

## EMPLOYMENT CONTRACT

**Subject to approval by the Board of Trustees at its meeting on August 8, 2012,** this Contract is entered into as of the 7<sup>th</sup> day of <sup>August</sup> ~~July~~, 2012, with an effective date of **December 22, 2011** by and between The University of Akron, a state of Ohio institution of higher education, (hereinafter called the "University") and Terry Bowden (hereinafter called "Coach").

### RECITALS

WHEREAS, the Department of Intercollegiate Athletics' (hereinafter called "Athletics") purpose is to further the educational mission of the University by developing the student-athlete as a total person through a collegiate experience that promotes academic achievement, athletic excellence and social responsibility; and

WHEREAS, Athletics is committed to the following core values: Accountability; Diversity; Integrity; Loyalty; Pursuit of Excellence; Responsibility; Sportsmanship; and Teamwork; and

WHEREAS, the University requires the services of an intercollegiate athletics coach to be the Head Coach of the University's intercollegiate men's football team ("Football Team" or "team"); and

WHEREAS, Terry Bowden ("Bowden") meets the University's qualifications for that position of Head Coach, and is available for employment in said capacity; and

WHEREAS, University desires to employ Bowden as the Head Coach;

NOW THEREFORE, in consideration of the mutual covenants and conditions herein contained, the University and the Coach agree as follows:

**I. Employment.**

- A. Subject solely to the conditions stated in the provisions of this Employment Contract, which supersedes and replaces all prior agreements and understandings, the University hereby employs the Coach as Head Football Coach of its intercollegiate football team at the University. Coach represents and warrants that he is fully qualified to serve and is available for employment in this capacity, and Coach hereby agrees to and does accept the terms and conditions for said employment outlined herein.
- B. It is expressly agreed that the provisions in this Contract, upon approval by The University of Akron Board of Trustees at its meeting on August 8, 2012 (hereinafter referred to as the "Board"), constitute the sole Employment Contract between the parties as herein provided notwithstanding any provision, right, or procedure to the contrary contained in Board of Trustees Bylaws, Rules and Regulations of the University. The Coach herein shall not be considered a member of the Faculty, General Faculty, or classified staff, but rather as an unclassified contract employee of the University.
- C. Coach shall be under the immediate supervision of the Director of Athletics of the University (hereinafter referred to as the "Director") or such other person as may be designated from time to time by the President. The Coach shall perform such duties of the head coach of the University's intercollegiate football team which duties shall include, but not be limited to, all duties described in Section 4 of this Contract and such other duties in the University's athletic program, consistent with his status as head coach, as the Director may assign. It is understood and agreed that the Coach shall confer with the Director, or other such designee of the President, on all matters requiring administrative and technical decisions. Coach also shall confer with the Director or the Director's designee, and reach mutual agreement, before Coach promises to award any athletic scholarships to Coach's current or prospective student-athletes.

- D. The parties recognize that the Director is responsible to the University's President for the operation, review and periodic evaluation of the entire athletic program at the University, including the football program. Coach recognizes and acknowledges the importance of the maintenance and observance of the principles of institutional control over every aspect of such program. Coach agrees to recognize and respect those relationships and the organizational structure of the University. Within that structure, the Director and the Coach shall mutually cooperate to implement the purposes of this Contract and Coach shall support and comply with Director's efforts and instructions regarding any such review of the athletic program.
- E. Coach agrees to represent University positively in public and private forums and shall not engage in conduct that reflects adversely on University, or its athletic programs. Coach further agrees to keep public statements complimentary to the athletic program and to the University and to perform his duties and personally comport himself at all times in a manner consistent with good sportsmanship and with the high moral, ethical and academic standards of University.

## **II. Term.**

- A. This Contract is for a fixed term appointment of approximately five years commencing with an effective date of December 22, 2011, and terminating without further notice to Coach on February 28, 2017, subject to the conditions stated herein. This employment in no way grants the Coach tenure or any claim to tenure in employment, nor any years of employment attributable to tenure within the University, nor does this employment grant any expectancy of employment or reemployment except as expressly provided by the terms herein.
- B. Following completion of Coach's second-year review, the University, at its sole discretion, shall have the option to extend the term of this Contract for an additional two (2) years. Should the University elect to extend Coach's contract, the parties shall negotiate the extension and any other Contract terms. Should the parties be unable to reach agreement on the terms of the two (2) year

extension within sixty (60) days after the University's notice of its election to extend the Contract, the Contract shall continue pursuant to its original terms and conditions for the remaining three (3) years of its original Term.

### **III. Compensation and Benefits.**

A. Compensation. In consideration for services and the satisfactory performance of the conditions of this Contract by the Coach, the University promises to pay the Coach and provide him benefits, subject to the appropriation of funds by the Ohio Legislature and to the determination of the adequacy of such funds for that purpose by the Board (provided that this provision shall not be utilized as a pretext to breach this Contract), as follows:

1. Base Salary. An annual base salary of \$300,000, payable pro rata and in equal monthly installments on the last business day of each calendar month, effective December 22, 2011. The parties acknowledge and agree that in the event the University provides annual merit increases to its non-academic administrative employees, Coach also shall be eligible to receive merit increases, which shall be in an amount equal to or greater than the average of any cost-of-living or other incremental increase given by the University to its non-academic administrative employees. Evaluation factors, which may be taken into account for any such additional merit increase, shall include, but not be limited to, the Coach's performance reflected by team competitiveness, extraordinary achievements such as winning post-season contests, overall contribution to the Intercollegiate Athletics Department and to the University, academic performance levels of student-athletes (i.e., academic progress rates, graduation success rates, federal graduation rates) and compliance with NCAA and University standards and rules.

The Coach's performance of his job duties and responsibilities, distinguished from his win-loss record, will be evaluated by the Director periodically on the same basis as performance evaluations are done for other non-academic,

administrative employees within the University. These evaluations also will take into account prior evaluations and the expectations and goals set for the Coach in such prior evaluation.

2. Retirement. Coach shall be eligible to receive contribution to the appropriate state of Ohio retirement system on the same basis as provided to other non-academic administrative employees, subject however to Coach's right to select an alternate retirement program approved by the state of Ohio. It shall be the responsibility of the Coach to make a timely selection of an eligible alternative retirement program, or, by default, Coach shall be enrolled in the appropriate state of Ohio retirement system.
3. Supplemental Compensation.
  - a. While the Coach is employed as the Coach, and not otherwise reassigned as provided herein, the parties further acknowledge and agree that Coach shall be eligible for supplemental compensation payments for academic and athletic achievements, as set forth in Appendix A, which is attached and incorporated herein by reference.
  - b. The parties acknowledge and agree that the University shall, at times convenient to Coach, arrange certain speaking engagements and appearances for Coach to benefit the University's football program.
  - c. As additional supplemental compensation, while the Coach is employed as the Coach and not otherwise reassigned as provided herein, the University shall:
    - i. provide Coach with an automobile, either directly or through an auto dealer sponsorship, for use by the Coach in the performance of his duties on behalf of the University. The Coach shall be responsible for and shall hold the University harmless from any personal tax

consequences to the Coach that may attach to the provision of such automobile. The University shall obtain and pay for insurance coverages for said vehicle; and

- ii. provide Coach with a stipend of a maximum of \$6,000.00 per year to cover the cost and expenses of a club membership, payable pro rata. Coach shall be responsible and shall hold the University harmless from any personal tax consequences to the Coach that may attach to the provision of such stipend; and
  
- iii. provide Coach with an annual stipend of \$50,000, payable pro rata, for media work, including but not limited to a weekly radio show, pre-game and post-game media appearances during the football season, occasional media appearances throughout the offseason, radio and television promotions for University sponsors and other media obligations as reasonably assigned by the Director. It is understood that unless he otherwise agrees, Coach will not appear in ads or commercials for sponsors unless sponsors agree to compensate Coach – such compensation to be agreed to by Coach and the sponsor and approved by President or his authorized designee. Coach shall be responsible and shall hold the University harmless from any personal tax consequences to the Coach that may attach to the provision of such stipend; and
  
- iv. provide Coach an annual stipend of \$25,000, payable pro rata, from footwear, equipment and apparel contracts, consistent with the obligations of section III(D) and IV(H) of this Contract. Coach shall be responsible and shall hold the University harmless from any personal tax consequences to the Coach that may attach to the provision of such stipend;

- v. provide Coach with an annual stipend of \$25,000, payable pro rata and in equal monthly installments on the last business day of each month, effective January 1, 2012, for the Coach to assist the President and University Development in promoting the University's development efforts;
  - vi. reimburse Coach up to the amount of \$12,000 annually, for non-traditional expenditures related to entertainment expenses associated with Coach's development efforts, in accord with the then-current University policies. All expenses must be pre-approved by the Director, which approval shall not be unreasonably withheld, and Coach must provide an annual accounting of expenses to the Director and the Vice President for Public Affairs and Development;
  - vii. reimburse Coach for transportation and travel expenses in accord with the then-current University policies for such travel as is necessary and approved in advance by the Director for the Coach to carry out his duties; and
  - viii. reimburse Coach for household moving expenses in accordance with University policy and state law, with a maximum allowance of \$10,000, unless a higher amount is approved in accordance with University Rules.
- B. Board of Trustees Approval. Coach acknowledges and agrees that any annual increase or supplemental compensation must be approved by the Board of Trustees of the University upon recommendation by the President of the University relative to Coach's performance in the duties required and assigned to him under this Contract as Head Coach of the intercollegiate football team.
- C. Benefits. The Coach shall be eligible to participate in and be entitled to benefits in the University's hospital, medical, dental, disability, and group life insurance



plans, retirement programs, voluntary payroll deduction programs, sick leave and vacation plans, library privileges, parking privileges, education fee exemptions, and employee discounts, on the same basis, and with the same employer contributions, that apply to University's non-academic administrative employees, as such plans, programs, and benefits may be revised from time to time.

- D. Apparel Agreements. Coach agrees to comply with the terms and conditions of apparel and product contracts between third-party vendors and the University.
- E. Taxes and Withholding. All fringe benefits received by the Coach will be subject to applicable tax laws and, if appropriate, will be treated as taxable income subject to applicable withholding and other payroll taxes.
- F. All salary and compensation of Coach for performance of coaching duties shall be paid only by the University or as expressly approved in writing by the Director. To that end, consistent with the Ohio ethics laws, National Collegiate Athletic Association ("NCAA") rules and regulations and the University Rules, Coach will not solicit or accept gifts of cash or of substantial value or accept hospitality from any person, including without limitation, a person who is a "representative of the athletic interests of the University," as that term is defined in governing athletic rules.

#### **IV. Coach's Duties.**

- A. In consideration of the annual salary and other benefits which may become due and payable to the Coach under the provisions of this Contract, the Coach does promise and agree as follows:
  - 1. To faithfully and conscientiously perform the duties of the Head Coach of the University's intercollegiate football team, which duties shall include, but not be limited to, all duties customarily performed by the Head Coach as well as



any other incidental duties as may be assigned by the Director and the President.

2. During the period in which the University employs the Coach as Head Coach of the University's intercollegiate football team, Coach shall undertake and perform to the best of his ability, devoting full-time best efforts, energy and skill, consistent with the standards of the University, all duties and responsibilities attendant to the position of Head Coach of the University's intercollegiate football team as set forth herein. The Coach shall not engage in any business, personal, or professional activities or pursuits that will conflict in any manner with the performance of his obligations hereunder or that, in the opinion of the University, would reflect adversely upon the University or its athletic programs. Coach shall comply with the applicable University conflict of interest rules and applicable ethics laws. Endorsements, speeches, appearances, and other promotional activities, whether arranged by the University, by its representatives, by the Coach himself or by any other entity, which promotes the University and its athletics program, shall not be deemed to be in conflict with the performance of the Coach's obligations hereunder. Any violation of this provision, as determined by the University, will subject the Coach to disciplinary action, up to and including discharge. Discharge under this provision will constitute "for cause" termination under this Contract.
- B. The Coach further agrees to abide by and comply with all federal, state and local laws, as well as the constitution, bylaws, rules, regulations, and interpretations of the NCAA, as well as with any applicable Conference and University rules and regulations, relating to the conduct and administration of the football program including, without limitation, recruiting rules, as are now constituted or as may be constituted or amended during the term hereof. Coach shall immediately report to the Director and to the Athletics Office of Compliance in writing if any person or entity, including without limitation, representatives of the University's athletic interests, has violated or is likely to violate such constitution, bylaws,

interpretations, rules or regulations. Coach shall cooperate fully with the Athletics' Office of Compliance at all times. Unless directed otherwise by the Director, Coach shall review and approve in writing all requests for expense reimbursements by assistant coaches prior to submission to the University to reasonably insure accuracy and compliance with all such constitution, bylaws, interpretations, rules and regulations and, upon satisfactory review, shall forward the same to the University with his approval for payment.

C. Coach shall observe and uphold all academic standards, requirements and policies of the University and encourage Team members to perform to their highest academic potential. Coach recognizes that the primary mission of the University is to serve as an institution of higher learning and shall fully cooperate with all academic counselors or similar persons designated by the University to assist student-athletes and shall use his best efforts to promote those efforts. Coach agrees to adhere to and to follow the academic standards and requirements of the University in regard to the recruiting and eligibility of prospective and current student-athletes for the football program. Coach also shall require that all members of his staff, including assistant coaches, comply with the aforesaid policies, rules, and regulations. It is recognized by the parties that a student-athlete may be declared ineligible for competition for academic reasons, because the University believes that the student-athlete would not be an appropriate representative of the University under University Rules, as a disciplinary sanction under the Code of Student Conduct, or because the University believes that the student-athlete is not eligible according to the rules for athletic competition specified by the Mid-American Conference (its successor conference or any other conference of which the University may be a member,) or the NCAA or for similar reasons.

D. In his position as Head Coach of the University's intercollegiate football program, the Coach, while working within the confines of rules, regulations, guidelines, and policies of the University and Athletics, shall be held directly accountable for all general responsibilities relating to the intercollegiate football program and for

recruiting, training, supervision, evaluation, and successful academic and athletic performance of all student-athletes in the program. The Coach shall have a complete and "working knowledge" of the rules and regulations governing intercollegiate athletics and shall be responsible for supervising assistant coaches, including the requirement for compliance by such coaches with any applicable University, Conference and NCAA rules and regulations, subject to the limitations of Section IV(I) herein. Coach also shall work to integrate sports into the whole spectrum of the University's academic life, in order to complement the University and its mission in the community, and shall work to promote contacts with media, alumni and civic groups.

- E. In no event shall the Coach accept or receive, directly or indirectly, any monies, benefits, or any other gratuity whatsoever from any person, corporation, University booster club or alumni association, or other benefactor if such action would violate the Ohio ethics laws, NCAA or Conference legislation or the constitution, bylaws, rules and regulations or interpretations thereof. Changes of such legislation, constitution, bylaws, rules and regulations or interpretations thereof shall automatically apply to this Contract without the necessity of a written modification.
  
- F. Except for (1) all outside athletically-related income and benefits approved annually by the President and Director and (2) all outside athletically-related income and benefits under blanket approval by the President (i.e., less than \$300.00), the Coach shall obtain prior written approval from the President for any athletically-related income and benefits from sources outside the University. It is the intent of this provision that NCAA and Conference rules respecting control over the conduct and employment of the Coach be strictly adhered to without exception whatsoever. It is not the intent of this provision to unreasonably limit the Coach's receipt of athletically-related income from sources outside the University. The Coach shall report annually, in writing, to the President, on or before April 15 each year, all athletically-related income from sources outside the University, including but not limited to, income received from

annuities, sports camps or clinics; housing benefits; television and radio programs; and endorsements or consultation contracts with athletic footwear or apparel or equipment manufacturers or sellers, or corporations of any kind who engage the Coach in this manner. The University shall have reasonable access to all records of the Coach necessary to verify such report. The Coach's outside sources and amounts of athletically-related income shall be reported to the President as of the effective date of this Contract and thereafter as provided herein.

1. Approval of such athletically related income and benefits shall be consistent with the Ohio ethics laws, University Rules related to outside income and benefits, if any, applicable to full-time or part-time employees.
2. It is further agreed that Coach may not appear on any radio or television program or make any endorsement in return for a fee without a prior written consent and approval of the President or his authorized designee. The Coach shall cooperate with and assist the University in the promotion of Athletics through University media contracts and participation in media appearances and events arranged by or through the University. The Coach shall not make any endorsement speech, make public or private appearances or participate in any other activity which may reasonably be construed to adversely affect the public image of the University, Athletics, or Coach. Coach may not associate the University's name, logos, trademarks, symbols, insignias, indicia, service marks or reputation in connection with any such arrangement without the prior written approval of the President. In the event that such permission is given to Coach, such permission shall be non-exclusive and non-transferable and such permission shall automatically expire upon Coach's resignation or termination from employment.
3. Coach agrees that the University shall own all broadcasting and telecasting rights to all live and recorded coach's shows, call-in programs, post-game and pre-game interviews, highlight shows, replay shows and other

promotions or programs ("Programs") that may be offered currently or in the future on media outlets, including but not limited to, radio and all forms of television, internet, satellite, cable, broadband, high definition television, DVD, video cassette, wireless and video-on-demand. The University shall be entitled, at its option, to produce and market the Programs or negotiate with third parties for the productions and marketing of the Programs.

4. Coach also agrees to, and hereby does assign to University, or its then-current rights holder of one or more of the Programs, all right, title and interest in his name, nickname, initials, autograph, facsimile signature, likeness, photograph, and derivatives thereof, and his picture, image and resemblance and other indicia closely identified with Coach (collectively the "Property") in connection with the Programs. The assignment includes, but is not limited to, intellectual property rights under any and all trademarks and copyrights and any applications therefore which have been obtained or filed, or may be filed in the future with respect to the Property. Coach further agrees to, and hereby does, assign to University the Property associated with all previously broadcast, recorded or stored Programs. Nothing contained herein shall limit Coach's ability to use the Property in activities not associated with the Programs (subject to the approval provisions of Section IV(F) of this Contract).
5. During the term of this Contract, the University grants Coach a terminable, non-exclusive, royalty free license to use the Programs, video footage, photographs, etc., as described in Sections IV.F.3 & 4., for his own promotional use. Such use is subject to the prior approval of the Director and may not interfere or compete with any University use thereof. Such license shall terminate at the end of this Contract; however the University will consider and will not unreasonably withhold approval to Coach for use after termination for promotional use.

- G. The Director shall have sole authority to approve scheduling dates for all football camps conducted in University facilities. Coach agrees to abide by all applicable laws, rules, regulations and policies in the conduct of the camps, including but not limited to the rules, regulations and policies of the NCAA, the Mid-American Conference and the University. Unless otherwise specifically required by law, any such supplemental compensation earned by Coach pursuant to this section shall not be taken into account in any retirement or other benefit program for which the Coach may be eligible.
- H. Coach agrees that the University has the exclusive right to select footwear, apparel and/or equipment for the use of its student-athletes and staff during official practices, games and camps. Coach recognizes that University has entered into a contract with adidas to supply University with athletic footwear, apparel and/or equipment. Coach agrees that he will abide by all requirements of the contract between University and adidas or any other contract between University and the supplier if footwear, apparel and/or equipment. In order to avoid entering into a contract with a competitor of adidas, Coach shall submit all outside consulting agreements to the University for review and approval prior to execution (including any consulting or equipment agreements that relate to camps.) Coach also must report all outside income to University in accordance with NCAA rules. Coach further agrees that he will not endorse any athletic footwear, apparel and/or equipment products, including adidas, and will not participate in any messages or promotional appearances that contain comparative or qualitative description of athletic footwear, apparel or equipment products, including adidas, unless approved in advance by the Director.
- I. Except as otherwise provided herein, and consistent with the requirements of University Rules and policies, Coach shall have the responsibility and the authority to recommend to the Director the hiring, termination and supplemental compensation of assistant coaches for the Team. (Supplemental compensation schedule is attached as Exhibit B.) The Director then shall make specific recommendations to the President who, in turn, shall make recommendations to

the Board. The Board shall make all final decisions regarding the employment, supplemental compensation and/or discharge of such assistants.

1. It is expressly understood and agreed that nothing herein is intended to create any employment or supplemental compensation rights, or expectancy of employment, reemployment or supplemental compensation rights or obligations between the University and said assistant coaches, inasmuch as any such employment relationship with any of them shall be subject to separate contracts and conditions of employment with the University.
  
2. Notwithstanding the foregoing, and consistent with the requirements and obligations of the Ohio ethics laws, Coach shall NOT have the responsibility and the authority to authorize or recommend to the Director the hiring, termination and compensation of assistant coaches or staff members for the Team when such coaches are "Family Members" as defined by the Ohio Revised Code. For avoidance of doubt, this limitation means that Coach is prohibited from:
  - a. hiring, authorizing, recommending, nominating or using his position in any other way to secure employment for a Family Members; and
  - b. participating in matters affecting the Family Members' employment, including:
    - i. changes in compensation or benefits;
    - ii. assignment of duties;
    - iii. evaluations;
    - iv. actions involving promotions, disciplinary actions, performance evaluations, lay-offs and removal; and
    - v. influencing the decisions or actions of other officials or employees regarding a Family Members' employment.

The responsibility for the hiring, termination and compensation of assistant coaches who are Family Members shall be the responsibility of Director.



3. Coach understands and agrees that certain provisions of the Ohio ethics laws and related statutes are criminal laws. Coach further understands and agrees that violation of this Section IV(I) will constitute a breach of this Contract and also may constitute a violation of Ohio law for which the potential penalties include a jail sentence and/or a fine. Two documents prepared by the Ohio Ethics Commission concerning public employees and nepotism considerations are attached to this agreement as Exhibits 1 and 2 and are made a part hereof. The first document is titled "Restrictions on Nepotism or Hiring Family Members: Ethics Commission Information Sheet #1." The second document is Advisory Opinion No. 2010-03, issued by the Ohio Ethics Commission on May 25, 2010 and discussing in greater detail Nepotism Restrictions applicable to public officials and employees in Ohio.
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- J. Subject to University Rules and governing athletic rules, the Director or the Director's designee shall have sole authority: to contract for and approve each season's football schedule and the rescheduling of any games; to negotiate the terms of the game contracts; and to accept invitations for pre-season and /or post-season play. Coach shall be reasonably consulted by the Director or the Director's designee as to the identity of opponents, playing site and the time of play for any scheduled game, and the details of the total schedule will be arranged through close coordination and collaboration between the Coach and the Director to insure that the football program meets and maintains the University's overall objectives in intercollegiate athletics.
  - K. Coach shall at all times take reasonable action necessary to comply with and to implement University policies relating to substance abuse and to class attendance by students subject to his direct control or authority, and to exercise reasonable care that all personnel and students subject to his direct control or authority comply with such policies. Coach represents and warrants that he has read such policies and that he will remain current as to the content of such policies.

- L. To the extent that any personnel matter is not addressed by the terms of this Contract, University Rules will govern.

**V. Termination.**

- A. The parties acknowledge and agree that this Contract shall terminate automatically if the Coach dies or if the Coach becomes disabled within the meaning of the University's disability insurance program for employees. If the Contract is terminated pursuant to this Section V(A), the Coach's salary and all other benefits shall terminate as of the date of death or disability except that the Coach shall be entitled to receive any disability benefits to which he is entitled under the disability insurance program in which he is enrolled.
- B. Termination for Cause. At all times, the Coach serves at the pleasure of the President, and the University shall have the right to terminate this Contract for cause prior to its normal expiration at the end of its term. No further payments or benefits shall be made to Coach if the President notifies Coach that the Contract is being terminated for cause, which in addition to any of its other normally understood meanings in employment contracts shall include, but not be limited to the following:
  - 1. Neglect or inattention by the Coach to the duties of Coach or the Coach's refusal or inability to perform such duties and Coach's failure to cease or correct such neglect, inattention, refusal or inability within ten (10) days after written notice has been given to Coach by the Director. If the situation cannot be cured and/or corrected within the ten (10) day period, the University will not terminate this Contract so long as Coach can demonstrate that he is making a reasonable effort to promptly cure and/or correct the situation. Such notice provision does not waive the University's right to suspend Coach pursuant to Section V(H) of the Contract; or

2. A significant or repetitive or intentional violation (or a pattern of conduct which may constitute or lead to a major violation), as determined by the University, by Coach (or any other person under Coach's supervision and direction, including but not limited to assistant coaches) of any laws, University rules and regulations or governing athletic rules (including but not limited to NCAA or Mid-American Conference rules); or
3. A breach of Contract terms by the Coach after receipt of a written notice from Director specifying the act(s), conduct or omission(s) constituting the breach, which breach cannot be or has not been cured within thirty (30) days after the date that a written notice by Director identifying such breach is sent. If the situation cannot be cured and/or corrected within the thirty (30) day period, the University will not terminate this Contract so long as Coach can demonstrate that he is making a reasonable effort to promptly cure and/or correct the situation.; or
4. The filing of a criminal charge against Coach, formulated in a written complaint, information or indictment, for violation of any law of the State of Ohio or the United States (excluding minor traffic offenses), including but not limited to Ohio's ethics laws; or
5. Fraud or dishonesty of Coach in the performance of his duties or responsibilities under this Contract, as determined by University; or
6. Fraud or dishonesty of Coach in preparing, falsifying, submitting or altering documents or records of the University, the Mid-American Conference or the NCAA, or documents or records required to be prepared or maintained by law, governing athletic rules or University rules and regulations, (including without limitation, expense reports, transcripts, eligibility forms or compliance reports) or permitting, encouraging or condoning such fraudulent or dishonest acts by any other person, provided that the Coach had actual

knowledge of such fraudulent or dishonest acts or reasonably should have known about such fraudulent or dishonest acts; or

7. Failure by the Coach to respond accurately and fully to any request or inquiry relating to the performance of Coach's duties hereunder or the performance of Coach's duties during his prior employment at any other institution of higher learning, propounded by the University, the Mid-American Conference, NCAA or any other governing body having supervision over the athletic programs of the University or such other institution of higher learning, or required by law, governing athletic rules or University rules and regulations, as determined by the University; or
8. Counseling or instructing by Coach of any coach, student or other person to fail to respond accurately and fully to any request or inquiry concerning a matter relevant to University's athletic programs or other institutions of higher learning's programs which shall be issued or adopted by the University, the Mid-American Conference, NCAA or any other governing body having supervision over the athletic programs of the University or such other institution of higher learning, or required by law, governing athletic rules or University rules and regulations, as determined by University; or
9. Failure by the Coach to manage the Team in a manner that reflects the academic values of the University, as determined by the University, and the Coach's failure to cure or correct such failure within ten (10) days after written notice has been given to Coach by Director. If the situation cannot be cured and/or corrected within the ten (10) day period, the University will not terminate this Contract so long as the Coach can demonstrate that he is making a reasonable effort to promptly cure and/or correct the situation; or
10. Soliciting, placing or accepting by Coach of a bet on any intercollegiate or professional athletic contest, or permitting, condoning or encouraging by the Coach of any illegal gambling, bookmaking or illegal betting involving any

intercollegiate or professional athletic contests, whether through a bookmaker, a parlay card, a pool or any other method or organizes gambling; or furnishing by the director of information or data relating in any manner to any sport to any individuals known by the Coach to be or whom he reasonably should know to be a gambler, better or bookmaker, or any agent of any such person, or the consorting or associating by the Coach with such persons, as determined by the University; or

11. Use or consumption by Coach of alcoholic beverages, drugs, controlled substances, steroids or other chemicals as to impair Coach's ability to perform Coach's duties hereunder, or failure by Coach to fully cooperate in the enforcement and implementation of any drug testing programs established by the University for student-athletes, as determined by the University; or
12. Coach's sale, use, possession or the Coach's permitting, encouraging or knowingly condoning by a student-athlete, coach or other Athletics staff member of the sale, use or possession of any narcotics, drugs, controlled substances, steroids or other chemicals, the sale, use or possession of which by the Coach, student-athlete, coach or other Athletics staff is prohibited by law or by governing athletic rules, as determined by the University; or
13. Failure by the Coach to report promptly to the Director and to the Office of Compliance in writing any violations or potential violations known to the Coach of laws, governing athletic rules or University rules and regulations, including but not limited to those by Coach, coaches, Athletics staff members, students or other persons under the control and supervision of the Coach, as determined by the University; or
14. Failure by the Coach to obtain prior approval for outside activities as required by this Contract and NCAA rules, and to report all sources and amounts of all

income and benefits as required by this Contract, NCAA rules, University rules and regulations or law, as determined by the University; or

15. Commission of or participation in by Coach of any act, situation, or occurrence, which, in University's judgment, brings Coach into public disrepute, contempt, scandal, or ridicule or failure by Coach to conform his personal conduct to conventional standards of good citizenship, with such conduct offending prevailing social mores and values and/or reflecting unfavorably upon University's reputation and overall primary mission and objectives, including, but not limited to, acts of dishonesty, misrepresentation, fraud or violence that may or may not rise to the level warranting criminal prosecution by the relevant authorities.

16. It is recognized that this subsection encompasses findings or determinations of violations during employment of the Coach at the University or any other institution of higher learning.

17. As required by NCAA Bylaw 11.2.1, Coach is notified that in addition to the actions that University may take in accordance with this Contract, Coach also is subject to disciplinary or corrective action by the NCAA as set forth in the provisions of the NCAA enforcement procedures if Coach is found by the NCAA or the University to be in violation of NCAA Bylaws.

C. Notice. If University terminates this Contract for cause under this Section, it shall give written notice to the Coach of its intention to so terminate this Contract and the intended effective date of termination.

D. Termination for Cause/Loss of Compensation and Benefits.

1. In the event this Contract is terminated for cause in accordance with this Section, all obligations of the University to make further payments and/or to provide any other consideration hereunder shall cease as of the end of the

month in which such termination occurs. In no case shall the University be liable to the Coach for the loss of any collateral business opportunities, or any other benefits, perquisites, income or consequential damages suffered by Coach as a result of University's termination of employment.

2. Termination of this Contract by the University for cause will occur only after recommendation of such action by the President to and approval thereof by the Board. If such adverse action becomes necessary, the President shall inform the Coach of the intent to recommend termination before making any such formal recommendation to the Board. No hearing shall be required unless the Coach alleges in good faith that the reasons for recommending termination do not constitute cause under this Contract or substantially interfere with Coach's applicable constitutional rights. Any required hearing shall be governed by the procedures of the Board as now or hereafter adopted or amended, applicable to appeals of such nature to the Board.

E. Termination by University Other Than for Cause. If University terminates this Contract for cause under this Section, it shall give written notice to the Coach of its intention to so terminate this Contract and the intended effective date of termination. In the event of termination other than for cause, the University shall pay to the Coach, as liquidated damages and not as compensation, in lieu of any and all legal remedies or equitable relief, a sum equal to one hundred percent (100%) of the then-current base salary, as provided in Section III(A)(1) of this Contract, in monthly installments (subject to all tax withholdings) for the remaining Term of the Contract. This Section V(E) is subject to the following:

1. Payments shall begin one (1) month after the date of termination.
2. University will not be liable to Coach for any benefits, performance bonuses or other supplemental compensation that may have been earned had Coach remained employed by University. All fringe benefits furnished by University,



including retirement contributions, shall terminate upon the date of termination of this Contract.

3. The Coach is required to mitigate University's obligations under this Section V(E) by making reasonable and diligent efforts to obtain a coaching or other comparable employment position as soon as practicable following such termination.
4. If the Coach is employed elsewhere post-termination in a coaching or other comparable employment position, University's obligations to pay Coach as set forth in this Section V(E) shall be reduced by the Coach's total compensation from all sources related to such position. University shall pay such revised amount in monthly installments after Coach's date of hire to the new position in monthly installments for the remaining term of the Contract.

F. Sole Remedy.

1. The parties acknowledge and agree that the liquidated damages specified in Section V(E) shall be the sole liability of the University relative to the termination of this Contract; provided, however, that the University shall continue to provide Coach with those cafeteria plan medical and related benefits on the same basis as provided prior to termination for up to twelve months following termination, or until the Coach obtains other employment, whichever occurs earlier. In reaching the agreement set forth in this Section V(E), the parties acknowledge and agree that the foregoing liquidated damage provision relates to damages that are extremely difficult to determine with certainty, fairly or adequately, that the payment of such liquidated damages by the University shall constitute adequate and reasonable compensation to the Coach because of such termination by the University, and the foregoing shall not be, nor be construed to be, a penalty. Payment of such amount shall be subject to the Coach's duty to mitigate the University's obligation as provided for in this Paragraph V(E). After Coach

obtains new employment, the University's financial obligation under this Contract, including but not limited to liquidated damages, shall cease, except as provided herein.

2. The financial consequences of termination of this Contract or termination thereunder are exclusively set forth herein. Therefore, with the sole exception of payments required by the Contract, in any instance of termination for cause or suspension effected in accordance with the procedures established in this Contract, neither the Coach nor University shall be entitled to receive, and each hereby waives any claim against the other and respective Boards of Trustees, officers, directors, agents, employees, successors, heirs and personal representatives, for consequential damages allegedly sustained by reason of any alleged loss of business opportunity, loss of perquisites, loss of outside income, or expectation income, or damages allegedly sustained by reason of alleged humiliation, emotional distress, defamation or loss of consortium resulting from the fact of termination, the public announcement thereof, or the release by University or documents that are required to be released by law.
  
3. Coach agrees that as a condition of receiving any post-termination benefit as set forth in this Contract, except for earned but unpaid compensation to the date of termination and any legally protected rights Coach has under any employee benefit plan maintained by University, Coach or, in the case of any amounts due after the Coach's death, the person to whom those amounts are payable (collectively, the "Payee") must execute a comprehensive release within sixty (60) days of the date of Coach's termination of employment in the form determined from time to time by University in its sole discretion. Generally, the release will require the Payee and the Payee's personal or legal representatives, executors, administrators, successors, heirs, distributees, devisees, legatees and assigns to release and forever discharge University, its Board of Trustees, officers, employees, directors, agents, attorneys, successors and assigns from any and all claims, suits and/or causes of action

that grow out of or are in any way related to Coach's employment with University, other than any claim that University has breached this Contract. This release will include, but not be limited to, any claim that University violated the Public Health Services Act; the Age Discrimination in Employment Act; the Older Worker's Benefit Protection Act; the Americans with Disabilities Act; Title VII of the Civil Rights Act of 1965 (as amended); the Family and Medical Leave Act; any state, federal law or local ordinance prohibiting discrimination, harassment or retaliation in employment; any claim for wrongful discharge, including in violation of public policy; claims of promissory estoppel or detrimental reliance, defamation, intentional infliction of emotional distress; or the public policy of any state; or any federal, state or local law relating to any matter contemplated by Coach. Upon Coach's termination of employment with University, the Payee will be presented with a release and if the Payee fails to execute the release, Coach agrees to forego any payment from University. Coach acknowledges that Coach is an experienced person knowledgeable about the claims that might arise in the course of employment with University and knowingly agrees that the payments upon termination provided for in this Contract are satisfactory consideration for the release of all possible claims described in the release.

4. Coach acknowledges that in the event of termination of this Contract for cause or otherwise, or suspension hereunder, he shall have no right to occupy the position of Coach and that his sole remedies are provided herein and shall not extend to injunctive relief.

G. Termination by the Coach. Coach recognizes that his promise to work for University for the entire term of this Contract is an essential consideration in University's decision to enter into this Contract and employ him as Head Coach. This Contract would be diminished were he to resign or otherwise terminate his employment as Head Coach prior to the expiration of the Contract. The Coach understands and agrees that he may, nevertheless, resign or otherwise

terminate his employment under this Contract prior to the expiration of this Contract, but only upon the following terms and conditions:

1. in addition to any other notices required in this Contract, the Coach shall provide University with written notice of termination of this Contract; and
2. the Coach shall not be entitled to receive any further compensation or benefits under this Contract, including but not limited to any bonuses pursuant to Exhibit A of this Contract; and
3. Coach will pay University as liquidated damages, and not as a penalty, an amount that is dependent upon the contract year in which the contract is terminated and that shall be paid pursuant to the following schedule:
 

a. After December 22, 2011, but prior to February 28, 2013:	\$400,000.
b. After March 1, 2013, but prior to February 28, 2014:	\$300,000.
c. After March 1, 2014, but prior to February 28, 2015:	\$200,000.
d. After March 1, 2015, but prior to February 28, 2016:	\$100,000.

In the event that Coach gives notice of termination after March 1<sup>st</sup> of a given year, but Coach or his representatives engaged in discussions with representatives of his new employer prior to that March 1<sup>st</sup> date, Coach shall be obligated to pay the liquidated damages amount owing for the year in which those discussions first occurred. Coach shall pay all such amounts to University within thirty (30) days after the date of the Coach's termination.

4. Coach agrees that he will not obtain employment as a Head Coach with any school in the Mid-American Conference, or any other conference to which The University belongs, for the time period remaining under the Contract. The parties agree that money damages will be inadequate to remedy a breach of this covenant and that University shall have the right to obtain

such equitable, injunctive or other relief as may be appropriate, including but not limited to enjoining the Coach from violating this provision.

- H. Suspension or Other Disciplinary Action. Coach acknowledges and agrees that the Director and the President of the University shall have the administrative authority to order disciplinary or corrective action as set forth in the National Collegiate Athletic Association Enforcement Procedures or University Rules. If the Coach is found to have engaged in conduct in violation of any law or any policy, rule or regulation of the NCAA, the Mid-American Conference (or any future conference to which the University belongs,) other governing athletic conference, or the University, or if substantial evidence exists of conduct warranting suspension, the President may initiate disciplinary or corrective action, including but not limited to ordering the suspension of the Coach with or without pay pending the outcome of a hearing. The Coach shall have the procedural right, upon written request, to appeal such suspension to the President. If the Coach fails to request such review and hearing within five (5) days after receipt of notice of suspension, such suspension shall be final, and the Contract shall be deemed terminated for cause as provided for in the notice.
- I. Reassignment. The parties acknowledge and agree that the University retains the right to assign the Coach to other positions without reduction in salary. The University shall confer with the Coach regarding any such reassignment at least thirty (30) days in advance of the effective date of reassignment. In no event, however, will the Coach be assigned to any position which is not consistent with his education and experience or which may reasonably be considered a demotion or embarrassment. If the University makes such a decision to reassign the Coach, consistent with the provisions of the previous sentence, and the Coach refuses to accept such reassignment, then the University may terminate this Contract with no further liability to the Coach, except that the Coach will be entitled to have his health insurance plan and life insurance plan paid by the University until he is employed full-time elsewhere; provided, however, that such obligation shall not exceed one (1) year from the date of termination. The Coach

is required to mitigate University's obligations under this Section V(I) by making reasonable and diligent efforts to obtain a coaching or other comparable employment position as soon as practicable following such reassignment. After Coach obtains new employment, Coach's obligations with respect to the reassigned position shall cease and the University's obligation under this Contract, including but not limited to the financial obligations of this section and/or any liquidated damages obligations, shall cease, except as otherwise provided in this section (IV)(I).

- J. Records and Information. The parties acknowledge and agree that all materials or other documents including without limitation, personnel records, recruiting records, team information, video, or any other material or data furnished to the Coach by the University or developed by the Coach on behalf of the University, or at the University's direction or for the University's use or otherwise in connection with the Coach's employment hereunder are, and shall remain, the sole property of the University. Within five (5) days of the expiration of the term of this Contract or its earlier termination as provided herein, Coach shall immediately provide and return any such materials in his possession or control, including but not limited to all keys (including car keys), vehicle, credit cards, telephones and computers to the University.
- K. Death or Disability. Notwithstanding any other provisions of this Contract, this Contract shall terminate automatically and shall be null and void upon the death of the Coach or if the Coach becomes totally or permanently disabled as defined by the applicable state retirement system or by any other applicable University supplemental disability program or is otherwise unable to perform the essential functions of the job.
- L. Interference with Coaches, Athletic Staff or Athletes. In the event of termination, the Coach agrees that he will not interfere with University's coaches, athletic staff or student-athletes or otherwise obstruct University's ability to transact business.

**VI. Travel.**

- A. The Coach shall conduct such travel as is necessary and approved in advance by the Director to carry out his duties as Head Coach for football, and the Coach shall be entitled to reimbursement for transportation and travel expenses in accord with the then current travel policies of the University.
- B. Travel by spouse/significant other who accompanies the Coach to sporting events such as bowl games and tournaments shall be presumed to have a bona fide University business purpose in situations where the NCAA, Mid-American Conference or potential donors expect that certain high-ranking members of Athletics and their spouses/significant others will participate in events associated with such athletic activities. Accordingly, the travel expenses of a spouse/significant other incurred in the pursuit of such activities may be reimbursed in accord with University travel policies, including obtaining prior approval therefore by the Director. In addition, University may include spouse/significant other and children of Coach as part of its official party to post-season championship and bowl games; and in such instances, the University shall pay the reasonable and necessary travel, lodging, and meal costs in accordance with University and NCAA rules.

**VII. Notification Requirement.**

The parties agree that should another coaching opportunity be presented to the Coach, his representatives or agents, or should the Coach be interested in another coaching position during the term of this Contract, the Coach must notify the Director of such opportunity or interest and permission must be given to the Coach by the Director before any discussions can be held by the Coach with the principals, agents or representatives of, or consultants to, the institution or entity with the anticipated coaching position, which permission shall not be unreasonably withheld.



**VIII. Indebtedness.**

It is mutually agreed that the Coach is without authority and shall not incur any indebtedness for or on behalf of the University without Director's prior approval.

**IX. Relationship Between the Parties.**

The employment relationship between the Coach and the University shall be determined solely by the terms and conditions of this Contract, unless otherwise expressly approved in writing by the Board. This Contract supersedes and replaces the regular employee rights normally accorded full-time employees of the University, pursuant to Board of Trustees Bylaws and Regulations and the Faculty Manual in general, except as otherwise explicitly provided herein.

**X. Non-Assignability.**

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

**XI. Entire Agreement.**

This Contract constitutes the full and complete understanding and agreement of the parties with respect to the employment of the Coach by the University and supersedes all prior understandings and agreements, oral or written, regarding the Coach's employment by the University.

**XII. Acknowledgment.**

The Coach acknowledges that he has read and understands the foregoing provisions of this Contract and that Coach has entered into same upon advice and counsel of the Coach's personal attorney and that such provisions in this Contract are

reasonable and enforceable and the Coach agrees to abide by this Contract and the terms and conditions set forth herein.

**XIII. Force Majeure.**

Neither party shall be considered in default in the performance of respective obligations under this Contract if such performance is prevented or delayed by Force Majeure and the affected party provides timely notice of such event to the other party. "**Force Majeure**" is any cause which is beyond the reasonable control of the affected party, including but not limited to war, hostilities, revolution, civil commotion, strike, lock-out, epidemic, accident, fire, wind or flood, or because of any law, order, proclamation, ruling, regulation, or ordinance of any government or sub-division of government or because of any act of God.

**XIV. No Waiver of Default.**

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

**XV. Notice.**

Notice provided for herein shall be in writing and shall be deemed to have been given, delivered or served when delivered personally to the party who is to receive such notice or when mailed by U.S. registered or certified mail, postage prepaid, to such party.

Unless changed by written notice of the party, any notice shall be sent to:

To the University:  
Office of the President  
302 Buchtel Common  
Buchtel Hall, Room 114  
Akron, OH 44325

To the Coach:  
Terry Bowden  
Department of Intercollegiate Athletics  
Stile Athletic Field House  
Akron, OH 44325-6302

With a copy to:  
The Office of General Counsel  
302 Buchtel Common  
Buchtel Hall, Room 63  
Akron, OH 44325

With a copy to:  
Richard T. Davis, Esq.  
2401 PGA Boulevard  
Suite 280  
Palm Beach Gardens, FL 33410

**XVI. Governing Law.**

This Contract shall be governed by and construed under the laws of the State of Ohio.

**XVII. Severability.**

If any provision of this Contract shall be determined to be void, invalid, unenforceable, or illegal for any reason by a court of competent jurisdiction, it shall be ineffective only to the extent of such prohibition and the validity.

**XVIII. Modification.**

This Contract may be amended at any time only upon mutual agreement in writing of the parties.

IN WITNESS WHEREOF, the parties hereto have executed this Contract this 7<sup>th</sup> day of August, 2012.

**THE UNIVERSITY OF AKRON**

**COACH**

RECOMMENDED:

By: 

**THOMAS WISTRUCILL**

Title: Director of Athletics

Date: 8-7-12

By: 

**TERRY BOWDEN**

Title: Head Football Coach

Date: 8/7/12

APPROVED:

By: 

**LUIS M. PROENZA**

Title: President

Date: 8/8/2012

Reviewed and Approved for legal form and sufficiency:

By: 

**JOHN J. REILLY**

Title: Associate Vice President and Associate General Counsel

Date: 8.8.12

**EXHIBIT A**  
**Supplemental Compensation**

1. Athletic Performance Goals

Incentive compensation for achieving athletic performance goals as follows:

- |  |          |
|--|----------|
| A. Mid-American Conference East Division Championship or a division championship in any future conference to which the University belongs: | \$25,000 |
| B. Mid-American Conference Championship or any future conference to which the University belongs:  | \$50,000 |
| C. Bowl Appearance:  | \$25,000 |
| D. Named Coach of the Year by the Mid-American Conference or any future conference to which the University belongs:                        | \$15,000 |
| E. BCS Bowl Game Appearance or playoff equivalent:   | \$50,000 |

2. Academic Performance Goals

Incentive compensation up to an annual cumulative total of \$40,000 for achievement of academic performance goals related to the annual academic success of Football team members as follows:

A. Graduation Success Rate (Not Cumulative)

- |                                 |          |
|---------------------------------|----------|
| • Greater than or equal to 70%: | \$ 5,000 |
| • Greater than or equal to 75%: | \$10,000 |
| • Greater than or equal to 80%: | \$20,000 |

B. APR Rates (Not Cumulative)

- |                                |          |
|--------------------------------|----------|
| • Greater than or equal to 935 | \$ 5,000 |
| • Greater than or equal to 960 | \$10,000 |
| • Greater than or equal to 970 | \$20,000 |

Supplemental compensation payments are subject to approval by the University's Board of Trustees, which approval generally occurs at the next regularly scheduled meeting of the Board of Trustees that occurs following the qualifying event; however for the Athletic Performance Goals, no later than January 31 and for the Academic Performance Goals, no later than sixty (60) days after they are announced.

**EXHIBIT B****Assistant Coaches' Supplemental Compensation**

Consistent with the requirements of Section IV(I) herein, Coach shall have the responsibility and authority to recommend to the Director supplemental compensation for some or all of the Football assistant coaches other than those that are Family Members. Such recommendations are subject to applicable University policies and rules and are further subject to approval by the Director, the President and the Board of Trustees.

The following reflects the available pool of supplemental compensation from which Coach may make recommendations to the Director.

1. Athletic Performance Goals

Incentive compensation up to a maximum of an annual cumulative total of two months' salary for achieving athletic performance goals as follows:

Conference Athletic Performance Goals.

- Mid-American Conference, East Division Championship: ½ month of individual assistant coach's salary\*
- Mid-American Conference Championship: 1 month of individual assistant coach's salary\*

\* For clarification and avoidance of doubt, these benefits are not cumulative. The total possible supplemental compensation for achievement of conference athletic performance goals that Coach may recommend to Director is one (1) month of the assistant coach's salary.

Bowl Game Athletic Performance Goals.

- Bowl Game Appearance: ½ month of the individual assistant coach’s salary\*
- Bowl Game Win: 1 month of the individual assistant coach’s salary\*

\* For clarification and avoidance of doubt, these benefits are not cumulative. The total possible supplemental compensation for achievement of bowl game athletic performance goals that Coach may recommend to Director is one (1) month of the assistant coach’s salary.

2. Academic Performance Goals

The pool of available supplemental compensation for achievement of academic performance goals shall be in accord with the following schedule. Note: the Total Supplemental Compensation Pool for assistant coaches is not cumulative within the categories of academic achievement. For clarification and avoidance of doubt, the total supplemental compensation pool for academic achievement shall not exceed a maximum of \$35,000 in any given Contract year.

<u>Graduation Success Rate (Not Cumulative)</u>	<u>Total Supplemental Compensation Pool</u>
● Greater than or equal to 70%:	\$15,000
● Greater than or equal to 75%:	\$20,000
● Greater than or equal to 80%:	\$25,000

APR Rates (Not Cumulative)

● Greater than or equal to 935	\$15,000
● Greater than or equal to 960	\$20,000
● Greater than or equal to 970	\$25,000



**AMENDMENT TO EMPLOYMENT CONTRACT  
AMENDMENT ONE**

THIS AMENDMENT, made by and between The University of Akron, a state of Ohio institution of higher education, (hereinafter called the "University") and Terry Bowden (hereinafter called "Coach").

WITNESSETH, THAT

WHEREAS, on August 7, 2012, the University and Coach entered into an EMPLOYMENT CONTACT ("Agreement"), whereby Coach was employed by University as Head Football Coach of the University's intercollegiate football team; and

WHEREAS, the University and Coach agree that certain amendments need to be made concerning the terms of the Agreement;

NOW THEREFORE, in consideration of the mutual covenants and conditions herein contained, the University and the Coach agree as follows:

1. Paragraph II. A., regarding the term of the agreement, shall be modified as follows:

"This Contract is for a fixed term appointment of approximately five years commencing with an effective date of ~~December 22, 2011~~ **November 17, 2013**, and terminating without further notice to Coach on February 28, ~~2017~~**2019**, subject to the conditions state herein. This employment in no way grants the Coach tenure or any claim to tenure in employment, nor any years of employment attributable to tenure within the University, nor does this employment grant any expectancy of employment or reemployment except as expressly provided by the terms herein."

2. All references to February 28, 2017 throughout the contract will be modified to February 28, 2019.

3. Paragraph V. G. 3. will be modified as follows:

"Coach will pay University as liquidated damages, and not as a penalty, an amount that is dependent upon the contract year in which the contract is terminated and that shall be paid pursuant to the following schedule:

- a. After ~~December 22, 2011~~ **November 17, 2013**, but prior to February 28, ~~2013~~ **2015**: \$400,000.
- b. After March 1, ~~2013~~ **2015**, but prior to February 28, ~~2014~~ **2016**: \$300,000.
- c. After March 1, ~~2013~~ **2016**, but prior to February 28, ~~2015~~ **2017**: \$200,000.
- d. After March 1, ~~2015~~ **2017**, but prior to February 28, ~~2016~~ **2018**: \$100,000.

In the event that Coach gives notice of termination after March 1<sup>st</sup> of a given year, but Coach or his representatives engaged in discussions with representatives of his new employer prior to that March 1<sup>st</sup> date, Coach shall be obligated to pay the liquidated damages amount owing for the year in which those discussions first occurred. Coach shall pay all amounts to University within thirty (30) days after the date of the Coach's termination."


- 4. Except as herein amended, all terms and conditions of the August 7, 2012 Agreement, by and between the University and Coach, shall remain in full force and effect.


IN WITNESS WHEREOF, the parties hereto have executed this Amendment this 18<sup>th</sup> day of November, 2013.

**THE UNIVERSITY OF AKRON**


**COACH**

RECOMMENDED:

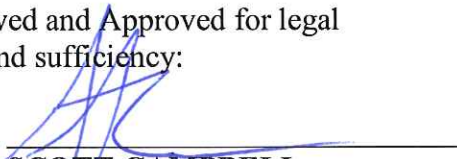
By:   
**THOMAS WISTRULL**  
Title: Director of Athletics  
Date: 11-18-13

By:   
**TERRY BOWDEN**  
Title: Head Football Coach  
Date: 11/18/13

APPROVED:

By:   
**LUIS M. PROENZA**  
Title: President  
Date: 11/19/2013

Reviewed and Approved for legal form and sufficiency:

By:   
**SCOTT CAMPBELL**  
Title: Assistant General Counsel and Records Compliance Officer  
Date: 11/19/13

**AMENDMENT TO EMPLOYMENT CONTRACT  
AMENDMENT TWO**

THIS AMENDMENT, made by and between The University of Akron, a state of Ohio institution of higher education, (hereinafter called the “University”) and Terry Bowden (hereinafter called “Coach”).

WITNESSETH, THAT

WHEREAS, on August 7, 2012, the University and Coach entered into an EMPLOYMENT CONTACT (“Agreement”), whereby Coach was employed by University as Head Football Coach of the University’s intercollegiate football team; and

WHEREAS, on November 18, 2013, the parties agreed on an amendment to the Agreement extending the term of the agreement to February 28, 2019; and

WHEREAS, the University and Coach agree that certain amendments need to be made concerning the terms of the Agreement;

NOW THEREFORE, in consideration of the mutual covenants and conditions herein contained, the University and the Coach agree as follows:

1. Paragraph II. A. of the Agreement, shall be modified as follows:

“This Contract is for a fixed term appointment of approximately five years commencing with an effective date of ~~December 22, 2011~~ **January 7, 2016**, and terminating without further notice to Coach on ~~February 28, 2017~~ **February 28, 2021**, subject to the conditions state herein. This employment in no way grants the Coach tenure or any claim to tenure in employment, nor any years of employment attributable to tenure within the University, nor does this employment grant any expectancy of employment or reemployment except as expressly provided by the terms herein.”

2. All references to February 28, 2017 throughout the Agreement and February 28, 2019 in Amendment One will be modified to February 28, 2021.

3. Paragraph V. G. 3. will be modified as follows:

“Coach will pay University as liquidated damages, and not as a penalty, an amount that is dependent upon the contract year in which the contract is terminated and that shall be paid pursuant to the following schedule:

- a. After ~~December 22, 2011~~ **January 7, 2016**, but prior to February 28, 2013 **2018**:  
\$400,000.

- b. After March 1, ~~2013~~ **2018**, but prior to February 28, ~~2014~~ **2019**: \$300,000.
- c. After March 1, ~~2013~~ **2019**, but prior to February 28, ~~2015~~ **2020**: \$200,000.
- d. After March 1, ~~2015~~ **2020**, but prior to February 28, ~~2016~~ **2021**: \$100,000.

In the event that Coach gives notice of termination after March 1<sup>st</sup> of a given year, but Coach or his representatives engaged in discussions with representatives of his new employer prior to that March 1<sup>st</sup> date, Coach shall be obligated to pay the liquidated damages amount owing for the year in which those discussions first occurred. Coach shall pay all amounts to University within thirty (30) days after the date of the Coach's termination."

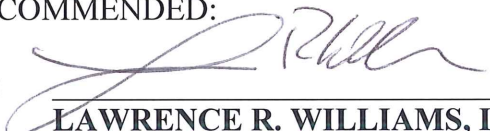
- 4. Except as herein amended, all terms and conditions of the August 7, 2012 Agreement, and the November 18, 2013 Amendment One by and between the University and Coach, shall remain in full force and effect.

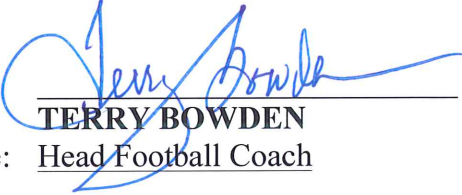
IN WITNESS WHEREOF, the parties hereto have executed this Amendment this 1<sup>st</sup> day of February, 2016.

**THE UNIVERSITY OF AKRON**


**COACH**

RECOMMENDED:

By:   
**LAWRENCE R. WILLIAMS, II**  
 Title: Director of Athletics  
 Date: 2/1/16

By:   
**TERRY BOWDEN**  
 Title: Head Football Coach  
 Date: \_\_\_\_\_

APPROVED:

By:   
**DR. SCOTT SCARBOROUGH**  
 Title: President  
 Date: 2/1/2016

Reviewed and Approved for legal form and sufficiency:

By:   
**SCOTT CAMPBELL**  
 Title: Associate General Counsel and Records Compliance Officer  
 Date: 2/4/16

**AMENDMENT TO EMPLOYMENT CONTRACT  
AMENDMENT THREE**

THIS AMENDMENT, made by and between The University of Akron, a state of Ohio institution of higher education, (hereinafter called the "University") and Terry Bowden (hereinafter called "Coach").

WITNESSETH, THAT

WHEREAS, on August 7, 2012, the University and Coach entered into an EMPLOYMENT CONTACT ("Agreement"), whereby Coach was employed by University as Head Football Coach of the University's intercollegiate football team; and

WHEREAS, on November 18, 2013, and February 1, 2016 the parties amended the contact; and

WHEREAS, the University and Coach agree that certain amendments need to be made concerning the terms of the Agreement;

NOW THEREFORE, in consideration of the mutual covenants and conditions herein contained, the University and the Coach agree as follows:

1. Section III.A.3.c.ii., shall be deleted and replaced with the following:

"provide Coach a country club membership and pay monthly dues and expenses as provided under Board rules. Based upon substantiation of information provided by Coach, the University shall include in Coach's compensation for income-tax purposes only the value attributable to the Coach's non-business uses of the country club. Coach will maintain and furnish an accounting of expenses provided for in the Agreement in accord with standard requirements of the University."

2. Section III.A.3.c.iv., shall be modified as follows:

"provide Coach an annual stipend of ~~\$25,000~~ \$30,000, payable pro rata, . . ."

3. Exhibit A.2. of the agreement will be modified as follows:

" . . . .

2. Academic Performance Goals

Incentive compensation up to an annual cumulative total of ~~\$40,000~~ \$60,000 for achievement of academic performance goals related to the annual academic success of Football team members as follows:

A. Graduation Success Rate (Not Cumulative)

- Greater than or equal to 70%: \$ 5,000
- Greater than or equal to 75%: \$10,000
- Greater than or equal to 80%: \$20,000

B. APR Rates (Not Cumulative)

- Greater than or equal to 935 \$ 5,000
- Greater than or equal to 960 \$10,000
- Greater than or equal to 970 \$20,000

**C. Team GPA (not cumulative; combined fall and spring semester only)**

- **2.75 to 2.99** **\$10,000**
- **3.00 or greater** **\$20,000**

**D. Failing Grades and Withdraws of Team Members (not cumulative; combined fall and spring semester only)**

- **51 to 75** **\$10,000**
- **Less than 50** **\$20,000**

....”

4. Exhibit B.2. of the agreement will be modified as follows:

“....

2. Academic Performance Goals

The pool of available supplemental compensation for achievement of academic performance goals shall be in accord with the following schedule. Note: the Total Supplemental Compensation Pool for assistant coaches is not cumulative within the categories of academic achievement. For clarification and avoidance of doubt, the total supplemental compensation pool for academic achievement shall not exceed a maximum of ~~\$60,000~~\$35,000 in any given Contract year.

<u>Graduation Success Rate (Not Cumulative)</u>	<u>Total Supplemental Compensation Pool</u>
● Greater than or equal to 70%:	\$15,000

- Greater than or equal to 75%: \$20,000
- Greater than or equal to 80%: \$25,000

APR Rates (Not Cumulative)

- Greater than or equal to 935 \$15,000
- Greater than or equal to 960 \$20,000
- Greater than or equal to 970 \$25,000

**Team GPA (not cumulative; combined fall and spring semester only)**

- **2.75 to 2.99** **\$10,000**
- **3.00 or greater** **\$20,000**

**Failing Grades and Withdraws of Team Members (not cumulative; combined fall and spring semester only)**

- **51 to 75** **\$10,000**
- **Less than 50** **\$20,000**

...”

5. Except as herein amended, all terms and conditions of the August 7, 2012 Agreement, and Amendment One and Two by and between the University and Coach, shall remain in full force and effect.

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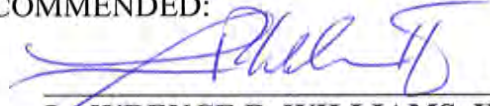



IN WITNESS WHEREOF, the parties hereto have executed this Amendment this 1<sup>ST</sup> day of August, 2016.

**THE UNIVERSITY OF AKRON**


**COACH**

RECOMMENDED:

By:   
**LAWRENCE R. WILLIAMS, II**  
Title: Director of Athletics  
Date: 8/1/16

By:   
**TERRY BOWDEN**  
Title: Head Football Coach  
Date: 8/3/16

APPROVED:

By:   
**MATTHEW WILSON**  
Title: Interim President  
Date: 8/29/2016

Reviewed and Approved for legal form and sufficiency:

By:   
**SCOTT CAMPBELL**  
Title: Associate General Counsel and Records Compliance Officer  
Date: 8/29/16