

## **EMPLOYMENT AGREEMENT**

THIS EMPLOYMENT AGREEMENT ("Agreement") is entered into by and between CHRIS KIELSMEIER ("Coach") and CLEVELAND STATE UNIVERSITY (the "University"), and is effective May 19, 2022 (the "Effective Date").

WHEREAS, Coach is currently employed by the University as the head coach of the University's varsity intercollegiate women's basketball team (the "Team"); and

WHEREAS, the University wishes to continue to employ Coach in the aforementioned capacity, and Coach is willing to accept such employment, upon the terms and conditions set forth in this Agreement;

WHEREAS, this Agreement supersedes the Employment Agreement between the parties effective as of April 23, 2018 (the "Existing Agreement");

NOW, THEREFORE, in consideration of the mutual agreements hereinafter set forth, Coach and the University have agreed and do hereby agree as follows:

1. **Term of Agreement.** The term ("Term") of this Agreement shall commence on the Effective Date and shall continue through April 30, 2027, unless sooner terminated in accordance with the provisions of Section 18 below. Coach's employment will cease at the end of the Term without further notice unless a new agreement is executed. For purposes of this Agreement, the term "Contract Year" means each period of May 1-April 30 occurring during the Term.

2. **Employment; Duties.**

(a) **Employment.** The University hereby employs Coach, and Coach hereby accepts employment with the University, as head coach of the Team upon all the terms and conditions set forth in this Agreement. The position for which Coach is employed is not eligible for tenure.

(b) **Basic Duties.** Coach shall report to the University's Director of Athletics with respect to the performance of his duties. He shall be responsible to the Director of Athletics and the University's President with respect to all matters relating to his employment. Coach's duties shall include:

(i) Serving as head coach for the Team (including without limitation the making of customary coaching decisions such as development and implementation of the systems and strategies used on the court, conduct of practice and training, selection of Team members, deployment of players, and all other matters relating to the practice for and play of games, as well as the performance of all other duties customarily associated with the position of head coach of a National Collegiate Athletic Association ("NCAA") Division I women's intercollegiate basketball program);

(ii) Adhering to, respecting and following the academic and personal conduct standards and requirements of the University in regard to the recruiting and eligibility of

prospective and current student-athletes in the Program. Such standards, requirements and policies of the University shall not knowingly be compromised or violated at any time by Coach, or by anyone for whose direct or indirect supervision he is responsible pursuant to this Agreement or University policies, procedures, rules and/or regulations. Coach shall monitor and encourage academic progress, in conjunction with faculty and the University, of student-athletes toward graduation, and Coach shall cooperate, and shall ensure that all persons under his direct or indirect supervision cooperate, with academic services and student services offered by the University for the benefit of student-athletes;

(iii) Establishing and maintaining Head Coach Control over the Program as defined by the NCAA, including promoting an atmosphere of compliance with, and actively supervising and monitoring assistant coaches, student athletes and other individuals under his direct or indirect supervision so as to maintain strict compliance with, the constitutions, bylaws, rules and regulations of the NCAA, the Horizon League and/or any other league or conference of which the University may be a member during the Term (the "Conference"), and any other athletics governing body to which the University may be subject (collectively, "Governing Body Requirements");

(iv) Engaging in (and using his best efforts to ensure that every person under Coach's direct or indirect supervision is engaging in) safe and responsible treatment of student athletes on the Team. Coach shall refrain from any act or omission (including but not limited to physical and/or emotional abuse of student athletes) that creates, or could reasonably be expected to create, an unreasonable risk of harm to a student athlete. Without limiting the preceding sentence, Coach shall comply with any and all applicable University policies, procedures, rules and/or regulations pertaining to medical clearance for participation, including deferring to University sports medicine personnel in accordance with applicable policies, procedures, rules and/or regulations.

(v) Promoting, representing and assisting the University in marketing the University, its intercollegiate women's basketball program (the "Program") and its athletics program, through personal appearances, speeches, press conferences, internet broadcasts or displays, and other similar activities and events; and

(vi) Such other duties not inconsistent with the preceding as the University's President or Director of Athletics may assign.

(c) Broadcasts. Coach acknowledges that from time to time the University may be presented with opportunities for the production and distribution of radio, television and/or internet broadcasts relating to the Program and/or the University's athletics program in general (the "Broadcasts"). Coach shall appear and participate in such Broadcasts in accordance with the instructions of the University. The timing and location of such Broadcasts shall be mutually agreed upon by the parties. In addition, Coach acknowledges that the University may require Coach to record generic or topical television or radio promotions for the promotion of such Broadcasts, and such other shows or events as determined by the University for the promotion of the University's athletics program.

(d) Promotional Activities. Coach acknowledges that from time to time opportunities to promote, publicize and/or raise funds for the University, the Program and/or the University's athletics program, and/or to participate in promotional activities or events of advertisers, sponsors, or affiliates of the University, will be presented to the University. Such opportunities may involve personal appearances, speeches, press conferences, and other similar activities and events which shall include, but not necessarily be limited to, meeting with donors or sponsors. Coach acknowledges and agrees that he may be required to participate in or to make special appearances at such activities and events in accordance with the instructions of the University.

(e) Manufacturer Relationships. Coach acknowledges that from time to time the University may enter into agreement(s) with one or more athletics footwear, equipment and/or clothing manufacturer(s) (collectively, the "Manufacturer") for use by the Manufacturer of Coach's personal services and expertise in the sport of basketball and/or for Coach's endorsement of the Manufacturer's products. In addition to providing such personal services and expertise to the Manufacturer, Coach shall grant to such Manufacturer the exclusive right and license to the unlimited use in any media (now known or hereafter created, including the internet) of Coach's name, etc., as provided in Section 17 of this Agreement, in connection with the production, advertisement, marketing, promotion, or sale of the Manufacturer's products. Throughout the Term, Coach shall take such actions as are necessary to enable the University to comply with its obligations under its agreement(s) with the Manufacturer, including without limitation wearing and/or using exclusively the products of the Manufacturer as and to the extent required thereby. During the Term, Coach shall not enter into or maintain any endorsement, promotional, consulting, or similar agreement (i) with any person or entity that licenses, manufactures, brands, or sells athletic products, whether through retail locations, on-line, by direct mail, or otherwise; (ii) that would prohibit or otherwise restrict the Manufacturer's use of Coach's name, etc., as provided in Section 17 of this Agreement, or subject such use to a third party's approval; or (iii) that would otherwise cause the University to violate its agreement(s) with the Manufacturer.

(f) Communications. Coach shall follow any and all protocols established by the President and/or the Director of Athletics from time to time with respect to contact with University officials (including without limitation members of the Board of Trustees) and/or elected or appointed government officials about matters of concern relating to the Program and/or the Athletics Department. The foregoing shall not be deemed to prohibit non-substantive social discourse between Coach and University or government officials in the context of social or other gatherings at which Coach and one or more such officials are present, but discussion of all substantive issues (including without limitation items of concern) about the Program or the Athletics Department shall be handled in accordance with established protocols. In addition, Coach shall at all times recognize that as part of the University's administration and its publicly visible representative, Coach has an affirmative duty to support the policies and academic priorities of the University in his actions and in public discourse. To that end, Coach shall keep comments about University, NCAA or Conference policies or actions taken by University administrators, the NCAA or the Conference in a positive tone, recognizing that any statements he makes about the University and its administrators are often publicized.

3. **Standard of Performance; Outside Activities.** Throughout the Term, Coach shall devote Coach's entire professional attention and energy to the business and affairs of the University on a full-time basis, exercising his best efforts, skills, and knowledge. Notwithstanding the preceding, Coach may also engage, in his personal capacity and not as an employee of the University, in any other permissible activities referred to in this Agreement as well as such other activities (e.g., the making of advertisements) as are not inconsistent with (i) the Governing Body Requirements; (ii) the policies, procedures, rules and regulations of the University; (iii) any other contract to which the University is a party of which Coach has prior notice; and (iv) the provisions of this Agreement. Such activities shall require the prior written approval of the Director of Athletics, and, where deemed necessary by the Director of Athletics, the President. No such other activities shall conflict with or be detrimental to Coach's duties as head coach of the Team, or be competitive with or otherwise detrimental to the University's interests. All such activities, except as otherwise provided in this Agreement, are independent of Coach's employment with the University, and the University shall have no responsibility or liability for any claims arising from them. Coach agrees to indemnify and hold harmless the University, its Board of Trustees and its employees from any and all suits, claims, demands, damages, liabilities, costs and expenses, including reasonable attorney fees, arising from any such outside activity.

4. **Compliance With Applicable Rules.**

(a) **Compliance.** In performing his duties under this Agreement, Coach shall be familiar with, shall adhere to, and shall promote within the Program an atmosphere of compliance with, all applicable Governing Body Requirements. In addition, Coach shall adhere to all applicable policies, procedures, rules and/or regulations of the University, as in effect from time to time (including, but not limited to, University policies, procedures, rules, and/or regulations adopted for purposes of compliance with Title IX of the Education Amendments of 1972 ("Title IX"), the Violence Against Women Act's amendments to the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, and/or any comparable state law ("Title IX Policies")). Coach shall use his best efforts in good faith to cause all Team members, University personnel whom he is responsible for supervising (directly or indirectly), and representatives of the University's athletics interests to comply with all applicable Governing Body Requirements and University policies, procedures, rules, and/or regulations.

(b) **Head Coach Responsibility.** Coach is presumed to be responsible for the actions and omissions of all University personnel who report, directly or indirectly, to him. Coach shall promote an atmosphere of compliance, academic integrity, and ethical conduct within the Program, and shall monitor the activities of all such personnel. In fulfilling these standards of conduct, Coach's responsibilities include, but are not limited to, the following:

(i) Coach shall ensure that he and his staff are responsive, cooperative, and timely in their involvement and responsibilities tied to all University compliance operations. This includes his staff's involvement and responsibilities for compliance monitoring and reporting; his staff's communications with Athletics Department leadership including compliance staff, and his staff's availability and participation in rules education sessions.

(ii) Coach shall ensure that he and his staff are available, present, and attentive participants in regularly scheduled rules education sessions as coordinated by the athletics compliance staff.

(iii) Coach shall demonstrate a commitment to compliance through actively monitoring his staff's activities. To this end, and in consultation with the University's compliance staff, Coach shall create or adopt written procedures to ensure his staff is actively monitoring the Program's compliance functions. This includes assigning specific monitoring duties to assistant coaches and non-coaching staff members as warranted.

(iv) Coach shall regularly solicit feedback from his staff about all compliance monitoring areas and identify opportunities to improve compliance monitoring and reporting.

(v) Coach shall ensure that he and his staff receive continuous training and rules education regarding NCAA, Conference, and University rules and compliance policies and procedures.

(vi) Coach shall document the ways in which he has communicated and/or demonstrated a commitment to compliance and be able to produce documentation, upon request, relating to the procedures in place for monitoring the Program's compliance. Without limiting the preceding sentence, Coach shall maintain accurate and dated records of discussions and correspondence between himself and his staff concerning compliance efforts taken by his staff.

(vii) Coach shall ensure that he and his entire staff utilize all applicable compliance monitoring, reporting, and documentation mechanisms implemented by the University.

(c) Reporting. If Coach shall become aware of any fact, occurrence, circumstance or state of affairs that would cause a reasonable person to suspect a violation of any Governing Body Requirement, Coach shall immediately report such to the University's Director of Athletics and Director of Athletic Compliance. In addition, without limiting Coach's reporting obligations under other University policies, procedures, rules, and/or regulations, if Coach shall become aware of any fact, occurrence, circumstance or state of affairs that he is obligated to report pursuant to the Title IX Policies, he shall immediately and directly report such information to the University's Title IX Coordinator. If Coach shall become aware of any fact, occurrence, circumstance or state of affairs that would cause a reasonable person to suspect a violation of any other University policy, procedure, rule, and/or regulation, Coach shall immediately report such to the Director of Athletics. If a suspected violation to be reported pursuant to this Section 4(c) involves the designated recipient of the report, Coach shall instead make the report to the President.

(d) Obligation to Furnish Certain Information and to Cooperate with Investigatory Processes. Coach shall furnish to the University, upon request, any information that the

University deems necessary or reasonably useful for purposes of any investigation of any potential infraction of any Governing Body Requirement or University policy, procedure, rule, and/or regulation. In addition, Coach shall cooperate fully in the NCAA infractions process, including the investigation and adjudication of potential infractions of any NCAA Governing Body Requirement, as well as corresponding processes of the Conference. Full cooperation includes, but is not limited to (i) affirmatively reporting instances of noncompliance to the NCAA or Conference (as applicable) in a timely manner and assisting in developing full information to determine whether a possible violation has occurred and the details thereof; (ii) timely participation in interviews and providing complete and truthful responses; (iii) making a full and complete disclosure of relevant information, including timely production of materials or information requested, and in the format requested; (iv) disclosing and providing access to all electronic devices used in any way for business purposes; (v) providing access to all social media, messaging and other applications that are or may be relevant to the investigation; and (vi) preserving the integrity of an investigation and abiding by all applicable confidentiality rules and instructions. This provision shall survive any expiration or termination of this Agreement.

(e) Consequences of Violation. Without limiting other available remedies, in the event that Coach or personnel under his direct or indirect supervision is/are found to be in violation of any Governing Body Requirement while Coach is employed pursuant to this Agreement, whether the violation occurred prior to or during the Term (including violations at a predecessor employer), he shall be subject to disciplinary or corrective action as set forth in relevant NCAA, Conference, other governing body and/or University disciplinary and/or enforcement procedures, including suspension without pay or termination of employment.

(f) Disclosure Concerning Prior Violations. Coach represents that he has disclosed to the University any and all information concerning previous Governing Body Requirement violations, or facts, occurrences, circumstances or states of affairs that could reasonably be expected to give rise to such violations, committed by Coach or any individual under Coach's direct or indirect supervision at any other NCAA member institution prior to the Effective Date. Coach acknowledges that the University is relying on Coach's representation set forth in this Section 4(f), that this representation is a material inducement for the University to enter into this Agreement, and that a material breach of this representation will constitute a material breach of this Agreement.

**5. Salary.** From the Effective Date through April 30, 2023, the University shall pay Coach a base salary at the rate of \$175,000 per year (prorated as such period is shorter than 12 months). Thereafter, Coach will be eligible for salary review annually in accordance with the results of the University's review of Coach's performance and with the University's policies and practices concerning performance review and salary adjustments for all University professional staff. Notwithstanding the foregoing, in the event that during the Term the Team appears in the post-regular season basketball tournament leading to the so-called "national championship" sponsored by the national governing body having authority over intercollegiate basketball competition (such as the NCAA) (the "National Championship Tournament"), and if the Program Bonus referenced in Section 9 is awarded with respect to the Contract Year in which such appearance occurs, Coach's annual base salary rate shall be increased by \$10,000 effective as of the succeeding May

1, in lieu of any annual increase that would otherwise apply (and he shall thereafter only be eligible for annual increases in future years as described in the preceding sentence). For all purposes under this Agreement, the term "Base Salary" shall refer to Coach's base salary rate then in effect pursuant to this Section 5, and shall not include any Additional Compensation, bonus, benefits or other amounts payable to Coach as provided in this Agreement.

**6. Additional Compensation.** In view of the level of commitment and effort required by Coach to fulfill his duties under Sections 2(b)(v), 2(c), 2(d) and 2(e) of this Agreement, the University shall pay Coach additional compensation at the annual rate of \$5,000 (prorated for any period shorter than 12 months), payable on or before the last day of each Contract Year, and subject to applicable deductions and withholdings. For all purposes under this Agreement, the term "Additional Compensation" shall refer to Coach's additional compensation rate pursuant to this Section 6. Amounts paid to Coach by the University pursuant to this Section 6 shall not be taken into account for purposes of computing the University's contributions to any pension or employee benefit plan unless the terms of the applicable plan provide otherwise.

**7. Coach/Team Performance Bonuses.** In addition to the Base Salary and Additional Compensation set forth above, with respect to each complete season (including postseason games) in which Coach coaches the Team as its head coach, Coach shall earn and be paid the following amounts, subject to limitation by the Maximum Bonus Opportunity described below, less any applicable deductions and withholdings:

(a) Conference Coach of the Year. If, with respect to any such season, Coach is selected by the Conference as its Coach of the Year, Coach shall be paid \$5,000.

(b) National Coach of the Year. If, with respect to any such season, Coach is selected National Coach of the Year by one or more of USA Today, the Atlanta Tipoff Club (Naismith), the Associated Press, or the WBCA, Coach shall be paid \$12,500 (Coach may earn only one \$12,500 bonus pursuant to this Section 7(b) with respect to each season, regardless of the number of such awards he receives for that season).

(c) Conference Regular Season Performance. If in any such season the Team finishes the regular season in sole or shared possession of first place in the Conference, Coach shall be paid \$5,000. If the Conference is restructured into multiple divisions, Coach shall be entitled to the aforementioned bonus only if the Team finishes with the best record (alone or tied with another team in the Conference) among all teams in the league or conference (*i.e.*, across all divisions).

(d) Conference Championship Tournament Performance. If in any such season the Team wins the championship game of the Conference's postseason championship tournament, Coach shall be paid \$7,500.

(e) National Championship Tournament Performance. If in any such season the Team competes in the National Championship Tournament, Coach shall be paid:

(i) \$5,000 if the Team wins its game in the Opening Round and/or the First Round of the NCAA Tournament (if the Team plays in the Opening Round, Coach may earn a bonus for winning the Opening Round Game and may not earn a bonus for winning its next (*i.e.*, First Round) game). For purposes of this Agreement, notwithstanding any terminology to the contrary utilized by the national governing body, the Opening Round shall be the initial round of games played in the National Championship Tournament regardless of the number of teams competing in such round, and the First Round shall be the earliest round as of which not more than 64 total teams are still participants in the National Championship Tournament); plus

(ii) \$5,000 if the Team plays in the "Sweet 16" round of the National Championship Tournament; plus

(iii) \$12,500 if the Team plays in the quarterfinal round (*i.e.*, the "Elite 8") of the National Championship Tournament; plus

(iv) \$25,000 if the Team plays in the semifinal round (*i.e.*, the "Final Four") of the National Championship Tournament; plus

(v) \$25,000 if the Team wins the championship game of the National Championship Tournament.

(f) Women's National Invitation Tournament Performance.

(i) If in any such season the Team is invited to compete in the post-regular season Women's National Invitation Tournament (the "WNIT Tournament"), Coach shall be paid \$2,500; plus

(ii) If in any such season the Team wins the championship game of the WNIT Tournament, Coach shall be paid \$5,000.

(iii) It is understood and agreed that the University shall have sole discretion to determine whether the Team accepts any invitation to play in the WNIT Tournament.

(g) WBI Performance.

(i) If in any such season the Team is invited to participate in the post-regular season Women's Basketball Invitational Tournament (the "WBI Tournament"), and if the Team's winning percentage for all regular and post-season games played (including without limitation games played in such tournament) is not less than .500, Coach shall be paid \$1,500; and

(ii) If in any such season the Team wins the championship game of the WBI Tournament, Coach shall be paid \$3,000.

(iii) It is understood and agreed that the University shall have sole discretion to determine whether the Team accepts any invitation to play in WBI Tournament.



Anything to the contrary notwithstanding, in no event shall Coach be paid more than \$50,000 for bonuses earned pursuant to this Section 7 (the "Maximum Bonus Opportunity") other than any bonuses payable pursuant to Section 7(e)(v) (which shall not be considered for purposes of applying the Maximum Bonus Opportunity). Any bonus payable pursuant to this Section 7 shall be paid to Coach within 60 days after the conclusion of the last game of the Team's season (including postseason games) for which the bonus is earned or, with respect to any bonus earned pursuant to Section 7(a) or 7(b), within 60 days after Coach receives the applicable award. The amounts paid to Coach pursuant to this Section 7 shall not be taken into account for purposes of computing the University's contributions to any pension or employee benefit plan unless the terms of the applicable plan provide otherwise. In the event that, for any reason, the University incurs an obligation to return to the NCAA proceeds from the Team's participation in NCAA competition due to violation of any Governing Body Requirement for which Coach is responsible, Coach shall be required to return to the University upon demand any bonus(es) paid to him under this Section 7 in connection with the participation that generated the violation.

**8. Academic Performance Bonuses.**

(a) Academic Progress Rate. With respect to each academic year of the University in which Coach remains employed and actively performing his duties as head coach of the Team for the entire academic year, Coach shall earn \$3,000 if the Team's single-year academic progress rate for such academic year, as calculated by the NCAA ("APR"), is greater than 975 and equal to or less than 990, or \$5,000 if the APR is greater than 990 and less than 1,000, or \$6,000 if the APR is 1,000. This bonus shall be paid within 60 days after the APR for the relevant academic year is determined, provided that Coach continues to be employed and actively performing his duties as head coach of the Team on the date the APR is determined. Should the NCAA substantively change the manner in which the APR is calculated, the parties will negotiate an amendment to this Section 8(a) designed to provide Coach a bonus opportunity equivalent to that existing based on the manner in which the APR is calculated as of the Effective Date.

(b) Grade Point Average. With respect to each Fall or Spring semester of the University during which Coach remains employed and actively performing his duties as head coach of the Team for the entire semester, Coach shall be paid \$1,500 if the average grade point average for such semester for all student-athletes on the Team ("Team GPA") is not less than 2.8, plus \$1,500 if the Team GPA is not less than 3.0. This bonus shall be paid within 60 days after the end of the relevant academic semester.

(c) Conference Academic Honors. With respect to each complete season (including postseason games) in which Coach coaches the Team as its head coach, Coach shall earn and be paid the following amounts, less any applicable deductions and withholdings:

(i) \$5,000 if one or more Team members is/are named to the Conference's All-Academic Team (Coach may only earn one such bonus with respect to each season, regardless of the number of Team members named to the Conference All-Academic Team).

(ii) \$500 for each member of the Team who is named to the Conference Academic Honor Roll with respect to each semester.

The bonuses set forth in this Section 8 shall be paid within 60 days after the Team member(s) receive the applicable award(s). The amounts paid to Coach pursuant to this Section 8 shall not be taken into account for purposes of computing the University's contributions to Coach's any pension or employee benefit plan unless the terms of the applicable plan provide otherwise.

**9. Program Bonus.** With respect to each Contract Year in which Coach remains employed and actively performing his duties as head coach of the Team for the entire Contract Year, Coach shall earn and be paid \$5,000, less any applicable deductions and withholdings, if the Director of Athletics determines that all of the following conditions are satisfied as of the end of the Contract Year:

(a) No NCAA Level I or II violations have been committed, or potential NCAA Level I or Level II violations have been actively under investigation by the University and/or the NCAA or subject to ongoing NCAA infractions processes, at any time during the Contract Year; and

(b) The Team satisfies all then-current NCAA APR minimum threshold requirements as of the end of the Contract Year; and

(c) Coach has designed and fully implemented a proactive student-athlete conduct education plan regarding University and athletic department policies, team rules, etc. during the Contract Year, and has appropriately managed and (if within Coach's responsibilities) resolved any disciplinary issues involving Team members during the Contract Year; and

(d) Neither Coach nor any other member of the Program staff has committed any significant violation of University policies, procedures, rules or regulations during the Contract Year; and

(e) Coach has complied with all reasonable directions from Director of Athletics or the University President during the Contract Year; and

(f) The University has not received credible expressions of significant concern by a substantial portion of student-athletes on the Team in exit interviews conducted during the Contract Year with respect to (i) the Program's compliance with NCAA, Conference or University policies, procedures, rules, regulations or legislation, or (ii) student-athlete welfare, health and/or safety.

The aforementioned bonus shall be paid within 60 days after the end of the Contract Year during which it was earned. The amounts paid to Coach pursuant to this Section 9 shall not be taken into account for purposes of computing the University's contributions to any pension or employee benefit plan unless the terms of the applicable plan provide otherwise.

**10. Benefits.** For so long as Coach is employed and actively performing his duties as head coach of the Team, he shall be eligible to receive the following benefits. Coach acknowledges that certain of these benefits (or portions thereof) may taxable, and the value of such benefits (or such portions thereof) will be added to Coach's W-2 income and subject to deductions and withholdings as applicable.

(a) Standard Benefits. Coach shall be entitled to participate in any welfare, health and life insurance, and retirement benefit and incentive programs as may be adopted from time to time by the University on the same basis as that provided to similarly situated employees of the University and in accordance with the University's policies as in effect from time to time.

(b) Automobile. The University shall pay to Coach a monthly vehicle stipend of \$600.

(c) Summer Camps.

(i) Coach shall have the right to conduct a summer basketball camp or camps (collectively, the "Camp") on the grounds and premises of the University for up to three (3) weeks per year as follows:

(A) The University shall make a good faith effort to provide Coach with on-campus housing, dining and playing facilities reasonably requested by Coach for Camp purposes.

(B) The University may charge Coach reasonable fees for the use of on-campus housing and dining facilities, as well as other facilities other than the Auxiliary Gym (e.g., rental of the recreation center) utilized by Camp participants. Such charges shall not exceed the least amount charged by the University for comparable facilities used by other camps or clinics organized by the University or any of its other coaches.

(C) With respect to the marketing and operation of the camps, Coach shall be entitled to identify himself as the University's Women's Head Basketball Coach and shall be entitled to reasonable use of the University's names, logos, and insignias without charge.

(D) The Camp shall be conducted in accordance with University policies and procedures regarding minors on campus, including without limitation criminal background checks of all Camp employees and volunteers. Coach shall report the number of hours he spends conducting camps to the appropriate University personnel. The University shall not be responsible for claims arising from Camp operations, and Coach agrees to indemnify and hold harmless the University, its Board of Trustees and its employees from any and all suits, claims, demands, damages, liabilities, costs and expenses, including reasonable attorney fees, arising therefrom. Prior to the beginning of each Camp, Coach will provide the University with evidence of insurance of such types and with such limits as are reasonably acceptable to the University, with the University listed as an additional insured on applicable liability insurance policies.

(E) Coach shall retain net revenue after all expenses associated with the Camp are paid. However, the University makes no guarantee of any compensation to Coach from Camp operations.

(F) The Camp must comply with applicable law, Governing Body Requirements and University policies, procedures, rules and regulations.

(ii) In lieu of the foregoing, the University may instead require that the Camp be conducted by the University as a University operation. In such event, the University and Coach shall negotiate terms for Coach's participation in operation of the Camp and compensation to Coach therefor.

(d) Tickets and Hospitality.

(i) In the event admission is charged for Team's home games, the University shall provide Coach with 12 complimentary season tickets for the Team's home games, plus additional single-game tickets to the Team's home games for business use subject to approval by the Director of Athletics or his/her designee.

(ii) The University shall provide Coach with reasonable quantities of complimentary tickets to the Team's away games, subject to availability from the home institution and approval by the Director of Athletics or his/her designee.

(iv) All tickets admissions provided pursuant to this Agreement shall be subject to taxation in accordance with University policy. All use of such tickets and admissions shall be subject to applicable Governing Body Requirements. Coach shall maintain a log of the names of individuals who have received all such tickets and admissions for each event, and shall provide the log to the Director of Athletics or his/her designee upon request.

(e) Travel. Coach and his spouse/partner and dependent children may travel with the Team for away and postseason competition, at the discretion of the Director of Athletics, for no cost. Coach shall be taxed for any expenses incurred by the University for said travel, according to University policy.

**11. Reimbursement of Expenses.** For so long as Coach remains employed and actively performing his duties as head coach of the Team, the University shall pay on Coach's behalf all reasonable expenses necessarily incurred by him in the performance of his duties. All such expenses shall be reimbursed in accordance with University policies and shall be subject to the approval of the University's Director of Athletics, which shall not be unreasonably withheld or delayed. Any expenses that are eligible for reimbursement under this Agreement shall be paid as soon as reasonably practicable following submission of supporting documentation in accordance with University policy, but in no event later than the March 15th date that immediately follows the calendar year in which such expenses were incurred.

**12. Disclosure of Outside Income; Information Rights.**

(a) Reporting. Coach shall report annually in writing to the President of the University, on or before June 30 of each year during the Term, all athletically related income and benefits from sources outside the University, including but not limited to income from endorsement or consultation contracts with apparel companies or equipment manufacturers, from television and/or radio programs, and/or from ownership, control or management of a foundation, organization or other entity. For purposes of this Section 12(a), income or benefits are considered athletically-related if they have an athletics nexus, are related to Coach's reputation or ability, or are provided because Coach is affiliated or employed with the University.

(b) Camp Accounting. Coach shall provide an annual accounting or report of the expenses and revenues of any Camp operated by Coach (or any entity controlled by him) on behalf of the University. The University shall have the right to conduct, at its expense, a full audit of any such Camp, using an accountant of its choice.

**13. Assistant Coaches And Certain Other Program Staff.**

(a) Employment of Personnel. The University shall employ as (i) three assistant coaches for the Team, (ii) a director of basketball operations ("DOBO"), (iii) a special assistant to the head coach or a video coordinator, and (iv) a graduate assistant or a part time administrative assistant, persons selected by Coach and acceptable to the University. Coach shall utilize his best efforts during the Term to develop a Program staff consistent with the needs, policies, procedures, rules and regulations of the University. Subject to the terms of any employment agreements or other contractual obligations between the University and Program staff and without limiting rights of dismissal available to the Director of Athletics or other authorized University personnel, Coach shall have the right to dismiss Program staff within the procedural and policy guidelines of the University if he determines it is in the best interest of the Program.

(b) Program Staff Compensation.

(i) The University shall budget for aggregate salaries of the three full time assistant coaches, the DOBO, and the special assistant to the head coach or video coordinator an annual amount of at least \$256,500 in the 2022-23 Contract Year. The budgeted amount shall be allocated among the referenced personnel as Coach shall determine consistent with the procedural and policy guidelines of the University and any contractual obligations to such personnel (such amounts shall be used to satisfy salary requirements under, and are not in addition to, amounts owed under any such contractual obligations), subject to approval by the Director of Athletics. Increases to the salary pool in future Contract Years shall be evaluated within applicable University procedures for professional staff salary increases. Notwithstanding the foregoing, it is understood that in the event the University implements any form of generally-applicable salary reduction program for its professional staff due to continuing effects of the COVID-19 pandemic or other causes impacting the University budget, such reductions may be applied to the aforementioned personnel on the same basis as other similarly situated University employees.

(ii) If Coach elects to employ a graduate assistant, the University shall fund the position with a stipend in line with other University Graduate Assistants per University academic year. Funding shall be at least \$8,400 per Contract Year unless the University pays Graduate Assistants generally at a lower rate (in which case the lower general rate may be applied to the Program's Graduate Assistant).

**14. Grants-in-Aid.** All grants-in-aid shall be awarded by Coach within the procedural and policy guidelines of the University (including without limitation being subject to approval of the Director of Athletics and the Compliance Director) and in compliance with applicable Governing Body Requirements.

**15. Schedule.** The Director of Athletics maintains scheduling authority for the University. Coach, or his designee, shall be responsible for coordinating the scheduling of contests for the Team with approval by the Director of Athletics. All non-Conference contests shall be scheduled

in accordance with applicable Conference rules. Subject to the preceding sentence it is agreed that "guarantee games" resulting in not less than \$40,000 in gross revenue income to the University shall be scheduled for each season, unless otherwise approved by the Director of Athletics.

**16. Representation of the University.**

(a) By Coach. Coach shall represent the University in a dignified manner and shall dress in attire appropriate to each occasion or setting at or in which he is present. He shall also conduct both his employment activities and his personal life in a manner that will not, in the University's reasonable discretion: bring disgrace or embarrassment to the University or Coach; tend to shock, insult, or offend the greater Cleveland and/or University alumni communities; manifest contempt or disregard for diversity, public morals or decency; or violate applicable University policies, procedures, rules and/or regulations with respect to personal conduct.

(b) By Others. Coach shall use his best efforts in good faith to cause all Team members and University personnel whom he is responsible for supervising to conduct both their activities in connection with the Team and their respective personal lives in a manner that will not, in the University's reasonable discretion: bring disgrace or embarrassment to the University or themselves; tend to shock, insult, or offend the greater Cleveland and/or University alumni communities; manifest contempt or disregard for diversity, public morals or decency; or violate applicable University policies, procedures, rules and/or regulations with respect to personal conduct.

**17. Use of Name, Etc.** Coach consents to the use of Coach's name, nickname, initials, autograph, signature, voice, video or film portrayals, photograph, image or likeness, and any other means of endorsement or identification of or by Coach, including statistical, biographical, or other information or data relating to Coach, by the University or by any party under contract with the University in the conduct and promotion of the University, the University's athletics program and/or the Program, and as otherwise contemplated by this Agreement.

**18. Termination of Coach's Employment.**

(a) Death. In the event Coach's employment hereunder ceases prior to the Expiration Date by reason of Coach's death, the University shall pay any Accrued Obligations (as defined in Section 18(f) below).

(b) Disability. If Coach is unable to perform the essential duties of his position as head coach by reason of a physical or mental condition that can be expected to result in death or to be of long-continued and indefinite duration ("Disability"), Coach's employment under this Agreement may be terminated by the University for Disability, subject to any requirements that may be imposed by applicable law. In such event, the University's sole liability shall be to pay Coach any Accrued Obligations (as defined in Section 18(f) below), and for any disability benefits to which Coach may be entitled under a University group disability plan. If the University has a reasonable good faith belief that Coach has become subject to a Disability such

that he cannot perform the essential functions of the position of head coach, the University reserves the right to require Coach to submit to a medical, psychological, and/or psychiatric examination, by a qualified independent physician selected and paid for by the University. Coach agrees to submit to such examination as soon as reasonably possible after being notified about such examination. Coach hereby waives any physician-patient privilege that he may have with respect to the results of any examination conducted pursuant to this Section 18(b) and will provide whatever consent may be reasonably necessary for the disclosure of these results to the University.

(c) Termination For Cause. In addition to any other remedy permitted by this Agreement or applicable law, the University may at any time, by written notice, terminate Coach's employment or, in lieu of termination, impose other appropriate discipline at University's sole discretion, for Cause. For purposes of this Section 18(c), "Cause" shall be defined to include, as determined by the University in its reasonable and good faith discretion:

- (i) any material breach of this Agreement by Coach;
- (ii) (1) any act or omission, whether occurring prior to or during the Term, that the University determines constitutes a serious violation (as defined below) of a Governing Body Requirement by or permitted by him, or
- (2) any act or omission, whether occurring prior to or during the Term, that the University determines constitutes a serious violation (as defined below) of a Governing Body Requirement by personnel he is responsible for supervising (directly or indirectly) which he knows or should have known about and does not immediately report as required by this Agreement (whether such failure to report consists of a failure to report a known violation or arises from Coach's failure to be aware of a violation Coach should have known about), or
- (3) any act or omission, whether occurring prior to or during the Term, that the University determines constitutes a serious violation (as defined below) of a Governing Body Requirement by any other person which he knows about and does not immediately report as required by this Agreement, or
- (4) any act or omission, whether occurring prior to or during the Term, that the University determines constitutes a serious violation (as defined below) of a Governing Body Requirement for which he is otherwise responsible under the applicable standards (including but not limited to responsibility by virtue of a failure to promote an atmosphere of compliance or to monitor personnel who report, directly or indirectly, to him),

In order for any of the foregoing (1)-(4) to constitute Cause, the violation must be one which is regarded as a serious violation (*e.g.*, repeated violations or a violation that the University reasonably determines could be expected to result in significant sanctions such as probation, vacation of athletic contest results, loss of scholarships, prohibition against Conference or championship or telecast appearances, material restrictions on a coach's right to engage in recruiting-related activities, etc.). For purposes of this Section 18(c)(ii), the decision as to



whether a violation of a Governing Body Requirement has been committed, and/or whether a violation is a serious violation, rests solely with the University. However, if Coach is terminated for Cause under this Section 18(c)(ii) and the applicable Governing Body renders a final determination establishing facts indicating that Cause as defined in this Section 18(c)(ii) does not exist, provided there are no other facts or circumstances justifying a termination for Cause, the termination shall be treated as a termination without cause under Section 18(d) below and the provisions of Section 18(d) shall apply and shall be Coach's sole remedy for any cause of action based on this Agreement;

(iii) failure of Coach to fully and promptly cooperate with the University or any governing body in any investigation of possible violations of a Governing Body Requirement or University policy, procedure, rule and/or regulation;

(iv) material breach of any Title IX Policy by Coach (it being understood that the foregoing shall not limit the University's right to terminate this Agreement for Cause based upon violations of other University policies, procedures, rules and/or regulations otherwise constituting Cause under this Section 18(c));

(v) failure by Coach to engage in (and/or to use his best efforts to ensure that personnel under Coach's direct or indirect supervision engage in) safe and responsible treatment of student athletes on the Team, including without limitation failure to comply with any University policy, procedure, rule and/or regulation pertaining to medical clearance for participation, or any other act or omission (including but not limited to physical and/or emotional abuse of student athletes) that creates, or could reasonably be expected to create, an unreasonable risk of harm to a student athlete.

(vi) prior to or during the Term, conviction of a violation of any criminal statute that constitutes a felony or constitutes a misdemeanor involving moral turpitude;

(vii) fraud, intentional and material dishonesty or gross misfeasance, whether occurring prior to or during the Term;

(viii) neglect of duties, if such neglect continues after five days' written notice to Coach;

(ix) commission of any act, whether occurring prior to or during the Term, that in the University's reasonable discretion brings, or could reasonably be expected to bring, disgrace or embarrassment to the University or Coach; tends to, or could reasonably be expected to, shock, insult, or offend the greater Cleveland and/or University alumni communities; manifests contempt or disregard for diversity, public morals or decency; or violates applicable University policies, procedures, rules and/or regulations with respect to personal conduct; or

(x) any other act or omission, whether occurring prior to or during the Term, which brings, or could reasonably be expected to bring, serious discredit to the Program.

In the event of Coach's termination for Cause, this Agreement shall terminate without further

obligation by the University, except for the payment of any Accrued Obligations (as defined in Section 18(f) below).

(d) Termination Without Necessity of Demonstrating Cause.

(i) The University may, by written notice, terminate Coach's employment without necessity of demonstrating Cause at any time. In the event that the University terminates Coach's employment pursuant to this Section 18(d)(i) and as long as Coach continued to actively perform his duties as head coach of the Team through such termination date, the University shall pay Coach, as Coach's sole remedy based upon termination of this Agreement and in full and final satisfaction of any claims arising from termination of Coach's employment, a severance benefit equal to the Base Salary that would have been payable for the then remaining Term had termination not occurred. Such amount shall be paid by the University in equal monthly installments beginning as of the last day of the month in which the effective date of termination occurs and ending as of the Expiration Date (the "Severance Period"). Notwithstanding the preceding sentence, with respect to any portion of the severance benefit that is payable in a calendar year after the calendar year in which the effective date of termination occurs ("Future Severance Pay"), a portion of the Future Severance Pay shall be accelerated in an amount equal to the federal and state income tax withholdings that would have been remitted by the University if there had been a payment of wages equal to the income includible by Coach under Section 457(f) of the Internal Revenue Code (the "Code") as of the effective date of termination (Future Severance Pay otherwise payable to Coach will be offset by any such Future Severance Pay accelerated) and such portion shall be paid by the end of the calendar year in which the effective date of termination occurs. The acceleration described in the preceding sentence is intended to comply with the requirements of Section 1.409A-3(j)(4)(iv) of the Code regulations (as it may be amended from time to time), and shall be administered and construed in whatever manner is necessary to ensure such compliance.

(ii) Notwithstanding the foregoing, no severance benefit shall be paid pursuant to this Section 18(d) unless and until (A) Coach timely and properly provides to the University an executed Release in a form satisfactory to the University; and (B) Coach does not properly revoke that Release within seven days after the date he first provides the timely and properly executed Release to the University (if Coach does not revoke the Release within that seven day period in accordance with the revocation requirements specified in the Release, the Release shall become binding and irrevocable between the parties once that seven day period ends). Coach must execute and return the release to the University within 60 days following the date his employment with the University is terminated without Cause; no benefit will be due or provided to Coach if Coach fails to return the properly executed Release within the 60 day period. If the 60 day period begins in one calendar year and ends in a second calendar year, the severance benefit otherwise due to be paid during the portion of the period that falls within the first year will be delayed and paid at the end of the period (that falls within the second year).

(iii) Coach shall use his best efforts to seek Other Employment and to take other reasonable actions to mitigate the amounts payable under this Section 18(d)), and the

University's obligation to pay the severance benefit contemplated by this Section 18(d) is subject to and contingent upon Coach's exercise of such efforts. If Coach fails to use his best efforts seek Other Employment as required by the preceding sentence, the University shall have no further obligation to pay the severance benefit until Coach remedies the situation (at which time future payments shall resume immediately; provided, however, that the University shall have no obligation to make any payments for any period during which Coach was not exercising such efforts). Any amounts payable by the University to Coach under this Section 18(d) shall be offset by the Compensation earned by Coach from Other Employment. If Coach engages in Other Employment during the Severance Period, at the University's option, the University may reduce the amount of the severance benefit otherwise payable pursuant to this Section 18(d) by the amount of the Compensation earned by Coach from such Other Employment. Coach shall inform the University, on a regular and continuing basis and at anytime upon request, as to whether he has obtained Other Employment during the Severance Period. In the event the University discovers evidence of such Other Employment that is not communicated to the University, (A) Coach waives and relinquishes the right for the payor of any Compensation due thereunder to withhold the full disclosure, and hereby authorizes such payor to make full disclosure, of such Compensation to the University, and (B) any severance benefit provided for under this Section 18(d) which has been paid to Coach during the period that Coach failed to notify the University of Other Employment shall be refunded to the University by Coach, in whole or in part, to the extent necessary to give effect to the right of offset contemplated hereby.

(iv) For purposes of this Section 18(d), (i) the term "Other Employment" shall mean the provision of services by Coach employment as a head basketball coach, assistant basketball coach or member of a basketball program staff, or in an intercollegiate athletics administrative position, including, without limitation, working as an employee for another employer, as a consultant, as a self-employed person, or as an independent contractor, whether personally or through one or more business entities owned or controlled by Coach; and (ii) the term "Compensation" shall mean any and all gross income derived from Other Employment, whether as wages paid by an employer, as a dividend or other distribution from a business entity owned or controlled by Coach, or otherwise. For purposes of determining the Compensation payable to Coach during the Severance Period under circumstances in which Coach's Other Employment is evidenced by one or more contractual agreements having a term greater than one year (without limiting inclusion of other types of Compensation) in which the annual increase from any one year to a succeeding year is equal to or greater than 25%, any periodically-rated salary, additional or supplemental compensation, or other compensation expressed as a periodic rate payable to Coach in any given year shall be deemed to be the average Compensation of such nature payable under said contractual agreement(s), determined by dividing the total such Compensation payable thereunder for all periods (including periods occurring after the end of the Severance Period) by the total number of years occurring during the term thereof. In the event the term of such contractual agreement(s) includes one or more partial years, such Compensation payable in such partial year(s) shall be included in the aforementioned calculation, and each such partial year shall be considered part of the term as a fractional year based on the number of days in such partial year divided by 365, rounded to the nearest hundredth of a year. For example, a

contractual agreement beginning on April 1, 2025 and ending on June 30, 2030 would be considered to have a term of 5.25 years.

(e) Termination by Coach.

(i) Coach recognizes that his promise to work as head coach of the Team for the entire Term is of the essence of this Agreement to the University. Coach also recognizes that the University is making a highly valuable investment in his continued employment by entering into this Agreement and that its investment would be lost were he to resign or otherwise terminate his employment with the University prior to the Expiration Date. The parties agree that Coach may, nevertheless, terminate his employment under this Agreement prior to the Expiration Date, subject to the terms of this Section 18(e), by giving the University advance written notice. Coach agrees that under no circumstance will he or his spouse, partner, agents, representatives or advisors reveal his termination of this Agreement pursuant to this Section 18(e) to anyone other than his spouse, partner, agents, representatives or advisors for a period of 12 hours following notification to the University.

(ii) In the event that Coach elects to terminate this Agreement prior to the Expiration Date, Coach will pay the University on demand, as liquidated damages due the University and not as a penalty, an amount equal to the following applicable amount based on the date of termination:

<u>Date of Termination</u>	<u>Liquidated Damages Amount</u>
Effective Date-April 30, 2023	\$150,000
May 1, 2023-April 30, 2024	\$75,000
May 1, 2024-April 30, 2025	\$50,000
May 1, 2025-Expiration Date	\$0

Notwithstanding the foregoing, no liquidated damages shall be payable if, as of the date Coach terminates this Agreement, Scott Garrett is not serving as the University's Director of Athletics. In the event Coach terminates this Agreement pursuant to this Section 18(e), the University's sole obligation to Coach will be to pay any Accrued Obligations (as defined in Section 18(f)).

(iii) Coach and the University acknowledge that the University will clearly be damaged if Coach terminates this Agreement prematurely and that it is difficult to calculate with reasonable certainty the amount of prospective damages. They further acknowledge that the amount and payment of liquidated damages provided above are reasonable in light of the anticipated and actual harm that will be caused the University in the event this Agreement is terminated prematurely by Coach pursuant to this Section 18(e).

(f) Accrued Obligations. As used in this Agreement, “Accrued Obligations” shall mean the sum of (i) any portion of Coach’s Base Salary and Additional Compensation through the date of death or termination of employment, as the case may be, which has not yet been paid; and (ii) any other compensation previously earned and accrued that has not yet been paid. “Accrued Obligations” shall not include any form of severance payment or contingent bonus, or benefit not yet vested in accordance with the terms of the applicable plan.

**19. Confidential Information; Etc.**

(a) Confidentiality. Coach acknowledges that while employed by the University Coach will occupy a position of trust and confidence and will receive and have access to Confidential Information, as hereinafter defined. Coach acknowledges that such Confidential Information is specialized, unique in nature and of great value to the University, and that such information gives the University a competitive advantage. During the Term and thereafter, Coach shall not use the Confidential Information or disclose the Confidential Information to any third party, except (i) as required to perform Coach’s duties to the University in a manner consistent with professional standards and obligations; (ii) as authorized by the University; (iii) in furtherance of the University’s legitimate business interests; (iv) to comply with applicable law, regulations, Governing Body Requirements or accreditation standards; or (v) to the extent such Confidential Information shall have become public other than by Coach’s unauthorized use or disclosure. Notwithstanding the foregoing, in no event shall Coach use or disclose Confidential Information if such use or disclosure could reasonably be expected to expose the University to competitive disadvantage or legal liability, or will otherwise harm the University. For purposes of this Agreement, “Confidential Information” means any information not generally available to the public regarding the University or its actual or prospective students, employees, alumni or donors, including without limitation information regarding actual or potential activities of the University; admissions information; fundraising information; financial statements, budgets, projections, or other financial information; the identities of persons under consideration for positions as trustees, officers or employees of the University; vendor contracts and/or pricing; customer information and/or pricing; information regarding actual or potential NCAA, Conference, governing body, legal, regulatory or accreditation proceedings; and any other information that should by its nature or context be recognized as proprietary and/or confidential.

(b) Return Of Documents And Property. Coach agrees to deliver or return to the University, at the University’s request at any time or upon termination or expiration of Coach’s employment or as soon thereafter as possible, all property furnished by the University or prepared, maintained, or acquired by Coach in the course of Coach’s employment by the University, including without limitation computer equipment, keys, documents, computer tapes and disks, records, lists, data, drawings, prints, notes and all other written information, in any form or media and including all copies. Notwithstanding the foregoing, Coach shall be permitted to keep and take copies of ordinary Team operational materials created by or at the direction of Coach in connection with the performance of his duties (*e.g.*, practice scripts, playbooks, calendars, training materials/notes, etc.).

(c) Notification of Certain Communications. Coach shall notify the Director of Athletics prior to engaging, either directly or indirectly through one or more representatives or intermediaries, in communications or discussions with a prospective employer other than the University with respect to potential employment with another college or university or with a professional basketball organization.

(d) Remedies for Breach. Coach expressly agrees and understands that the remedy at law for any breach by Coach of this Section 19 will be inadequate and that damages flowing from such breach are not usually susceptible to being measured in monetary terms. Accordingly, it is acknowledged that upon Coach's violation of any provision of this Section 19 the University shall be entitled to obtain from any court of competent jurisdiction immediate injunctive relief and obtain a temporary order restraining any threatened or further breach as well as an equitable accounting of all profits or benefits arising out of such violation. Nothing in this Section 19 shall be deemed to limit the University's remedies at law or in equity for any breach by Coach of any of the provisions of this Section 19, which may be pursued by or available to the University.

(e) Survival of Provisions. The obligations contained in this Section 19 shall, to the extent provided in this Section 19, survive the termination or expiration of Coach's employment with the University and, as applicable, shall be fully enforceable thereafter in accordance with the terms of this Agreement. Coach agrees that the restrictions set forth in this Section 19 are reasonable and necessary in order to adequately protect the University's interests, and agrees not to challenge the reasonableness of any such restriction in any proceeding to enforce it. If it is determined by a court of competent jurisdiction that any restriction in this Section 19 is excessive in duration or scope or otherwise unenforceable under the laws of that state, it is the intention of the parties that such restriction may be modified or amended by the court to render it enforceable to the maximum extent permitted by the law of that state.

**20. Entire Agreement; Prior Agreements.**

(a) This Agreement constitutes the entire agreement between the parties and supersedes any and all prior agreements and understandings (whether written or oral) between the parties with respect to the subject matter of this Agreement, including without limitation the Existing Agreement and the term sheet dated as of \_\_\_\_\_, 2022. Coach acknowledges and agrees that neither the University nor anyone acting on its behalf has made, and is not making, and in executing this Agreement, the Coach has not relied upon, any representations, promises or inducements except to the extent expressly set forth in this Agreement. In the event of any conflict between the terms of this Agreement and any University policy, procedure, rule or regulation, the terms of this Agreement shall control.

(b) Coach affirms and represents that he is under no obligations to any current or former employer or other third party, or pursuant to any applicable statute or regulation, which are in any way inconsistent with, which impose any restriction upon, or which require any payment by or on behalf of Coach in view of, his employment by the University or his undertakings under this Agreement, or that prevent him from complying with any other agreement that the University has with a third party.

**21. Assignment; Successors.** This Agreement is personal in its nature and none of the parties hereto shall, without the consent of the others, assign or transfer this Agreement or any rights or obligations hereunder, provided that, in the event of the merger, consolidation, transfer, or sale of all or substantially all of the assets of the University with or to any other individual or entity, this Agreement shall, subject to the provisions hereof, be binding upon and inure to the benefit of such successor and such successor shall discharge and perform all the promises, covenants, duties, and obligations of the University hereunder, and all references herein to the "University" shall refer to such successor.

**22. No Third Party Beneficiaries.** This Agreement is not intended to benefit any third party, nor shall any person who is not a party hereto be entitled to enforce any of the rights or obligations of a party under this Agreement.

**23. Withholding.** Whether or not expressly stated in this Agreement, all compensation and any other benefits payable or provided pursuant to this Agreement shall be subject to withholding, payroll taxes, and such other deductions as may from time to time be required in accordance with applicable law and University policies generally. Coach shall comply with all applicable reporting and record-keeping requirements in regard to compensation, benefits, and reimbursed expenses.

**24. Construction.** Notwithstanding any provisions in this Agreement to the contrary: (a) this Agreement is intended to comply with Section 409A of the Code and the regulations and interpretive guidance thereunder ("409A Requirements"), to the extent the Agreement is subject to the 409A Requirements and is not otherwise exempt under one of the applicable exemptions to the 409A Requirements; (b) it is intended that any exercise of authority or discretion by the University or Coach under this Agreement shall comply with the provisions of the 409A

Requirements so as not to subject Coach to the payment of any interest or tax penalty which may be imposed under the 409A Requirements; (c) to the extent this Agreement provides for a payment to be made or a benefit to be provided upon a termination of employment, and to the extent such payment or benefit is subject to the 409A Requirements, the meaning of "termination of employment" for purposes of that payment or benefit shall mean a "separation from service" as defined in the 409A Requirements; and (d) this Agreement shall be interpreted and applied in all circumstances in a manner that is consistent with the intent of the parties that amounts earned and payable pursuant to this Agreement shall not be subject to the premature income recognition or adverse tax provisions of the 409A Requirements.

**25. Heading References.** Section headings in this Agreement are included for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

**26. Waiver; Modification.** Failure to insist upon strict compliance with any of the terms, covenants, or conditions hereof shall not be deemed a waiver of such term, covenant, or condition, nor shall any waiver or relinquishment of, or failure to insist upon strict compliance with, any right or power hereunder at any one or more times be deemed a waiver or relinquishment of such right or power at any other time or times. This Agreement shall not be modified in any respect except by a writing executed by each party hereto.

**27. Severability.** Subject to Section 19(e), in the event that a court of competent jurisdiction determines that any portion of this Agreement is unenforceable or in violation of any law or public policy, only the portions of this Agreement that are unenforceable or that violate such law or public policy shall be stricken. All portions of this Agreement that are enforceable or that do not violate any law or public policy shall continue in full force and effect. Further, any court order striking any portion of this Agreement shall modify the stricken terms as narrowly as possible to give as much effect as possible to the intentions of the parties under this Agreement.

**28. Offset.** To the maximum extent permitted by law, the University shall be entitled to offset any amounts owed by it to Coach against any payment or compensation that is owing and unpaid by Coach to the University, in each case whether under this Agreement, under any other agreement between the parties, or otherwise.

**29. Notices.** All notices and other communications under this Agreement shall be in writing and shall be given by first-class mail, receipted overnight courier, certified or registered with return receipt requested, or hand delivery acknowledged in writing by the recipient personally, and shall be deemed to have been duly given three days after mailing or immediately upon duly acknowledged receipt by hand delivery or overnight courier to the respective persons named below. Either party may change such party's address for notices by written notice duly given in accordance with this Section.

If to the University:

**Director of Athletics**  
Cleveland State University  
2121 Euclid Avenue, WO 2  
Cleveland, Ohio 44115



With a copy to:

Office of General Counsel  
Cleveland State University  
2121 Euclid Avenue, AC 327  
Cleveland, Ohio 44115

If to Coach:

Chris Kielsmeier  


With a copy to:

Gary Rosenfeld  
Coaches, Inc.  
1317 F Street, NW  
Suite 920  
Washington, DC 20004

**30. Governing Law; Jurisdiction.** This Agreement and the legal relations thus created between the parties hereto shall be governed by and construed under and in accordance with the internal laws of the State of Ohio without reference to the principles of conflicts of laws. Any and all disputes between the parties which may arise pursuant to this Agreement will be heard and determined before a federal or state court of competent subject matter jurisdiction located within the geographic boundaries of the state of Ohio. The parties acknowledge that such courts have jurisdiction to interpret and enforce the provisions of this Agreement, and the parties consent to, and waive any and all objections that they may have as to, personal jurisdiction and venue in such courts.

**31. Survival.** The final sentence of Section 3, as well as Sections 4(d), 4(e), 11(b), 12(b), 17, 18 (with respect to post-termination obligations) and 19-32 of this Agreement, as well as other obligations arising during the Term which by their context are to be performed in whole or in part subsequent to termination or expiration, shall survive the termination or expiration of this Agreement and, as applicable, will be fully enforceable thereafter in accordance with the terms of this Agreement.


**32. Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original but all of which together will constitute one and the same instrument. The exchange of copies of this Agreement and of signature pages by facsimile transmission, by electronic mail in "portable document format" (".pdf") form, or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, or by combination of such means, shall constitute effective execution and delivery of

this Agreement as to the parties and may be used in lieu of the original Agreement for all purposes. Signatures of the parties transmitted by the foregoing means shall be deemed to be their original signatures for all purposes.

*[Signatures Appear On Next Page]*

IN WITNESS WHEREOF, the University has caused this Agreement to be executed and delivered and Coach has executed and delivered this Agreement as of the respective dates set forth below.

**CLEVELAND STATE UNIVERSITY**

By:   
President

Date: May 25, 2022

By:   
Director of Athletics

Date: May 25, 2022

  
**CHRIS KIELSMEIER**

Date: May 24, 2022

