shall have no further liability except for Base Salary,Media Compensation and Car Allowance earned and benefits accrued to the date of termination.

Mr. Nuñez understands and agrees that termination of this Contract pursuant to this Section prior to the expiration of the Contract Term will cause irreparable harm to the reputation and athletic programs of the University in an amount not capable of precise calculation or quantification. Therefore, if Mr. Nuñez terminates this Contract during the Contract Term then he agrees to pay, or cause to be paid, to the University as liquidated damages, and not as a penalty as follows:

<u>Termination Date</u>	<u>Amount Owed</u>
Before June 30, 2022	\$250,000
July 1, 2022 – June 30 2023	\$250,000
July 1, 2023 – June 30, 2024	\$100,000
After July 1, 2024	\$0

If during the Contract Term, President Stokes' contract expires, she is terminated, or she otherwise no longer serves as the University's President, then the liquidated damages set forth in this Section shall be reduced by fifty percent (50%) for a period ending 90 days from the date of such separation. Thereafter, the liquidated damages owed for early termination shall revert to their original value. Additionally, liquidated damages may be modified to a lesser amount at the discretion of the President.

Pursuant to this Section, any sum of liquidated damages shall be paid in full to the University within ninety (90) days of termination. Failure to pay the full sum of liquidated damages shall constitute a material and actionable breach of this Contract. The liquidated damages shall be the University's sole and exclusive quantification and limitation of Mr. Nuñez' damages owed to the University pursuant to this Section and the University shall seek no other remedies or damages whatsoever against Mr. Nuñez related to his termination of this Contract.



12. Termination by Request of University: The University may voluntarily terminate this Contract at any time by giving Mr. Nuñez a minimum 10 working days written notice. Notwithstanding any terms or provisions of this Contract or that may be found in University policy regarding employment that may be interpreted to the contrary, or unless otherwise specifically agreed to in writing, Mr. Nuñez' employment relationship with the University shall terminate upon delivery of the notice of termination or as otherwise set forth in the notice of termination.

- a. **Severance:** In the event of termination of this Contract by the University other than for cause as defined in Section 10, the University agrees to pay, and Mr. Nuñez agrees to accept, as severance, the payment of his base salary for the remainder of the contract term. The sum described in this Section shall be deemed a severance payment to Mr. Nuñez and shall be paid in approximately equal monthly payments to Mr. Nuñez over the greater of twenty-four (24) months or the number of months remaining in the Contract Term at the time of termination, on the last day of each month following termination, with New Mexico and federal tax withholdings associated with the payment of salary withheld, until paid. Mr. Nuñez understands and agrees that there will be no retirement withholding or contribution on the severance payments described in this Section, and that no benefits of any kind will accrue to Mr. Nuñez as a result of such payment. Mr. Nuñez agrees that as a condition of receiving any severance payments under this Section, except for any earned but unpaid compensation to the date of termination and any legally protected rights Mr. Nuñez has under any employee benefit plan, Mr. Nuñez must agree to not disparage the University and must execute a comprehensive release in a form to be determined by the University, in its sole discretion (the "Release"). Severance payments will not commence until Mr. Nuñez has fully executed the Release.
- b. **Mitigation/Offset:** Mr. Nuñez agrees that the University's obligation to make payments under this Section shall be subject to Mr. Nuñez' obligation to mitigate his damages by immediately making reasonable, good faith and diligent efforts to obtain other employment. Should Mr. Nuñez obtain athletics-related employment, including employment as a media consultant, on-air personality or analyst, the University's financial obligations under this Section shall cease so long as Mr. Nuñez' monthly base compensation from such employment, but excluding reasonable and usual non-monetary fringe benefits such as health and life insurance, club memberships and use of vehicles ("Monthly Compensation"), is equal to or greater than the University's obligation to pay severance under this Section, prorated on a monthly basis.
- c. If Mr. Nuñez Monthly Compensation from such employment is less than the University's monthly obligation to pay severance under this Section, the amount of the University's obligation to pay severance shall be reduced by the amount of Mr. Nuñez' Monthly Compensation from such employment. **Notice:** Mr. Nuñez shall promptly, but no more than thirty (30) days from acceptance of other employment, notify the President in writing of such employment and the total compensation to be paid to Mr. Nuñez for the employment. In addition, Mr. Nuñez agrees to provide the University with a copy of Mr. Nuñez' W-2 form for each calendar year as long as the University has the obligation to make severance payments under this Section.

Except as otherwise expressly provided in this Section, all rights and obligations due from each party to the other under this Contract shall cease upon the effective date of termination as set forth in the notice required by this Section. Additionally, no notice from the University shall be required for the Contract to expire by its terms on **June 30, 2025**, and there exists no expectancy of renewal of this Contract.

13. Termination by Disability or Death: It is expressly understood and agreed that this is a personal service agreement between the parties and that in the event of the incapacity of Mr. Nuñez to the degree that he is rendered incapable of performing the obligations and duties contained in this Contract for a period of more than ninety (90) consecutive days, as certified by two (2) physicians selected or approved by the University, or his untimely demise, this Contract shall terminate and the University shall have no further financial or other obligation whatsoever hereunder except to pay Mr. Nuñez his Base Salary and benefits accrued to the date of termination.

14. Availability of Funds: This Contract is subject and subordinate to a determination by the Board of Regents of the University of New Mexico as to the availability of funds for the support of the intercollegiate athletics program. In the event such funds are determined to be insufficient by the Board of Regents, this Contract shall also be terminated at the end of the fiscal year in which such a finding is made. Upon such termination, all rights and obligations due from each party to the other under the provisions of this Contract shall cease for lack of funds.

15. Complete Employment Contract: This Employment Contract and any Exhibits attached hereto and incorporated herein by reference, constitute the final and complete agreement between the parties. Any amendments or further addenda, hereafter agreed to by both parties, shall be in writing and executed with the same formality. All prior and

contemporaneous negotiations and agreements pertaining to Mr. Nuñez' employment by the University are deemed incorporated into this Contract and such documents and instruments are deemed to have been abandoned if not so incorporated. No verbal understandings, statements, promises, or inducements contrary to the terms of this Contract exist.

- 16. **Severability:** If any provision of this Contract is held to be invalid or unenforceable for any reason, such provision shall be ineffective to the extent of such invalidity or unenforceability; provided, however, that the remaining provisions will continue in full force without being impaired or invalidated in any way unless such invalid or unenforceable provision or clause shall be so significant as to materially affect the Parties' expectations regarding this Contract. The Parties shall replace any invalid or unenforceable provision with a valid provision which most closely approximates the intent and economic effect of the invalid or unenforceable provision.
- 17. **Governing Law and Forum:** This Contract, and any other amendments, shall be governed by and construed in accordance with the laws of the State of New Mexico and the policies and procedures of The University of New Mexico Board of Regents.
- 18. **Waiver:** No waiver by either party of any rights under this Contract will be valid unless set forth in a writing signed by that party. The failure of either party to insist upon strict performance of this Contract shall not be construed as a waiver of any of the party's other rights under the Contract.
- 19. **Captions:** The captions used herein are for convenience only and do not in any way limit or amplify the terms and provisions hereof.
- 20. **Mandatory Binding Arbitration:** The Parties agree to submit to binding arbitration any claims that they may have against each other, of any nature whatsoever, other than those prohibited by law, pursuant to the New Mexico Uniform Arbitration Act.

IN WITNESS HEREOF this Employment Contract has been duly executed by the parties hereto on the respective dates appearing below each party signature.

THE REGENTS OF THE UNIVERSITY OF NEW MEXICO



Garnett S. Stokes
President

11-4-2021

Date



Eduardo J. Nuñez
Vice President and Director of Intercollegiate Athletics

11-4-2021

Date