

# **HEAD COACH EMPLOYMENT AGREEMENT**

**Between**

**The BOARD OF REGENTS OF THE NEVADA SYSTEM OF HIGHER  
EDUCATION**

**On behalf of**

**the University of Nevada, Reno**

**And**

**BRIAN POLIAN**

This Head Coach Employment Agreement (this "**Agreement**") is effective this 11th day of January, 2013, contingent upon the approval of the Board of Regents of the Nevada System of Higher Education, by and between the Board of Regents of the Nevada System of Higher Education, on behalf of the University of Nevada, Reno (the "**University**"), and Brian Polian (the "**Head Coach**" or the "**Employee**"). Concurrent with this Agreement, the parties shall also execute, on an annual basis for each academic year, a "Terms of Employment for Faculty," or successor document, which said document shall incorporate this Agreement, together with its accompanying document called the University Personnel/Payroll Action Form (PAF), or successor document, along with all other documents or forms reasonably required by the University to effectuate the terms of this Agreement.

## **ARTICLE I - PURPOSE**

The University and the Head Coach have entered into this Agreement because the University desires to contract the Employee for the period set forth in Article 3 with the Employee's assurance that he/she will serve the entire term of this Agreement, a long-term

commitment by the Employee being critical to the University's desire to run a stable athletic program. The University and the Employee agree that head coaches of intercollegiate athletic teams at the University conduct their professional activities under circumstances unique in the University community and among University employees, including evaluation and scrutiny of program performance by the public and the news media and control by external rules and regulations, including without limitation the rules and regulations of the National Collegiate Athletic Association ("NCAA") and the athletic conference of which the University is a member (the "Conference"). These circumstances justify job security and commitment by the Employee longer than one year but less than a continuous appointment. The Employee desires to obtain the opportunities of employment with the University which are set forth in this Agreement. For these reasons, the University has agreed to employ the Employee and the Employee has promised to be employed by the University upon the terms and conditions set out in this Agreement.

#### **ARTICLE II – PUBLIC DOCUMENT**

The parties agree that this Agreement is a public document and that the University may release copies of this Agreement to persons requesting the same.

#### **ARTICLE III – TERM OF EMPLOYMENT AND NOTICE OF NON-RENEWAL**

The Employee's employment hereunder shall commence January 12, 2013, subject to the approval of the Board of Regents of the Nevada System of Higher Education, and shall continue until this Agreement terminates upon the close of business at the University on January 11, 2018, (the "Term"), provided, that this provision is subject to the terms and conditions of Article VI hereof concerning termination and Article VII hereof concerning restrictions on competition, and neither party shall have any right to terminate this Agreement prior to the close of business at the University on January 11, 2018, except as provided therein.

THE PARTIES TO THIS EMPLOYMENT AGREEMENT EXPRESSLY UNDERSTAND AND AGREE THAT THE PROVISIONS OF THIS ARTICLE CONSTITUTE THE NOTICE TO THE EMPLOYEE OF THE NONRENEWAL OF HIS/HER EMPLOYMENT AT THE UNIVERSITY AND THAT HIS/HER EMPLOYMENT WILL TERMINATE UPON THE CLOSE OF BUSINESS AT THE UNIVERSITY ON THE DATE SET FORTH IN THIS ARTICLE III, AND THAT, NOTWITHSTANDING ANY PROVISION OF THE NEVADA SYSTEM OF HIGHER EDUCATION CODE TO THE CONTRARY, NO OTHER NOTICE OF NONRENEWAL OF EMPLOYMENT SHALL BE REQUIRED.

**ARTICLE IV – POSITION**

**4.01. Employment As Head Football Coach Of University.**

The Employee is hereby employed by the University. Throughout the term of this Agreement, the Employee shall use his/her best full-time energies and abilities for the exclusive benefit of the University. The Employee shall serve as the Head Coach of the University's Football program (the "Program"), and the Employee, as Head Coach, shall also serve as the primary and responsible administrator of the Program. As such, the Employee is an "administrator" as that term is defined by the policies, rules and regulations of the Board of Regents of the Nevada System of Higher Education and University may reassign Employee in accordance with Nevada System of Higher Education Code (hereinafter "Code"), Title 2, Chapter 5, Section 5.4.8, as such section may be amended from time to time.

(REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK.)



#### **4.02. Description Of Employee's Responsibilities.**

a. **Recognition Of Duties.** The Employee agrees to be a loyal employee of the University. The Employee agrees to devote his/her best efforts full time to the performance of his/her duties for the University, to give proper time and attention to furthering his/her responsibilities to the University and to comply with all rules, regulations, policies, and decisions established or issued by the University, the NCAA, and the Conference and to comply with all rules, regulations, policies, and decisions established or issued by the athletic department of the University (the "**Athletic Department**"). The Employee agrees that, notwithstanding any provision of Article 5.08 herein, during the terms of this Agreement, he/she will not engage, directly or indirectly, in any business which would detract from his/her ability to apply his/her best efforts to the performance of his/her duties hereunder. Subject to the provisions of Article 5.08, the Employee also agrees not to usurp any corporate or competitive opportunities of the University.

b. **General Duties And Responsibilities Of Employee.** During the Term, the Employee agrees to undertake and perform properly, efficiently, to the best of his/her ability and consonant with the standards of the University all duties and responsibilities attendant to the position of Head Coach of the Program as set forth in Article 4.02(c.) below. The Employee further agrees to abide by and comply with the constitution, bylaws and interpretations of the NCAA and all NCAA and University rules and regulations relating to his/her conduct and administration of the Program, including recruiting rules, as now constituted or as any of the same may be amended during the term hereof, as well as the applicable constitution, bylaws, rules and regulations of the Conference. In the event that the Employee becomes aware of, or has reasonable cause to believe that violations of any NCAA constitution, bylaws, rules or regulations, or official interpretations thereof, may have taken place, he/she shall report the same promptly to the University's Director of Intercollegiate Athletics ("**Athletic Director**") or



designee. It is further understood that Employee is individually responsible for compliance with the policies of NSHE, the University, including, but not limited to, those of its Athletic Department, and with the rules and regulations of the NCAA and the Conference and the constitution, bylaws, rules, regulations and official interpretations thereof, as may be in effect from time to time, and for reporting violations and potential violations thereof to the Athletic Director. The Employee agrees to adhere to, respect and follow the academic standards and requirements of the University in regard to the recruiting and eligibility of prospective and current student athletes for the Program. All academic standards, requirements and policies of the NSHE and University shall also be observed by the Employee and members of his/her staff, including assistant coaches, at all times and shall not be compromised or violated at any time. It is the goal and desire of both the University and Employee that student athletes in the Program perform at the highest possible academic level. As Head Coach, the Employee will publicly support the mission and policies of the Athletic Department. Employee shall not exhibit any behavior that brings Employee or University into public disrepute, contempt, scandal or ridicule or in any behavior that is unfavorable to the reputation or ethical standards of NSHE or University. In his/her position as Head Coach of the Program, the Employee is held directly accountable for these general responsibilities relating to the Program: implementation of the budget for the Program and the recruiting, training, supervision, evaluation and performance of student athletes and coaching staff. As Head Coach of the Program, Employee shall be positive in supporting the Program, the Athletic Director, the Athletic Department, and the University.

c. Duties And Responsibilities While Employed As Head Coach. The duties and responsibilities assigned to the Employee in connection with this position as Head Coach of the Program are as set forth below. The Employee's specific job duties and responsibilities shall be reviewed, assigned and revised from time to time, after consultation with the

Employee, by the Employee's reporting supervisor, the Athletic Director. The duties and responsibilities are not exclusive of the other general duties and responsibilities provided for elsewhere in this Agreement.

**i) Specialized Position**

The position of Head Coach of the Program is a specialized professional position. The Employee is responsible for evaluating, recruiting, training and coaching student athletes to compete successfully against major college competition in a quality football program and the Employee is expected to conduct the Program in a manner most beneficial to the University and its Athletic Department.

**ii) Coaching**

Employee shall participate in the instruction and coaching of student-athletes and shall effectively apply experience in recruiting, training and coaching of student-athletes.

**iii) Recruiting**

Employee shall determine evaluation schedules for high school contests and junior college contests, as appropriate, to interview and recruit prospective student-athletes.

**iv) Rules Compliance**

Employee shall work within the confines of rules, regulations, guidelines and policies of the Athletic Department, the NCAA and the Conference. Employee shall have complete knowledge of the rules and regulations governing intercollegiate athletics and maintain strict compliance therewith and attend all department-wide rules education meetings unless the Athletic Director or designee gives prior approval for absence from such meetings.



**v) Good Sportsmanship**

Intercollegiate athletics contests shall be conducted in a sportsmanlike manner. It is the responsibility of Employee to ensure that all student-athletes, coaches and staff who are associated with the Program conduct themselves in a sportsmanlike manner. Employee shall, and shall ensure that all student-athletes, coaches and staff, exhibit ethical behavior at all NCAA and Conference competitions and shall conduct themselves in accordance with the rules of the NCAA and the Conference and the playing rules of the respective sports. Employee shall, and shall ensure that all student-athletes, coaches and staff, refrain from making negative comments regarding an opposing institution or its players, teams, coaches/staff or game officials, and shall create a healthy environment for competition.

**vi) Fiscal Management**

Employee is responsible for all aspects of fiscal management related to the Program. The Employee, in conjunction with the Athletic Director may be required to assist in securing outside funding to meet other basic needs of the Program or to enhance the overall Athletic Department programs, if necessary.

**vii) Support Academic Mission**

Employee shall work towards integration of intercollegiate athletics and the experience for each student-athlete into the whole spectrum of academic life and to complement the University and its mission.

**viii) Other Specific Duties and Responsibilities**

All other duties and responsibilities will be assigned by the Athletic Director or designee, and will be reasonably related to the position of Head Coach for the sport in which Employee serves as Head Coach.

**4.03. Employee May Be Disciplined for Violations of NCAA Rules and Regulations.**

If the Employee is found to have violated NCAA rules and regulations during prior employment at another NCAA member institution, the Employee shall be subject to disciplinary or corrective action as set forth in the NCAA enforcement procedure. If the Employee is found to be in violation of NCAA, Conference or University rules and regulations while employed by the University, the Employee shall also be subject to disciplinary or corrective action as set forth in the NCAA and/or University enforcement procedure and/or as set forth below in Article 6.01(c) and (d). The Employee may be suspended for a period of time, without pay, or the employment of the Employee may be terminated as provided in Article 6.01 (c) and (d) hereof. Employee may also be disciplined in accordance with Code Chapter 6, Section 6.6, as such section may be amended from time to time.

(REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK.)



#### **4.04 Reporting Relationship.**

The Employee shall report to the Athletic Director. The Employee is expected to work closely with a variety of athletic departments and University staff on all matters affecting the Program or otherwise connected with the discharge of his/her duties as an employee of the University.

#### **4.05 Periodic Personnel Evaluations.**

The Employee's performance of his/her job duties and responsibilities, distinguished from his/her win-loss record, will be evaluated by his/her reporting superior periodically on the duties and responsibilities set forth in this Agreement according to the following categories:

- 40% Competitiveness;
- 40% Academics and rules compliance;
- 10% Institutional goals, including diversity, and citizenship and;
- 10% Program administration.

These evaluations also will take into account prior evaluations and the expectations and goals set for the Employee in such prior evaluations. Academic achievement shall include but not be limited to maintenance of the academic performance rate (APR) as described in Article 5.10. In addition, each year that the Employee serves as Head Coach of the Program, the Employee will be responsible for evaluating assistant coaches, who shall be evaluated on the same basis as performance evaluations are done for other professional employees of the University.

### **ARTICLE V – COMPENSATION**

In consideration for the promises Employee has made in entering into this Agreement, the Employee shall be entitled to the compensation as described below. All payments, including non-cash consideration and benefits, by the University are subject to normal

deductions and withholding of all applicable state, local and federal taxes, including all provisions, regulations and guidelines of the Internal Revenue Code, and for any retirement or other benefits to which the Employee is entitled or in which he/she participates, and are subject to the terms and conditions of Article VI hereof concerning termination of this Agreement and Article VII hereof concerning restrictions on competitive employment.

**5.01. Base Salary.**

The base salary paid by the University to the Employee for his/her services and satisfactory performance of the terms and conditions of this Agreement shall be at the base rate of **\$475,000.00 until July 1, 2014, when such base rate shall increase to \$525,000.00** ("**Base Salary**") per fiscal year (a fiscal year begins on July 1 and ends the following June 30), prorated to the portion of the fiscal year the Employee is actually employed, and payable in equal monthly installments by the University to the Employee on the first working day of each consecutive calendar month during the Term. Notwithstanding this Article 5.01, in the event there are salary reductions throughout the Nevada System of Higher Education for any fiscal year during the Term, Employee's salary shall be reduced by the same percentage and in the same manner as other non-tenured faculty of University through the mechanisms required by the Board of Regents, such as, for example, pay cuts and unpaid leave days.

**5.02 Fringe Benefits.**

The Employee shall be entitled to the standard fringe benefits provided to all other professional employees of the University including, but not limited to, retirement contributions based upon the compensation paid pursuant to Article 5.01 of this Agreement, insurance and annual leave and sick leave, but excluding merit increases and COLA. Employee shall earn 2 days of annual leave per month and may carry over from contract year to contract year up to 48 earned days of annual leave. Notwithstanding any Board of Regents policy, Employee



shall not be paid for unused annual leave upon termination, under any circumstances, of this Agreement.

**5.03 Expenses.**

The University will reimburse the Employee for all travel and out-of-pocket expenses reasonably incurred by him/her for the purpose of and in connection with the performance of his/her duties under this Agreement, including, but not limited to, expenses incurred while recruiting and scouting. Such reimbursement shall be made in accordance with standard reimbursement rates and procedures of the University upon presentation to the University of standard travel reimbursement forms, vouchers or other statements itemizing such expenses in reasonable detail. In addition, the University will provide the Employee's spouse with team travel privileges to all away games at the standard state per diem rate.

**5.04. Automobiles.**

The University, as additional compensation to the Employee, shall make arrangements for and provide to the Employee, either an automobile allowance or, on a loan basis, a courtesy car for the use of the Employee for so long as the Employee serves as Head Coach of the Program. The University further agrees to provide appropriate liability and comprehensive automobile insurance to cover the Employee in his/her use and operation of said automobile. Employee shall be responsible for all other expenses involved in the use and operation by Employee of said automobile.

**5.05. Season Tickets and Memberships.**

- a. The University shall make available to the Employee, upon request, skybox family privileges for up to twelve (12) season tickets to the University's football team's home games.
- b. The University shall make available to the Employee, upon request, four (4) complimentary season tickets for all other sports.

c. The University shall make available to the Employee, upon request, a country club membership ,including mandatory annual fees not to exceed \$10,000.00.

**5.06 Appearances and Hosting.**

**a. Television, Radio, and Personal Appearances**

At the Athletic Director's direction, Employee shall participate in television, radio, and personal appearances. As compensation for television, radio, and personal appearances, University shall pay Employee up to the sum of \$ 50,000.00 annually as follows:

1. Weekly coaches' television show: \$25,000.00
2. Weekly coaches' radio show: \$15,000.00;
3. Personal appearances: \$10,000.00 .

Personal appearances may include, but shall not be limited to, coaches caravans, athletic department sponsored functions, and other events required by University contracts with sponsors or other parties.

**b. Hosting Account**

University shall provide Employee up to \$ 10,000.00 for hosting activities undertaken as Head Coach of the Program; Employee shall comply with all Board of Regents, University, and Athletic Department policies governing Hosting Accounts.

(REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK.)



### **5.07 Other Compensation**

Incentives: Employee may earn up to an additional \$75,000.00 per contract year for the following:

a.. National Television (Mountain West Conference National Exposure Bonus System):

1. Per weekday game: \$15,000.00;
2. Per Saturday game: \$25,000.00.

b. Paid Football Season Ticket Sales Increase: For every 5,000 season tickets sold above 10,000 tickets, University shall pay Employee \$10,000.00.

### **5.08. Opportunities to Earn Outside Income.**

While the Employee is employed as Head Coach of the Program, he/she shall have the opportunity to earn outside income as a result thereof, but only upon the following terms and conditions:

a. General Provisions Concerning Outside Income. The following general terms and conditions shall apply to each case in which the Employee seeks to or makes arrangements for activities to earn outside income as a result of being Head Coach of the Program.

1. University Obligations are Primary. Such outside activities shall not interfere with the full and complete performance by the Employee of his/her duties and obligations as a University employee, recognizing always that the Employee's primary obligations lie with the University and its students.
2. Laws and University, NCAA and Conference Rules Control. In no event shall the Employee accept or receive directly or indirectly any monies, benefit or any other gratuity whatsoever from any person, corporation, University booster club or alumni association or other benefactor if such action would violate: (1) the

laws of the State of Nevada or of the United States of America; (2) the Code, any other provisions of the NSHE Board of Regents Handbook, or rules or policies of the University or its Board of Regents; or (3) NCAA legislation or the constitution, bylaws, rules and regulations, or interpretations thereof, or of the Conference, as now or hereafter enacted. Changes or amendments of such laws, legislation, constitution, bylaws, policies, rules and regulations or interpretations thereof shall automatically apply to this Agreement without the necessity of a written modification of this Agreement or of notification to Employee.

3. University Approval is Required. To the extent required by NCAA regulations and as provided in this Agreement, the Employee shall obtain the advance written approval of the University's President, through the Athletic Director, before entering into agreements to receive outside income, which approval shall not be unreasonably withheld.

4. University is Not Liable: ANY ARRANGEMENTS FOR OUTSIDE COMPENSATION AND THE ACTIVITIES THEREUNDER ARE INDEPENDENT OF THE EMPLOYEE'S UNIVERSITY EMPLOYMENT, AND THE UNIVERSITY SHALL HAVE NO RESPONSIBILITY OR LIABILITY FOR ANY PAYMENT OF OUTSIDE COMPENSATION OR FOR ANY CLAIMS ARISING THEREFROM UNDER ANY CIRCUMSTANCES WHATSOEVER.

b. Commercial Endorsement. Subject to the provisions of Article 5.08 (a) hereof, the University and the Employee agree that the Employee may undertake commercial endorsements of products and services in which he/she is identified as the Head Coach of the Program, but that he/she may not otherwise associate the University's name with an



endorsement and provided that all such endorsements must cease at the termination of this Agreement or at such time as Employee stops serving as Head Coach of the Program.

c. Income from Written and Video Materials. Subject to the provisions of Article 5.08 (a) hereof, the Employee may write and release books and magazine and newspaper articles, columns or video productions in connection with his/her position as Head Coach of the Program. The Employee agrees to act in a professional manner in all such matters and shall in no way disparage the Nevada System of Higher Education, the University, their activities, programs, regents, officers, employees or agents.

d. Summer Camp. Subject to the provisions of Article 5.08(a) hereof and, subject to the availability of the facilities in question, for so long as the Employee serves as Head Coach of the Program, the Employee shall have the opportunity to use University facilities in connection with a summer camp run by the Employee and using his/her name, provided that the University is reimbursed by the Employee for its actual and overhead expenses incurred in making the facilities available, and upon such conditions as may be required from time to time by the University's administration. For any and all camps and/or clinics the Employee may conduct, the Employee shall purchase comprehensive general liability insurance with limits set forth by the University and which shall name the Board of Regents of the Nevada System of Higher Education as an additional insured. Prior to the commencement of such camps and/or clinics, Employee shall provide the Athletic Director with certificates of insurance evidencing such insurance. The University may waive the insurance requirements if it is determined in the best interest of the University to conduct the camps and/or clinics through a division or department of the University. Any profits made by the Employee from this enterprise, after deducting any fees that may be due to the University for conducting the camps and/or clinics through a division or department of the University, shall be retained by him/her solely. Employee may direct the University to distribute this supplemental



compensation, or a part thereof, to his/her assistant coaches as supplemental compensation to them upon the written approval of the Athletic Director. Employee shall hold harmless and defend Employer from any and all liability arising from any camp he/she conducts.

e. Shoe, Apparel and Equipment Contracts. Subject to the provision of Article 5.08(a) hereof, the Employee may retain any monies offered by shoe, apparel or equipment manufacturers or sellers in exchange for an agreement that the Program's team shall wear its shoes, apparel or equipment during competition or that the Employee shall wear, promote, endorse or consult with the manufacturer or seller concerning the design and/or marketing of such shoes, apparel or equipment, provided that such agreements are in writing, do not extend beyond the term of this Agreement and must be coterminous with the Employee's termination of employment or the date Employee stops serving as Head Coach of the Program, whichever is earlier, and do not conflict with any shoe, apparel and equipment contracts of the Athletic Department as determined by the Athletic Director.

f. Payment Disbursement. All contracts under Article 5.08(e) of this Agreement shall require payment be disbursed through the Athletic Department. Such disbursements by the Athletic Department shall be made within a reasonable period upon receipt of said monies. In no event shall the University be liable for any payment or disbursement of monies unless and until the University receives said monies for disbursement. The University shall use those efforts it deems appropriate to collect monies owing.

g. Disclosure of Outside Income. In accordance with NCAA regulations, the Employee shall report annually in writing to the President of the University, through the Athletic Director, on or before June 30 of each fiscal year, all athletically-related income from sources outside the University, including, but not limited to, income from annuities, sports camps, housing benefits, complimentary ticket sales, television and radio programs and endorsement or consultation contracts with athletic shoe, apparel or equipment manufacturers or sellers, and

the University shall have reasonable access to all records of the Employee necessary to verify such report. In addition, in accordance with NCAA regulations, Employee may be required to report outside income directly to the NCAA.

**5.09. Supplemental Compensation if Team Participates in Post-Season Play.**

During his/her employment as Head Coach of the Program, the Employee shall have the opportunity to earn supplemental compensation in the amounts and upon the conditions set forth below, based upon the exceptional performance of the Program's team's participation in post-season based games and for the extra services required of the Employee in preparation for and participation in such post-season games. The Employee may direct the University to distribute this supplemental compensation, or a part thereof, to his/her assistant coaches as supplemental compensation to them upon the written approval of the Athletic Director. The University shall pay Employee up to \$125,000.00 annually as follows:

- a. Conference Championship and BCS Bowl Appearance. For winning the Conference championship/participating in a BCS Bowl Appearance, the University will pay the Employee the sum of \$100,000.00.
- b. Conference Championship and Non-BCS Bowl Appearance. For winning the Conference championship/participating in a non-BCS Bowl Appearance, the University will pay the Employee the sum of \$50,000.00.
- c. NCAA Sanctioned Bowl Game. In the event that the Program's team does not win the Conference championship but participates in an NCAA sanctioned bowl game, the University will pay the Employee the sum of \$15,000.00.
- d. Post-Season Ranking. If the University Program's team is in the season-ending USA Today Top Twenty Coaches Poll, the University will pay the Employee the sum of \$15,000.00.

e. Conference Coach of the Year. If Employee is selected as Coach of the Year of the Conference, the University will pay Employee the sum of \$10,000.00.

**5.10. Academic Performance.**

Commencing with the academic year 2013-14, and each academic year thereafter for the term of this Agreement, the Employee will be expected to maintain a minimum academic performance rate (APR), currently 925, as established by the NCAA or the Conference, whichever is the higher, for all athletes on the Program's team. Employee shall require all athletes on the Program's team to follow all academic procedures established by the Athletic Department.

University shall pay Employee up to \$50,000.00 annually for the following academic achievements:

- a) NCAA APR single year rate of 940: \$25,000.00.
- b) NCAA APR multi-year rate of 960: \$15,000.00.
- c) NCAA Academic Americas: \$5,000.00 for each.

(REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK.)



## ARTICLE VI – TERMINATION

### 6.01. Termination by University.

The Employee recognizes that his/her promise to remain as Head Coach of the Program through the entire term of this Agreement is of the essence of this Agreement to the University. It is also recognized, however, that certain limited circumstances may make it appropriate for the University to terminate this Agreement prior to the completion of its entire term, as follows:

a. Termination By University Without Cause. Notwithstanding any provision of the Code to the contrary, at any time after commencement of this Agreement, the University may terminate this Agreement by giving thirty (30) days' written notice to the Employee, such termination to become effective no earlier than thirty (30) days after receipt of such written notice.

In the event the University terminates this Agreement without cause, the University shall pay to the Employee, as liquidated damages, an amount equal to the Employee's Base Salary, exclusive of any benefits whatsoever, for the period remaining in the Term of this Agreement, to be paid on a monthly basis prorated over the remainder of the Term of this Agreement or to be paid annually, the choice between monthly or annual payment being in the sole discretion of the University. The University shall not be liable for any consequential damages or loss of any collateral business opportunities or any other benefits, perquisites, or income from any sources that might ensue as a result of the University's termination of this Agreement without cause.

The parties have bargained for and agreed to the foregoing liquidated damages provision, giving consideration to the fact that the Employee may lose certain benefits, supplemental compensation or outside compensation relating to his/her employment at the

University, which damages are extremely difficult to determine with certainty, or fairly or adequately. The parties further agree that payment of such liquidated damages by the University and acceptance thereof by the Employee shall constitute adequate and reasonable compensation to the Employee for damages and injury suffered because of such termination by the University. The foregoing shall not be, nor be construed to be, a penalty.

b. Automatic Termination upon Death or Disability of Employee. This Agreement terminates upon the Employee's death. Notwithstanding any provision of the Code to the contrary, in addition to any benefits which may be paid to the estate of the deceased Employee from insurance, retirement or any other source, the University shall pay to the Employee's estate the Employee's salary through the day death occurred together with one-twelfth of the Employee's base salary.

Upon total or permanent disability of the Employee, within the meaning of the University's disability insurance for employees, the Employee is required to first use all unused, accrued sick and annual leave, if applicable under University policies, and then the Employee is entitled to the extended, salaried sick leave benefit for catastrophic illnesses authorized by the University for its employees, provided the Employee meets the conditions of the Board of Regents' policy for such sick leave. Upon the expiration of the extended, salaried sick leave benefit for catastrophic illnesses or the period of six (6) months, whichever comes last, this Agreement shall automatically terminate and the Employee shall be entitled to benefits as provided by the University's long-term disability insurance coverage. Benefits provided under this article are calculated on the Base Salary as set forth in Article 5.01 of this Agreement.

c. Termination by University for Cause. The University shall have the right to terminate this Agreement for cause at any time. The term "cause" shall include, in addition to



and as examples of its reasonable and customary meaning in employment contracts, any of the following:

1. Insubordination, including but not limited to, failure to follow instructions from the Athletic Director, failure to comply with Athletic Department policies and procedures, failure to fulfill the duties and responsibilities of Head Coach as specified in this employment agreement or as reviewed, assigned, and revised in accordance with Article 4.02 of this Agreement;
2. Deliberate and serious violations of the duties outlined in Article 4.02 of this Agreement or refusal or unwillingness to perform such duties in good faith and to the best of the Employee's abilities;
3. Any conduct of the Employee in violation of any criminal statute of moral turpitude;
4. A serious or intentional violation of any law or of any policy, rule, regulation, constitutional provision, bylaw or interpretation of the University, the Nevada System of Higher Education, the NCAA or the Conference, which violation may, in the sole judgment of the University, reflect adversely upon the University or its Athletic Department, including any violation which may result in the University being sanctioned by the NCAA or the Conference, and including any violation which may have occurred during prior employment of the Employee at another NCAA member institution;
5. A serious or intentional violation of any law or of any policy, rule, regulation, constitutional provision, bylaw or interpretation of the University, the NCAA or the Conference, by Employee or student athletes in the Program, which violation may, in the sole judgment of the University, reflect adversely upon the University or the



programs of its Athletic Department, including any violation which may result in the University being sanctioned by the NCAA or the Conference;

6. Conduct of the Employee which, in the sole judgment of the University, is seriously prejudicial to the best interests of the University or its Athletic Department or which violated the University's mission;

7. Prolonged absence from duty without the written consent of the Employee's reporting superior; or

8. Any cause adequate to sustain the termination of any other University employee under the provisions of the Code.

d. Determination of Cause and Employee's Right to University Hearing.

Notwithstanding the provisions of the NSHE Board of Regents Handbook, specifically, Title 2, Chapter 6, if the Athletic Director provides a written recommendation to the President of the University, that Employee's employment be terminated for cause, a review hearing may be held by a review committee to consider the evidence on the issue of cause. The review committee shall be composed of the Provost or Vice Provost, the Vice President for Student Services and the chief Human Resources officer, or their designees (collectively, the "**Review Committee**"). The Provost or Vice Provost, or his/her designee, shall chair the Review Committee. The Employee shall be provided with a copy of the Athletic Director's written recommendation for termination for cause. The review hearing shall be held within a reasonable time. The Employee and the Athletic Director, who shall present the evidence at the review hearing, shall be given no less than five (5) working days' written notice of the review hearing date. The review hearing shall be informal in nature. Neither party shall be represented by legal counsel at the review hearing. No later than three (3) calendar days prior to the review hearing, the Athletic Director and the Employee shall exchange copies of the documentary evidence they intend to present and lists of the names, addresses and

telephone numbers of all witnesses, and shall disclose any physical evidence they intend to present.

The Provost or Vice Provost, or his/her designee, shall preside over the review hearing, shall make decisions concerning the order of the presentation and the relevance of evidence, and may limit the amount of time the parties have to present evidence.

Upon the completion of the presentation of the evidence, the Review Committee shall deliberate and make a written recommendation to the President whether cause supports the proposed termination. Within a reasonable time of receipt of the Review Committee's recommendation, the President shall inform the Athletic Director and the Employee of his/her decision in writing and, in the event the President's decision is termination, he/she will set the effective date of the termination in his/her decision. The president's decision is final; there is no appeal.

e. University's Obligations Upon Termination for Cause. In the event this Agreement is terminated for cause in accordance with the provisions of Article 6.01 (c) and (d) hereof, as of the effective date of such termination, all of the University's obligations to the Employee under this Agreement subsequent to that date shall cease. In no case shall the University be liable to the Employee for the loss of any collateral or outside business opportunities or any other benefits, perquisites or income resulting from activities such as, but not limited to, camps, clinics, media appearances, apparel or shoe contracts, consulting relationships or from any other source whatsoever.

#### **6.02. Termination by Employee.**

The Employee understands that his/her promise to remain employed as Head Coach for the entire term of this Agreement is of the essence of this Agreement to the University. The Employee also understands that the University is making a highly valuable investment in his/her continued employment by entering into this Agreement and that its investment would



be lost were he/she to resign or otherwise terminate his/her employment with the University prior to the expiration of this Agreement. In recognition of these understandings, the parties agree that while the Employee may, nevertheless, terminate this Agreement prior to its normal expiration, such termination shall be only upon the following terms and conditions:

a. Written Notice by Employee. Subject to the provisions of Article 7.01, the Employee may terminate this Agreement during the Term by giving the University at least thirty (30) days' advance written notice of the termination of his/her employment with the University. Such termination by the Employee must occur at a time outside the Program's team's playing season and recruiting contact periods, as defined by the NCAA, so as to minimize the impact of such termination upon the Program.

b. Effect of Termination by Employee. If the Employee terminates this Agreement prior to its expiration pursuant to Article 6.02(a), all compensation and other obligations owed by the University to the Employee under this Agreement will be terminated on the effective date of the Employee's termination, except such sums as are earned by and are still owing to the Employee prior to the effective date of the Employee's termination. The provision of this Article 6.02(b.) shall be without prejudice to any right the University may have under applicable law.

In no case shall the University be liable to the Employee for the loss of any collateral business opportunities or any other benefits, perquisites or income resulting from activities such as but not limited to camps, clinics, media appearances, apparel or shoe contracts, consulting relationships or from any other sources whatever, that may ensue as a result of the Employee's termination of this Agreement.

c. In the event the Employee terminates this Agreement, the Employee shall pay to the University, as liquidated damages, an amount equal to the Employee's Base Salary for the period remaining in the Term of this Agreement and, if the Employee terminates this



Agreement prior to January 1, 2015, Employee shall pay to the University an additional \$1,000,000.00.

d. The parties have bargained for and agreed to the foregoing liquidated damages provision, giving consideration to the fact that the University is hiring Employee as Head Coach with the Employee's assurance that he/she would serve the entire term of this Agreement, a long-term commitment by the Employee being critical to the University's desire to run a stable athletic program. The Employee's termination of this Agreement prior to the end of its Term causes disruption to the Program and places University and its Program at a competitive disadvantage and causes damages and injury to the University. The parties further agree that payment of such liquidated damages by the Employee and acceptance thereof by the University shall constitute adequate and reasonable compensation to the University for damages and injury suffered because of such termination by the Employee. The foregoing shall not be, nor be construed to be, a penalty.

#### **ARTICLE VII – RESTRICTIVE COVENANTS**

##### **7.01 Employee May Not Seek or Accept Other Coaching Position Without Notice to the University.**

The parties agree that in the course of employment, Employee will have access to confidential information regarding the Athletic Department and its programs that could be used by other institutions to place the Program's team at a competitive disadvantage. Employee shall not provide, and is prohibited from providing, any such confidential information to other institutions, their coaches, employees, student athletes, agents or representatives. The parties agree that should another coaching opportunity be presented to the Employee or should the Employee be interested in another position as a coach at any institution of higher education which is a member of the NCAA or the NAIA, or any team participating in any professional league or conference in the United States or elsewhere,

requiring the performance of duties prior to the expiration of the Term of this Agreement or any extension hereof, the Employee shall notify in writing the Athletic Director of such opportunity or interest. The Employee agrees not to seek, discuss, negotiate for or accept employment requiring performance of duties prior to the termination date of this Agreement or any extension thereof, without first obtaining written consent from the Athletic Director.

**7.02 Injunctive Relief.**

Employee acknowledges that Article 7.01, and all other provisions of this Agreement, may be enforced by any and all legal and equitable actions available to Employer, including application for a restraining order and preliminary and permanent injunction. In the event that Employee resigns from the position of Head Coach during the term of this Agreement and obtains other employment, Employee shall be deemed to have resigned employment and agreed to the terms in Article 6.02. In no case shall University be liable for the loss of any collateral business opportunities or any other benefits, prerequisites or income resulting from activities such as, but not limited to, campus, clinics, media appearance, shoe or apparel contracts, consulting relationships or from any other sources whatever that may ensue as a results of Employee's resignation or termination of this Agreement.

<b>ARTICLE VIII – MISCELLANEOUS</b>
-------------------------------------

**8.01. Assistant Coaches.**

Subject to such limitations as may be imposed from time to time by the NCAA or the Conference, the University shall provide the Program with the maximum permissible number of assistant coaches. The Employee shall have the authority to recommend the hiring and termination of assistant coaches for the Program, subject to the review of the University's Affirmative Action Officer and the Athletic Director and the approval of the President of the University, as the University's appointing authority, or the President's designee. All assistant



coaches shall be University employees. It is understood that assistant coaches are immediately responsible to the Employee, who will assign the duties of each of the assistant coaches, and that the Employee is responsible for the activities of such assistant coaches as those activities relate to the educational purposes and the athletic interests of the University. It is further understood, however, that the Employee and assistant coaches are additionally responsible to the Athletic Director for compliance with the policies of the University, including its Athletic Department, with the rules and regulations of the NCAA and the constitution, bylaws, rules, regulations, and all official interpretations thereof, and the rules and regulations of the Conference, as may be in effect from time to time.

**8.02. Other Remedies.**

The Employee shall be entitled to use the grievance procedures established by the University Bylaws for the resolution of disputes under this Agreement.

**8.03. Choice of Law and Venue.**

It is the intent of the parties hereto that this Agreement shall be governed by and construed in accordance with the laws of the State of Nevada and the laws of the State of Nevada shall govern the validity, performance and enforcement of this Agreement. Any and all disputes arising out of or in connection with this Agreement shall be litigated in a court of competent jurisdiction in Washoe County, State of Nevada, and the parties hereby expressly consent to the jurisdiction of said court.

**8.04. Assignment of Agreement.**

The Employee's rights and interests under this Agreement may not be assigned, pledged or encumbered by the Employee.



**8.05. Merger Clause.**

THIS AGREEMENT CONSTITUTES THE FULL AND COMPLETE UNDERSTANDING OF THE PARTIES WITH RESPECT TO THE EMPLOYMENT OF THE EMPLOYEE BY THE UNIVERSITY AND SUPERSEDES ALL PRIOR UNDERSTANDING AND AGREEMENTS, ORAL OR WRITTEN, REGARDING THE EMPLOYEE'S EMPLOYMENT BY THE UNIVERSITY.

**8.06. Amendments to Agreement.**

This Agreement may be amended at any time only by a written instrument duly approved by the Board of Regents of the Nevada System of Higher Education, and executed by the Chancellor or his/her designee, the University, through its designated representative, and the Employee.

**8.07. Severability.**

If any provision or provisions hereof shall be deemed invalid or unenforceable, either in whole or in part, this Agreement shall be deemed amended to delete or modify, as necessary, the offending provision or provisions or to alter the bounds thereof in order to render it valid and enforceable.

**8.08. No Waiver of Default.**

No waiver by the parties hereto of any default or breach of any covenant, term or condition of this Agreement shall be deemed to be a waiver of any other default or breach of the same or any other covenant, term or condition contained herein.

**8.09. Acknowledgement.**

The Employee acknowledges that he/she has read and understands the foregoing provisions of this Agreement and that such provisions are reasonable and enforceable and he/she agrees to abide by this Agreement and the terms and conditions set forth herein.

Employee acknowledges having had the opportunity to consult with counsel of his/her choice regarding the provisions of this Agreement prior to signing it.

**8.10. Indemnification of University.**

The Employee agrees to hold harmless and indemnify the University from any and all suits, claims, demands, damages, liability, costs and expenses, including attorneys' fees and costs, arising out of the Employee's performance of acts outside the scope of this Agreement, or for acts in pursuit of outside income as permitted by this Agreement, except such suits, claims or demands in which the Employee seeks to compel the University to comply with its obligations hereunder or in which the Employee seeks to enforce any remedies he/she may have hereunder. This Article 8.10 shall survive the termination for any reason of this Agreement.

**8.11. University Retains All Materials and Records.**

All materials or articles of information including, without limitation, personnel and student athlete records, recruiting records, team information, films, statistics or any other material or data, furnished to the Employee by the University, developed by the Employee on behalf of the University or at the University direction or for the University's use, or otherwise in connection with the Employee's employment hereunder, are and shall remain the sole property of the University. Within two (2) days after the Employee ceases to serve as Head Coach of the University's Program, after the expiration of the term of this Agreement, or after this Agreement's earlier termination as provided herein, the Employee shall immediately cause any such materials in his/her possession or control to be delivered to the University. This Article 8.11 shall survive the termination for any reason of this Agreement.

**8.12. Employee Will Not Incur University Indebtedness.**

It is mutually agreed and understood that the Employee shall not incur any indebtedness for or on behalf of the University without first securing the approval of the Athletic Director.

**8.13. Government Immunity Not Waived.**

It is expressly agreed and understood between the parties that the University is an entity of the State of Nevada and that nothing contained herein shall be construed to constitute a waiver or relinquishment by the University of its right to claim such exemption, privileges and immunities as may be provided by law.

**8.14. Notice.**

Any notice or communication which may or is required to be given under this Agreement shall be in writing and shall be deemed to have been given on the earlier of either the day actually received or on the close of business on the third business day next following the day when deposited in the United States Mail, postage prepaid, registered or certified, addressed to the party at the address set forth at its name below or such other address as may be given by such party in writing to the other:

**If to the Employee:**

Brian Polian  
Head Football Coach  
Department of Intercollegiate Athletics  
Mail Stop 232  
University of Nevada, Reno  
Reno, Nevada 89557

**If to the University:**

Cary Groth  
Director of Intercollegiate Athletics  
Department of Intercollegiate Athletics  
Mail Stop 232  
University of Nevada, Reno  
Reno, Nevada 89557



**8.15. Applicability of Nevada System of Higher Education Code and Annual Employment Document.**

This Agreement is subject to the provisions of the Code, except as stated herein, and the Terms of Employment for Faculty, or their successor documents, signed in each academic year in which this Agreement is in effect.

**8.16. Captions.**

All captions in this Agreement are included for convenience only and do not constitute, nor are incorporated in, the terms and conditions of this Agreement.

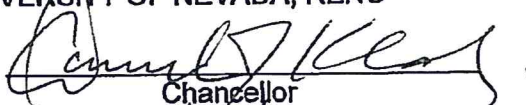
(REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK.)

IN WITNESS WHEREOF, the parties hereto have executed this Agreement or caused this Agreement to be executed, effective the day and year first written above, intending to be legally bound by its provisions upon approval of the Board of Regents of the Nevada System of Higher Education, the Employee acknowledging that he/she has reviewed this Employment Agreement with his/her attorney.

BOARD OF REGENTS OF THE  
NEVADA SYSTEM OF  
HIGHER EDUCATION,  
ON BEHALF OF THE  
UNIVERSITY OF NEVADA, RENO

EMPLOYEE:

By:

  
Chancellor

Date:

1/11/13

By:

  
President

Date:

1-9-13

  
Brian Polian

Date

Jan. 7, 2013

By:

  
Director, Intercollegiate Athletics

Date:

January 9, 2013