



NIL Negotiations

Many student-athletes are taking advantage of the opportunity to use their name, image, and likeness (NIL) to promote themselves and earn money while in school. It is exciting for student-athletes to be approached by businesses, collectives, and others regarding engaging in NIL activities. However, it is important for student-athletes to do their due diligence when entering into agreements. Here are some questions for student-athletes and parents to keep in mind while negotiating NIL deals and determining what would be the right fit.

Contract Language

- What is your NIL? Your name, image, likeness, nickname, avatar, etc.
- Are you using a third party such as an agent to find NIL deals? If so, do they receive a percentage of your earnings?
- Is there an “out” clause, can you terminate the agreement at any time?
- Are there any consequences or “damages” for terminating the agreement?
- Can the collective/organization terminate the contract? If so, on what basis?
- Is there an exclusivity clause? Can you sign agreements with other brands? You may be limiting your earning options if you aren’t allowed to work with other brands.
- Who has the rights to use your NIL and the conditions surrounding it? Are there any other “parties” in the contract?
- Research the company/individual who has contacted you. Do they have a website? Do they have deals with any other student-athletes? It is important to know who you are working with.

Your Obligations

- Is there a specific outline of your obligations? Social media posts? How many and on what platform? Is there specific language that needs to be in the posts?
- Does the agreement require attendance at in-person events? How many and where? Who will pay your travel expenses, if any? Don’t commit without knowing how much time these will take and confirming you have the availability for it with your academic and athletic schedules.
- How long is the agreement for? How long can a company use your NIL?
- How does your overall schedule and time commitments look in relation to your NIL activities? Do you have enough time in your schedule to complete NIL activities?
- Does your contract have any type of “morality clause” regarding your behavior/actions?

Compensation

- How are you being paid? Will you receive a check after a social media post or an appearance? Make sure the payment schedule is in writing in the contract.
- Is there a clause that allows them to withhold payment or require the repayment of advanced money if they feel the terms of the deal have not been meant? E.g., could they withhold payment if they don’t think your social media post received enough engagement?
- Is the compensation worth your time? You don’t have to say yes to every deal.

Compliance Considerations

- Are you required to enroll at a particular NCAA school?

- Are you required to participate in athletics?
- Ask about your school's and state's NIL policy, is the contract in compliance with the policy?
- Are you permitted to use the University's marks and logos in your NIL activities?
- Are you permitted to use the University's facilities to create (e.g., film an ad) your NIL activities?
- If a company does not want to provide you this information in writing, that should be a red flag. Contracts are standard business practice so ask yourself why if you receive pushback from a company on getting these terms written out.
- If you have questions, ASK!

Who at my University can help with my NIL questions?

Contact your NCAA school's compliance office with question on your school or state policy.

Who can help you review an NIL contract?

It is permissible for a professional services provider to assist you with your NIL contracts and negotiations (although they may not market your professional ability). Professional services providers could be attorneys, agents, tax advisors, marketing consultants, or brand management companies.

Website: cchalaw.com