



CALIFORNIA STATE UNIVERSITY,
FRESNO ATHLETIC CORPORATION

December 14, 2011

Tim DeRuyter

Re: Salary Supplement

Dear DeRuyter:

I am pleased to notify you that you will be receiving a supplement to your monthly state salary in the position of Head Football Coach.

This supplement is funded by the Athletic Corporation and will be paid to you twice monthly in accordance with the Athletic Corporation regular payroll schedule, in the amount of \$16,326.34 each pay period for the period from December 14, 2011 to December 31, 2016. This supplement, coupled with your state salary increase, brings your new combined annual salary to \$650,000.00. The payment of this supplement is contingent on your continued employment during the period of your appointment as Head Football Coach. Athletic Corporation supplements are not subject to salary, merit or service step increases or cost of living incremental adjustments that occur through legislation nor do they augment any pension benefit from the California Public Employees Retirement System (CalPERS).

This supplement will become effective date of hire.

Sincerely,

A handwritten signature in dark ink, appearing to read 'J. A. Parten', with a long, sweeping horizontal line extending to the right.

J. A. Parten

Associate Vice President for Human Resources

c: Director of Athletics, Thomas Boeh
Athletic Corporation
Personnel File

SUPPLEMENTAL LETTER OF APPOINTMENT
Head Football Coach – Timothy J. DeRuyter

On behalf of the President, I am pleased to offer you (Employee) an appointment to the position of Head Football Coach at California State University, Fresno (Fresno State) a position within the Management Personnel Plan (MPP) of the California State University (5 Cal. Code Regs., Title 5 § 42720 et seq.). This appointment is subject to the provisions of the Management Personnel Plan, as well as the rules, regulations, policies and procedures of the California State University system (CSU) and Fresno State. This appointment includes the following provisions:

1. Effective April 15, 2014, Employee will serve as an Administrator IV, in the California State University Management Personnel Plan (MPP) at a base salary of \$21,514 per month or \$258,168 on an annual basis.
2. As an Administrator IV, the terms of his appointment and service are governed by this appointment letter and the MPP which is found in Section 42720 et seq. of Title 5 of the California Code of Regulations. Any commitment to Employee regarding his service or appointment not expressly contained in this Supplemental Letter of Appointment or the initial Letter of Appointment or in the Consulting Services Agreement or in the MPP is void. A copy of the MPP accompanies this Supplemental Letter of Appointment.
3. In accord with Section 42723 of the MPP, no tenure or permanent status is granted with this appointment, and no tenure or permanent status can be achieved within the MPP. Employee serves at the pleasure of the campus President.
4. Future changes in salary and benefits will be in accord with Section 42721 of the MPP and any salary increases will be based upon Employee's performance and the needs of Fresno State. Employee will be entitled to participate in those fringe benefits available to persons covered by the CSU Management Personnel Plan.
5. This appointment does not establish consideration for subsequent employment or any further rights. Subsequent employment will occur only if a new written appointment offer is made by Fresno State and a new written appointment letter is signed by Employee and Fresno State.

ARTICLE I – PURPOSE

The University and Employee agree that 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 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. Employee desires to obtain the opportunities of employment with the University, which are set forth in this Supplemental Letter of Appointment. For these reasons, the University agrees to employ Employee and Employee agrees to be employed by the University upon the terms and conditions set out in this Supplemental Letter of Appointment.

ARTICLE II – PUBLIC DOCUMENT

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

ARTICLE III – TERM OF EMPLOYMENT

3.01 Term of Appointment.

The term of this appointment commences on January 1, 2014 and ends on December 31, 2018, unless sooner terminated in accordance with Article 3.02 or Article VI below.

3.02 Non-Retention.

Fresno State reserves the right under this Supplemental Letter of Appointment and the MPP to non-retain Employee and terminate his appointment as Head Football Coach at any time without cause prior to the completion of the base term of this appointment. If Employee is non-retained and his appointment as Head Football Coach is terminated under this paragraph, Employee shall be entitled to receive one hundred percent (100%) of his annual base salary as described in Section 5.02(a) in the form of monthly installments of \$21,514 for the remainder of the term described in Section 3.01 above; provided however that, if and to the extent that Employee accepts comparable professional employment after termination of employment, any earnings from that employment during the term will be offset against and reduce the monies owed by Fresno State under this section. For purposes of this Section 3.02, "comparable employment" shall mean employment as a head or assistant football coach at either the high school, collegiate or professional level, employment or consulting in the sports broadcasting industry, or consulting with any collegiate or professional football team or organization. Apart from any payment that might be owing under this Section, or Section 5.02(b) of this Supplemental Letter of Appointment, or under the Consulting Services Agreement upon non-retention and termination of this appointment by Fresno State, all obligations of Fresno State and the Athletic Corporation shall cease upon Employee's termination of employment.

ARTICLE IV – POSITION

4.01 Employment As Employee of University.

Employee is hereby employed by the University. Throughout the term of this Supplemental Letter of Appointment, Employee shall use his best energies and abilities for the exclusive benefit of the University. Employee shall serve as the Head Football Coach.

4.02 Description of Employee's Responsibilities.

a. Recognition of Duties. Employee will be a loyal employee of the University, to devote his best efforts and full time to the performance of his duties for the University, undertake and perform properly, efficiently, to the best of his ability and consistent with the standards of the University, all duties and responsibilities attendant to this position, give proper time and attention to furthering his responsibilities to the University and to comply with all rules, regulations, policies and decisions heretofore and hereafter established or issued by the University. Employee recognizes that his statements about the University are often publicized and he agrees, to the extent objectively reasonable, to make only positive and constructive in tone any public comments he makes about the University, its policies or actions taken by senior administrators and/or staff. Notwithstanding any provision of Section 5.03 to the contrary, during the term of this Supplemental Letter of Appointment, Employee will not engage, directly or indirectly, in any business that would detract from his ability to apply his best efforts to the performance of his duties hereunder. Employee also will not negotiate or enter into any agreement in conflict with agreements entered into by the University or the Athletic Corporation.

b. General Duties and Responsibilities of Employee. During the period in which the University employs Employee as Head Football Coach, Employee agrees to undertake and perform properly, efficiently, to the best of his ability and consistent with the standards of the

University, all duties and responsibilities attendant to the position as set forth in this Supplemental Letter of Appointment, the campus Policy on Coaches, and as otherwise assigned.

Employee will abide by and comply with the constitution, bylaws, rules and interpretations of the NCAA, all University rules and regulations relating to the conduct and administration of the Football 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 athletic conference of which the sport is a member. Such legislation, to the extent applicable, is incorporated herein by reference and to the extent inconsistent herewith shall prevail over the terms of this Supplemental Letter of Appointment. Modifications, changes, additions or deletions to such legislation shall automatically apply to this Supplemental Letter of Appointment without the necessity of a written modification. If such modifications or changes in NCAA or athletic conference legislation shall impair or reduce the University provided economic benefits of Employee's employment, the University shall substitute other reasonably equivalent and appropriate benefits permissible under the legislation acceptable to Employee that will preserve for Employee the overall value and quality of this Supplemental Letter of Appointment. In the event Employee becomes aware, or has reasonable cause to believe, that violations of such constitutions, by-laws, interpretations, rules or regulations may have taken place, he shall report the same promptly to the Director of Athletics, Associate Athletics Director, Director of Compliance Services, or the Faculty Athletics Representative(s) as well as his immediate supervisor.

Employee will adhere to, respect and follow the academic standards and requirements of the University with regard to the recruiting and eligibility of prospective and current student-athletes. All academic standards, requirements and policies of the University shall be observed by Employee and members of his staff, including assistant coaches, at all times and shall not be compromised or violated. It is the goal and desire of both the University and Employee that student-athletes in the Football program will achieve at the highest possible academic level, with the expectation that the team's NCAA Academic Progress Rate will reach NCAA threshold minimums and the annual graduation rate for these student-athletes will be at least 5% above the graduation rate for the general undergraduate student population at the University, or the Employee will work with academic support personnel to devise and implement a written Graduation Rate Improvement Plan to be placed in the Employee's Personnel File. The academic progress of student-athletes is an area on which the Employee will receive significant evaluation in the annual performance review.

c. Specific Duties and Responsibilities. The duties and responsibilities assigned to Employee in connection with his position as Head Football Coach are as set forth below. This list of specific duties and responsibilities supplements and is not exclusive of the other general duties and responsibilities provided for elsewhere in this Supplemental Letter of Appointment.

d. General Description. The position of Head Football Coach is a specialized professional position. Employee is responsible for evaluating, recruiting, training, developing academic and social skills, as well as coaching student-athletes to compete successfully against the highest level of NCAA intercollegiate competition in a quality Football program.

e. General Responsibilities. In his position as Head Football Coach, Employee is held directly accountable for these general responsibilities relating to the Football program: overall management and administration of the Football program, implementation of and compliance with the budget of the Football program, and the recruiting, training, supervision, evaluation and performance of student-athletes and coaching staff. Employee shall also have responsibility for assisting in the scheduling of contests with opponents consistent with campus Policy, but the Director of Athletics retains the final approval with regard to the Football program's schedule of contests and opponents.

f. Specific Responsibilities. Employee's position has these additional specific responsibilities. It is hereby understood that Employee's responsibilities as herein defined are to comply with the campus Policy on Coaches as approved by the President. In addition to those duties

listed in the campus Policy on Coaches (copy to be placed in Employee's Personnel File), Employee is responsible for compliance to the extent objectively reasonable with the following:

- 1) Work in cooperation with and support of athletics department's administrative and support officials to ensure that all student-athletes' academic and general welfare issues are addressed
- 2) Have thorough knowledge of the NCAA and conference rules and regulations and maintain strict compliance as well as attend all department rules education meetings unless the Director of Athletics or his/her designee provides prior approval for Employee's absence from such meetings
- 3) Maintain reasonable discipline and be fair, empathetic and develop a positive relationship with the student-athletes, while motivating them to excellence in all aspects of life, including athletic and non-athletic endeavors
- 4) Recruit exceptional high school prospective student-athletes that have a reasonable opportunity to gain a degree from Fresno State and manage the team's roster in a manner that conforms to the department's stated policies regarding squad size, out-of-state residents and junior college and four-year institution transfers.
- 5) Be reasonably available to and cooperate with the media and appear before faculty, administrators, students, alumni, benefactors and civic groups as requested or assigned by the sport supervisor, Director of Athletics or his/her designee
- 6) Work to integrate intercollegiate athletics into the whole spectrum of academic life to complement the University and its mission in the community
- 7) Work within the confines of all rules, regulations, guidelines, policies and procedures of the athletics department and to ensure that those staff members in his charge do so as well
- 8) Ensure that public statements remain complimentary regarding the athletics program and the University
- 9) Maintain a professional, collegial, mature and rational demeanor and attitude at all time
- 10) Advance the efforts of the Department of Athletics and the University toward diversity and gender equity. Fully support and abide by the CSU and Fresno State's commitment to gender equity in education, including athletics, and its full compliance with Title IX of the Education Amendments to the Civil Rights Act of 1964. Employee will fully support and abide by CSU and Fresno State's commitment to maintain a working and learning environment where every student, employee and community member is treated with dignity and respect. Employee will support and comply with the Fresno State's commitment to maintain a safe and healthy living and learning environment for everyone
- 11) All full-time coaches are expected to have their own university email, voice mail addresses and cell phone numbers at which they can be contacted directly or be available to directly receive electronic and voice messages

12) Accurately report all vacation and sick leave time and ensure that those in his charge do the same.

g. Scheduling. During each year of this Supplemental Letter of Appointment, the University shall consult with Employee, and Employee shall be involved to the greatest extent possible, in developing a scheduling philosophy, arranging each season's game schedule for the football program, and any rescheduling of games involving the football program. The Director of Athletics shall have the final authority and responsibility with regard to the football program's schedule after giving good faith consideration to the input from Employee and using the University's best efforts to implement the preferences of Employee.

4.03 Reporting Relationship and Annual Evaluations.

a. Reporting Relationship. Employee shall report to the Director of Athletics and/or his/her designee. Employee's job duties and responsibilities shall be reviewed, revised and assigned from time to time by Employee's reporting superior, whether it is the Director of Athletics or his/her designee. Employee is expected to work closely with a variety of Athletics Department and University staff on all matters affecting the University's athletics program or otherwise connected with the discharge of his duties as an employee of the University. Employee is expected to discuss or forward any employment or workplace issues with his reporting superior and, when appropriate, to the Director of Athletics.

b. Annual Performance Evaluations. Employee's performance of his job duties and responsibilities will be evaluated annually on the job duties as described in this Supplemental Letter of Appointment; the campus Policy on Coaches, and the Head Football Coach position description.

Additionally, included are the following quantifiable evaluation points:

- 1) Annual NCAA Academic Progress Rate (APR);
- 2) Annual team grade point average (GPA);
- 3) Annual Federal Graduation Rate (trending of four-year cohort);
- 4) NCAA Graduation Success Rate;
- 5) Quantity and nature of Student-Athlete Code of Conduct violations;
- 6) Quantity and nature of NCAA compliance secondary violations;
- 7) Quantity and nature of Student-Athlete Drug/Alcohol violations;
- 8) Compliance with roster management, as assigned;
- 9) Fiscal management, efficiency and integrity;
- 10) Team win/loss percentage;
- 11) Regular-season conference finish;
- 12) Final College Football Playoff Standings (if applicable);
- 13) Final computed national ranking (e.g. Massey, Wolfe, Sagarin, etc.);
- 14) Computed strength of schedule (e.g. Massey, Wolfe, Sagarin, etc.);
- 15) Final subjective national rankings and polls (e.g. Associated Press, USA Today, ESPN.com, etc.);
- 16) Quantity and nature of NCAA/conference reprimands regarding sportsmanship;
- 17) Quantity and nature of ICA letters of admonishment and reprimand regarding program operations;
- 18) Student-athlete evaluation ratings and comments; and
- 19) Attendance, both personal and that of the football coaching staff, at mandatory department meetings (both excused and unexcused).

Additionally, other non-quantifiable evaluation points are: team-oriented; respect for student-athletes, peers, staff and management; general welfare of student-athletes; and recruiting efforts.

These evaluations will take into account prior evaluations and the expectations and goals set for Employee in such prior evaluations as well as adherence to the terms and conditions set forth in this agreement. Employee will also be evaluated according to terms in the campus Policy on Coaches, a policy Employee is required to carefully read. In addition, each year that Employee serves as Head Football Coach, Employee will be responsible for evaluating assistant coaches.

ARTICLE V – COMPENSATION

5.01 Terms And Conditions Of Compensation.

In consideration for the Employee's promises in this Supplemental Letter of Appointment, Employee shall be entitled to the compensation as described below. All payments to Employee are subject to normal deductions and withholding for state, local and federal taxes and for any retirement or other benefits to which Employee is entitled or in which he participates, and are subject to all terms and conditions of this Supplemental Letter of Appointment concerning termination and restrictions on the search for other employment.

5.02 Compensation.

a. **Base Salary.** The guaranteed base salary paid by the University to Employee for his services and the satisfactory performance of the terms and conditions of this Supplemental Letter of Appointment shall be at the rate of \$258,168 in each year of this Agreement, prorated for any partial year of the term, payable in equal monthly warrants by the University to Employee on or about the last day of each consecutive calendar month during the term of this appointment. Salary increases during the term of this appointment shall be paid to Employee at the same time and under the same conditions in accordance with MPP.

b. **Supplemental Compensation in Form of Bonuses.** The Athletic Corporation shall pay to the Employee an annual bonus, based upon the criteria set forth below so long as Employee is employed by Fresno State in the position of Head Football Coach. All bonuses will undergo the process of determination at the completion of each fiscal year. The process will continue until all applicable data has been quantified and confirmed, but will be paid no later than October 1st of the following fiscal year. In the event Employee is no longer employed by Fresno State at the time the process of determination is completed and the applicable data has been quantified and confirmed, Employee shall be entitled to all bonuses earned prior to termination of employment. Specifically and except as otherwise provided below, the Employee will receive an annual bonus in the amounts set out below (non-incremental) provided that his team's annual NCAA Academic Progress Rate (APR) is at or above 930 (as applicable for the previous fiscal year) and the specific goals are met as outlined below. With respect to bonuses set forth at b.1), b.2), and b.3) below, those specific bonuses shall be allocated among the Employee and other coaches on the football staff as the Director of Athletics and Employee shall determine from time to time during the term hereof. The individual bonuses amounts set forth at b.4) through b.8) below shall be awarded and allocated solely to the Employee. Any adjustments in NCAA policy will be reflected appropriately and will be implemented by mutual consent.

1) Achievement of Annual NCAA APR

- a) At or above 935 provides \$75,000.00
 - b) At or above 945 provides \$100,000.00
 - c) At or above 955 provides \$110,000.00
 - d) At or above 965 provides \$120,000.00
- Only one may be awarded.*

2) Annual Team GPA (Fall/Spring Semesters)

- a) 2.6 to 2.699 provides \$60,000.00

- b) 2.7 to 2.799 provides \$70,000.00
 - c) 2.8 to 2.899 provides \$80,000.00
 - d) 2.9 and above provides \$90,000.00
- Only one may be awarded.*

3) Annual Federal Graduation Rate

- a) At or above 57% provides \$75,000.00
- b) At or above 58% provides \$85,000.00
- c) At or above 59% provides \$95,000.00
- d) At or above 60% provides \$105,000.00
- e) At or above 61% provides \$115,000.00
- f) At or above 62% provides \$125,000.00

All percentages refer to four-year cohort. Only one may be awarded.

4) Achievement of regular-season winning percentage

Any award of this bonus is predicated upon an 11, 12, or 13-game schedule:

- a) At or above 58% provides \$75,000.00
- b) At or above 66% provides \$125,000.00
- c) At or above 75% provides \$175,000.00
- d) At or above 83% provides \$225,000.00
- e) At or above 92% provides \$275,000.00
- f) At 100% provides \$325,000.00

Only one may be awarded; assumes affiliation with Mountain West Conference. Any change in either the membership or the conference affiliation requires adjustments to reflect the appropriate level of competition. Adjustment will be based on BCS conference power rankings.

5) Conference Success

- a) Regular Season Co-Conference Championship (OR) Divisional Champion with advancement to championship game provides \$75,000.00
- b) Regular-Season Conference Champion (OR) winner of conference championship game provides \$150,000.00

Only one of four may be awarded; assumes affiliation with Mountain West Conference. Any change in either the membership or the conference affiliation requires adjustments to reflect the appropriate level of competition.

6) Bowl Participation

- a) Participation in a conference-associated or at-large bowl provides \$75,000.00 (OR) \$150,000 for winning said bowl
- b) Participation in a BCS bowl provides \$200,000.00 (OR) \$400,000 for winning said bowl
- c) Participation in College Football Playoff National Championship Semifinal game provides \$350,000.00
- d) Participation in College Football Playoff National Championship game provides \$500,000.00 (OR) winning said College Football Playoff National Championship provides \$750,000

Only one may be awarded.

7) Final College Football Playoff National Standing

- a) Top 25 provides \$50,000.00
 - b) Top 10 provides \$75,000.00
- Only one may be awarded.*

8) Individual Honors

- a) Conference Coach of the Year Awards provides \$20,000.00
 - b) National Coach of the Year Award provides \$30,000.00
- Only one National Coach of the Year award will be provided & only one from among the four apply: Walter Camp; Eddie Robinson; Paul "Bear" Bryant; and the American Football Coaches Assn.*

c. Use of Automobile. The Athletic Corporation will provide Employee with the exclusive use of an automobile, including insurance, repairs and gas. The Employee is responsible for payment of gas for the Employee's personal use of the vehicle. Any personal use of the vehicle by the Employee is considered as imputed income for tax purposes.

d. Country Club Membership. Employee will have the option for the provision of country club privileges as provided through the California State University, Fresno corporate membership program for the term of this Supplemental Letter of Appointment. The Employee is responsible for payment for the Employee's personal expenses relating to the club's membership.

e. Complimentary Tickets to Athletics Events. Fresno State will provide the Employee with up to twelve (12) complimentary "best available" on west side of stadium and twenty (20) "bench seating" season tickets for all Football home contests. Employee has option to receive six (6) complimentary tickets for Men's Basketball, Women's Basketball, Volleyball, Softball and Baseball. The value of any tickets utilized by the Employee is considered as imputed income for tax purposes. These tickets are intended for Employee's personal use/distribution, in compliance with NCAA rules and regulations. Seat locations will be determined by the Athletics Ticket Office based upon availability.

f. Benefits. Employee shall be entitled to the standard benefits provided through employment with the University as outlined in the CSU Management Personnel Plan (MPP) Benefits Overview including insurance, sick leave, vacation, and retirement contributions based upon the amount paid pursuant to paragraph a. above. Accrual of vacation credit and sick time will be subject to this Supplemental Letter of Appointment and CSU Management Personnel Plan (MPP). Use of vacation credit and sick time will be subject to department policy. Upon termination of employee's employment with the University, unused vacation will be paid in a lump sum or will extend the term of the agreement until such time as any unused vacation is exhausted, at the discretion of the Director of Athletics.

5.03 Opportunities to Earn Outside Income.

Employee shall, at the discretion of the Director of Athletics, be permitted to engage in activities and enter into agreements with other persons for additional compensation, benefits or perquisites that relate to but are separate and independent from Employee's employment as Head Football Coach at Fresno State, subject to the following conditions. Such agreements must be approved in writing, before being entered into, by the Director of Athletics to ensure that they do not conflict with Employee's employment obligations, violate any conflict of interest laws, rules or regulations that apply to Employee's employment, are not prejudicial to the best interests of Fresno State and its Athletics Department, or interfere with the performance of Employee's duties for Fresno State. Employee is subject to California statutory conflict of interest restrictions as well as the CSU conflict of interest code and must scrupulously adhere to them.

In addition to the above conditions, the following terms and conditions shall apply in each instance, in which Employee seeks to make, or makes, arrangements to earn outside income as a result of his

employment as Head Football Coach.

a. University Obligations Are Primary. Such outside activities shall not interfere with the full and complete performance by Employee of his duties and obligations as a University employee, recognizing always that Employee's primary obligations lie with the University and its students.

b. Compliance with Laws, Rules & Regulations. In no event shall Employee accept or receive, directly or indirectly, any monies, benefits, services or other gratuity whatsoever from any person, business entity, University booster club, alumni association or other benefactor, if such action would violate: (A) any applicable law, statute or regulation; (B) applicable policies, rules or regulations of the University; or (C) NCAA legislation or the constitution, bylaws, rules, regulations or interpretations thereof of the NCAA or the athletic conference of which the University is a member, as now or hereafter enacted. Changes to such laws, policies, rules, regulations, legislation, constitution, bylaws or interpretations thereof shall automatically apply to this Supplemental Letter of Appointment without the necessity of a written modification.

c. University Is Not Liable. Employee's arrangement(s) for outside income and the activities hereunder are independent of Employee's University employment, and the University shall have no responsibility or liability for payment of any such income or for any claims arising there from under any circumstances whatever. Employee agrees to defend, indemnify and hold the University harmless with respect to claims of any type whatsoever that arise from or relate in any way to Employee's outside activities and outside income.

d. Commercial Endorsements. Employee may undertake commercial endorsements of products and services subject to the following: no mention of Fresno State, no use of Fresno State identifiable equipment or facilities; no use of marks, slogans, music or logos of the University; and no commercial endorsements of products or services that are contrary to any exclusive corporate sponsorships or endorsements by the Department of Athletics or its representatives.

e. Income from Written Materials. Employee shall be entitled to write and release books and magazines and newspaper articles or columns in connection with his position as Head Football Coach. Employee agrees to act in a professional manner and protect the best interest of the University and Department of Athletics in all such matters.

f. Shoe, Apparel and Equipment Contracts. Employee may not enter into any contracts with shoe, apparel, sports-related equipment or supplies vendors, including with manufacturers, distributors or sellers or any party which would be in conflict with a contract, corporate sponsorship, or endorsement of the University or Athletic Corporation. Prior written approval from the Director of Athletics or his/her designee is required for any contracts not precluded.

g. Sport Camps. Employee shall have the opportunity to conduct youth sport camps and realize the additional income. All sport camps must comply with all NCAA, University, and Department policies, procedures and regulations. If the sport camps are conducted on the Fresno State campus, Employee may utilize name, marks, slogans, music or logos of the University. If the sport camps are conducted off the Fresno State campus, Employee is prohibited from utilizing any reference to the University including name, marks, slogans, music or logos.

h. Income from Coach-Participation Broadcast Properties. Employee shall be required to participate in regularly-scheduled radio, television, internet-based broadcast programming, or any other medium related to Fresno State Football (e.g.: coach's show, pregame show, etc.). In all regularly-scheduled media programs the coach is expected to represent the interests of any Fresno State team, the University, the Department of Athletics or the Athletic Corporation, the University and/or its representatives shall maintain all rights to such broadcasting

properties and shall be solely responsible for arranging any and all agreements with a broadcast partner. Employee agrees to act in a professional manner and protect the best interest of the University and Department of Athletics in all such matters whether or not the Employee is expected to comment on any Fresno State team, the University, the Department of Athletics, the Athletic Corporation, or any of their agents or employees. Any compensation or fee from any source the Employee may receive for participating in such broadcast programming or other medium shall be tendered by the Employee to the Athletic Corporation.

i. **No Conflicting Endorsements.** Prior to extensive discussion regarding any commercial endorsements, Employee will review the existing environment with the Director of Athletics to ensure that there are no potential conflicts with departmental or University policies or Athletics Department sponsorship agreements. All further discussions and/or negotiations with any third party regarding endorsements must include the Director of Athletics or his/her designee and shall be subject to his/her approval.

j. **Disclosure of Outside Income.** In accordance with NCAA regulations, Employee shall report annually in writing to the University's President, through the Director of Athletics, on or before July 15th of each year, all athletically related income from all sources outside the University and the University shall have reasonable access to all records of Employee necessary to verify the information contained in such report(s).

ARTICLE VI – TERMINATION, SUSPENSION OR OTHER DISCIPLINE

6.01 Employee May Be Disciplined For Violations Of NCAA, Conference And University Rules And Regulations.

If, after a University and/or NCAA investigation, Employee is found to have violated NCAA, athletic conference or University rules or regulations during prior employment at another NCAA member institution or while employed by the University, Employee shall be subject to disciplinary or corrective action. Should there be an investigation into any alleged violation, the Employee shall cooperate fully.

6.02 Suspension or Termination For Cause.

Notwithstanding any other provision of this Supplemental Letter of Appointment or the earlier Letter of Appointment, this appointment may be terminated by Fresno State, without further obligation of CSU or Fresno State, or Employee may be suspended without pay for a period determined by the President or designee, if the President or designee finds that the employee has committed any of the following acts or omissions (for cause) in accordance with Education Code Section 89535:

- a) gross negligence in relation to Employee's duties hereunder;
- b) insubordination;
- c) willful and knowing violation of the rules of NCAA, or an athletic association or conference of which Fresno State is a member, or knowing participation in any violation of such rules, or failure to report violations by Fresno State coaches, athletes, or Department staff of which Employee has knowledge;
- d) dishonesty;
- e) immoral conduct;
- f) unprofessional conduct;
- g) incompetency;
- h) failure or refusal to perform the normal and reasonable duties of the position;
- i) conviction of a felony or conviction of a misdemeanor involving moral turpitude;
- j) fraud in securing this appointment;
- k) addiction to the use of controlled substances;
- l) drunkenness on duty;

- m) conduct which is seriously prejudicial to the best interests of Fresno State or its athletics program or which is a material violation of Fresno State's mission;
- n) material breach of any of the terms, duties or responsibilities set forth in this Supplemental Letter of Appointment or the initial Letter of Appointment;
- o) any cause adequate to sustain the dismissal of any other Fresno State employee under applicable law and Fresno State policies and procedures.

Employee shall be entitled to utilize the reconsideration procedures available under MPP §42728.

In the event this appointment is terminated for cause in accordance with the provisions of this Supplemental Letter of Appointment, all of Fresno State's and the Athletic Corporation's obligations to Employee under this appointment subsequent to that date shall cease. In no case shall the University be liable to Employee for the loss of any sum payable by the Athletics Corporation for services to be rendered or for unearned potential bonuses or 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 source whatever that may ensue as a result of the University's termination of this appointment.

6.03 Constructive Resignation.

In the event that Employee obtains other employment or refused to perform the duties outlined herein, Employee shall be deemed to have resigned his employment and all compensation and other obligations owed by the University or the Athletic Corporation to Employee under this Supplemental Letter of Appointment shall cease. In no case shall the University or Athletic Corporation be liable 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 Employee's termination of this appointment. The provisions of this subsection shall be without prejudice to any rights the University or Athletic Corporation may have under applicable state or federal law.

ARTICLE VII –LIMITATION ON SEEKING OTHER EMPLOYMENT

7.01 Limitation.

Employee has special, exceptional and unique knowledge, skill and ability as a coach at the intercollegiate level which, in addition to the continued acquisition of coaching experience at the University, as well as the University's special need for continuity in its athletics program, renders Employee's services unique.

Employee, and/or any representative(s) of Employee, shall not seek, discuss or negotiate with another prospective employer for other employment requiring performance of duties prior to the expiration or termination of this Supplemental Letter of Appointment without first personally speaking with the Director of Athletics to notify him/her of the endeavor.

ARTICLE VIII – UNIVERSITY'S EDUCATIONAL PURPOSE AND SUPPORT OF PROGRAM

Although this Supplemental Letter of Appointment is sports-related, the primary purpose of the University and, accordingly, of all its legal arrangements, including this Supplemental Letter of Appointment, is educational. Thus, the educational purposes of the University shall at all

times have priority in the various provisions of this Supplemental Letter of Appointment. By way of example only, a student-athlete may be declared not eligible for competition for academic reasons, because the University believes he would not be an appropriate representative of the University, as a disciplinary sanction under applicable University policies, or because the University believes that he is not eligible according to the rules for practice or competition specified by the NCAA, the athletic conference in which the University is a member, or the University's Intercollegiate Athletics Codes and Policies. In no event shall such action by the University be considered a breach of this Supplemental Letter of Appointment.

ARTICLE IX – MISCELLANEOUS

9.01 Assistant Coaches.

Subject to such limitations as may be imposed from time to time by the NCAA or the athletic conference of which the University is a member, the Director of Athletics in his/her discretion may provide the Football program with assistant coaches. Employee shall have the authority to recommend the hiring and termination of assistant coaches for the Football program subject to the approval of the Director of Athletics, as the University's appointing authority, and the University President's designee. All assistant coaches shall be employees of either the University or the Athletic Corporation. Assistant coaches are immediately responsible to Employee, who will assign the duties of each of the assistant coaches, and Employee is responsible for the activities of assistant coaches as those activities relate to the educational purposes and the athletic interests of the University. Assistant coaches are responsible to the Director of Athletics for compliance with the policies of the University and Athletics Department as well as the rules and regulations of the NCAA, and the constitution, bylaws, rules, regulations, legislation and all official interpretations thereof, and the rules and regulations of the athletic conference of which the University is a member, as may be in effect from time to time and Employee shall immediately report any violations that Employee knows or has reason to know of such rules and regulations to the Director of Athletics, Associate Athletics Director, Director for Compliance Services, or the Faculty Athletics Representative(s) as well as his immediate supervisor. Employee will be responsible for conducting written evaluations of each assistant coach on his staff in accordance with University policy or applicable collective bargaining agreement.

9.02 Amendments To Supplement Letter of Appointment.

This Supplemental Letter of Appointment may be amended only by a written instrument duly approved by the University through its designated representative and accepted by Employee, such approval and acceptance to be acknowledged in writing.

9.03 No Waiver Of Default.

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

9.04 Acknowledgment.

Employee acknowledges that he has read and understands the foregoing provisions of this Supplemental Letter of Appointment and that such provisions are reasonable and enforceable and he agrees to abide by this Supplemental Letter of Appointment and the terms and conditions set forth herein.

9.05 Indemnification.

Employee agrees to hold harmless and indemnify the University and the Athletic Corporation from any

and all suits, claims, demands, damages, liability, costs, and expenses, including attorney's fees, arising out of claims made by third parties based on Employee's intentional violation of the terms of this Supplemental Letter of Appointment. University and the Athletic Corporation agree to hold harmless and indemnify Employee from any and all claims made by third parties arising from Employee's employment hereunder, as set forth in Government Code sections 825 and 995. Notwithstanding the generality of the foregoing, there shall be no indemnity arising out of suits, claims or demands in which Employee, the University and/or the Athletic Corporation seek to compel another party to this Agreement to comply with his obligations hereunder or in which a party seeks to enforce any remedies such party may have hereunder.

9.06 University Retains All Materials And Records.

All materials or articles of information, including, without limitation, personnel and student-athlete records, recruiting records, team information, videos, films, statistics or any other material or data, furnished to Employee by the University or developed by Employee on behalf of the University or at the University's direction or for the University's use or otherwise in connection with Employee's employment hereunder are and shall remain the sole and confidential property of the University. Within three (3) days of the expiration of the term of this Supplemental Letter of Appointment or its earlier termination as provided herein, Employee shall deliver any such materials in his possession or control to the University.

9.07 Employee Will Not Incur Indebtedness.

Employee shall not incur any indebtedness or sign any contracts for or on behalf of the University or the Athletic Corporation.

9.08 Employee Will Not Make Investments Competitive With University Objectives.

During the period of employment hereunder, Employee shall not make or continue to hold any investment in or be associated with any enterprise that could be deemed to be competitive with the University's objectives and philosophies or with the University's intercollegiate program, without first having obtained the written approval of the University's President.

9.09 Notice.

Any notice or other communication which may or is required to be given under this Supplemental Letter of Appointment 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 fifth 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 after its name below or such other address as may be given by such party in writing to the other.

If to Employee: California State University, Fresno
Football Office
5305 N. Campus Drive - Mail Stop/NG 27
Fresno, CA 93740

With a copy to: PSR, Inc.
1220 Plumas St.
Reno, NV 89509
Attn: Robert LaMonte

If to University: California State University, Fresno
Director of Athletics
5305 N. Campus Drive - Mail Stop/NG 27

If to the Athletic Corporation:
Fresno, CA 93740
Athletic Corporation
Fresno State Athletics Business Office
5305 N. Campus Drive - Mail Stop/NG 27
Fresno, CA 93740

9.10 Gender And Neuter Provision.

As used in this Supplemental Letter of Appointment, the masculine, feminine or neuter gender, and the singular or plural number, shall each be deemed to include the others whenever the context permits.

9.11 Personnel File.

A copy of the executed Supplemental Letter of Appointment will be placed in the Employee's Personnel File five days (5) from the date of completed execution of this Supplemental Letter of Appointment.

9.12 Supersede Provision.

This Supplemental Letter of Appointment together with the initial Letter of Appointment supersedes any other communications between Employee and the University or Athletic Corporation with respect to the terms of employment. Any promises or statements of inducement made by any agent or representative of the University that are not contained in this Supplemental Letter of Appointment or the initial Letter of Appointment shall not be valid or binding on the University or Athletic Corporation.

Your written acceptance of this appointment is required. If you decide to accept this appointment, please date and sign this page in the space below and return the original of this letter to me. A copy is provided for your records. Written acceptance of the terms of this appointment by the Athletic Corporation is also required.

Sincerely,



Thomas C. Boeh
Director of Athletics

My signature below manifests my acceptance of the appointment as described in this Supplemental Letter of Appointment. I acknowledge that I have received the opportunity to review, or have reviewed, this Supplemental Letter of Appointment with my attorney, at my discretion.

SIGNED:



Timothy J. DeRuyter

Date: 4-18-14

UNIVERSITY:

By 

Joseph I. Castro, Ph.D., President

Date: 4-21-14

ATHLETIC CORPORATION:

The signature below manifests acceptance by the Athletic Corporation of its obligations under this Supplemental Letter of Appointment.

By 

Cynthia Teniente-Matson, Ed.D., Chair, Athletic Corporation

Date: 4/17/2014

DEPARTMENT OF ATHLETICS CONSULTING SERVICES AGREEMENT

This Department of Athletics Consulting Services Agreement (Agreement) is made effective as of the 15th day of April, 2014, by and between the CALIFORNIA STATE UNIVERSITY, FRESNO ATHLETIC CORPORATION (Athletic Corporation) and DERUYTER, INC., a Nevada Corporation, (Consultant) for the services of TIMOTHY J. DERUYTER (Key Employee).

ARTICLE I: PURPOSE

1.01. Purpose. Consultant is in the business of providing consulting services to college athletics programs and the Athletic Corporation wishes to engage Consultant to promote and support the athletics program at California State University, Fresno (University). This consulting agreement shall be coterminous with the employment of Consultant by the University as its Head Football Coach and shall terminate automatically if and when the Consultant is no longer employed by the University following his non-retention as Head Football Coach for any reason. Notwithstanding the foregoing, the rights and obligations set forth in Section 3.02 of this Agreement shall survive the termination of this Agreement and remain in effect. The Athletic Corporation has received all necessary consent and approval required under Consultant's letter of appointment with the University and supplements thereof ("Letter of Appointment").

ARTICLE II: DESCRIPTION AND SCOPE OF SERVICES

2.01. Scope of Services. Consultant shall be engaged by the Athletic Corporation to promote the Football Program and the Department of Athletics at the University through the use of public appearances, personal hosting, television, radio, video, film, Internet and other communication formats (hereinafter referred to as "promotional assistance") not within the scope of Key Employee's employment under the Letter of Appointment.

2.02. Description of Consultant's Services.

a. General Nature of Services. In providing promotional assistance, Consultant shall conduct itself in a professional manner at all times while engaged in activities attendant to the University's Department of Athletics and the Athletic Corporation. All services and responsibilities of Consultant to the Athletic Corporation shall be conducted at the specific direction of the University's Director of Athletics and his/her designated representative(s).

b. Specific Responsibilities. Consultant is responsible for ensuring the

engagement of Key Employee and that he:

- (1) uses best efforts, consistent with the objectives of the University's athletics program, to work within and support all activities of the Athletic Corporation; and,
- (2) is reasonably available to help ensure the best-possible news media coverage and exposure of the University's athletics program and athletics activities, and perform certain marketing, promotional and advertising functions connected therewith; and,
- (3) is reasonably available for public appearances, personal hosting, and participation on radio and television broadcasts, film, Internet webcasts and other communication formats.

2.03. Reporting Relationship. Consultant shall report directly to the University's Director of Athletics and/or his/her designated representative(s) and obtain promotional assistance directives and approval of all its activities.

2.04. Conflict of Interest. Consultant will not perform consulting services with clients whose interest conflict with either the Athletic Corporation or the University. Consultant agrees that neither the Athletic Corporation, nor University, shall have any responsibility or liability for loss of income to Consultant, nor any related claims for collateral business activities based on any decision that a client or activity, for which approval is withheld, is a conflict of interest.

2.05. Broadcast Payments. Any compensation or fee the Consultant receives for participating in such broadcast programming or other medium which relate to the consulting services being provided by the Consultant hereunder shall either be tendered by the Consultant or Key Employee, as applicable, to the Athletic Corporation or shall be offset against payments to be made by the Athletic Corporation to Consultant under this Agreement.

2.06. Shoe, Apparel and Equipment Contracts. Consultant may not enter into any contracts with shoe, apparel, sports-related equipment or supplies vendors, including with manufacturers, distributors or sellers or any party which would be in conflict with a contract, corporate sponsorship, or endorsement of the University or Athletic Corporation. Prior written approval, for any contracts not precluded, shall be provided by the Director of Athletics in accordance with CSU System wide policy for supplemental income.

In the event that the University or Athletic Corporation is able to procure a sponsorship agreement with a shoe, apparel or sports-related equipment that includes the sport of football, the University will make its best effort to contractually require and then facilitate the payment of an annual endorsement/speaking engagement fee to the Consultant for the length of that agreement, which shall not be offset against payments to be made by

the Athletic Corporation to Consultant under this Agreement, which shall not be offset against payments to be made by the Athletic Corporation to Consultant under this Agreement.

2.07. Camps and Clinics. Any compensation or fee the Consultant receives for participating in camps or clinics shall not be offset against payments to be made by the Athletic Corporation to Consultant under this Agreement.

ARTICLE III: TERM OF AGREEMENT

3.01. Term of Agreement. This Agreement shall commence on January 1, 2014, and shall continue until December 31, 2018 ("Contract Term").

3.02 Cancellation by Athletic Corporation. The Athletics Corporation reserves the right to cancel this Agreement if Consultant is terminated as a University employee after being non-retained without cause as the University's Head Football Coach prior to the completion of the Contract Term, subject to the following:

- a) Except as otherwise provided below, following the termination of the Consultant without cause as the University's Head Football Coach, Consultant will be entitled to receive one hundred percent (100%) of his remaining unpaid fee, to be paid in equal monthly installments through the end of the term of this Agreement, unless Consultant subsequently accepts comparable professional employment or consultation. If such employment or consultation is obtained, any earnings through other employment or consultation will offset the amounts otherwise due under this Section 3.02. For purposes of this Agreement, "comparable professional employment or consultation" shall include employment as a head or assistant football coach at either the high school, collegiate or professional level, employment or consulting in the sports broadcasting industry, or senior-level consulting with any collegiate or professional football team or organization.
- b) In the event Consultant voluntarily resigns his position as the University's Head Football Coach (or is deemed to voluntarily resign), or if his employment as the University's Head Football Coach is terminated for cause in accordance with the provisions his Supplemental Letter of Appointment, all Athletic Corporation's obligations to Consultant under this Agreement subsequent to that date shall cease.
- c) In no case shall the Athletic Corporation be liable to Consultant 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 source whatever that may ensue as a result of the termination of Consultant appointment as the University's Head Football Coach.

3.03 Cancellation by Consultant. The Consultant automatically cancels this Consulting Services Agreement if Consultant chooses to resign his position as the University's Head Football Coach prior to the completion of the Contract Term, according to the following:

- a) If Consultant resigns his position as the University's Head Football Coach before the conclusion of the 2014 football season, Consultant will pay the Athletic Corporation an early-departure fee of \$2,800,000;
- b) If Consultant resigns his position as the University's Head Football Coach before the conclusion of the 2015 football season, Consultant will pay the Athletic Corporation an early-departure fee of \$1,400,000;
- c) If Consultant resigns his position as the University's Head Football Coach before the conclusion of the 2016 football season, Consultant will pay the Athletic Corporation an early-departure fee of \$1,000,000;
- d) If Consultant resigns his position as the University's Head Football Coach before the conclusion of the 2017 football season, Consultant will pay the Athletic Corporation an early-departure fee of \$700,000; or
- e) If Consultant resigns his position as the University's Head Football Coach before the conclusion of the 2018 football season or thereafter, Consultant shall not be required to pay the Athletic Corporation an early-departure fee.

ARTICLE IV: CONSULTING SERVICE FEE

4.01. Consulting Service Fee.

For the period of January 1, 2014, Consultant shall receive a fee of \$1,141,832, paid in equal monthly installments of \$95,152.66. Consultant shall be paid pro rata and in arrears for the period of January 1, 2014 – March 31, 2014 in a lump sum payment of \$187,504.50, which is the difference between the original monthly rate of \$32,651.17 and the new effective monthly rate of \$95,152.66 for the applicable period. Consultant shall receive the new effective monthly rate of \$95,152.66 starting April 1, 2014, and will receive the additional lump-sum of \$31,250.71 in his final April paycheck as a pro rata payment in arrears for the period April 1 – April 15, 2014. In 2015, Consultant shall receive a fee of \$1,191,832, paid in equal monthly installments of \$99,319.33. In 2016, Consultant shall receive a fee of \$1,241,832, paid in equal monthly installments of \$103,486. In 2017, Consultant shall receive a fee of \$1,291,832, paid in equal monthly installments of \$107,652.66. And in 2018, Consultant shall receive a fee of \$1,341,832, paid in equal monthly installments of \$111,819.33.

ARTICLE V: MISCELLANEOUS

5.01. Independent Contractor/No Agency. It is the express intention of the parties that Consultant is an independent contractor and not an agent, joint venture, partner, broker or broker-dealer for or on behalf of the Athletic Corporation. Consultant is not authorized to, and shall not (i) take any action on behalf of Athletic Corporation or otherwise bind Athletic Corporation to any agreement, except as expressly authorized hereunder or in writing by Athletic Corporation. Neither Athletic Corporation nor Consultant shall be liable for the debts or obligations of the other.

5.02 Non-Exclusive Relationship. This Agreement is intended to create a non-exclusive relationship between Consultant and the Athletic Corporation during the Contract Term and Consultant may perform services for other parties in any location at any time during the Contract Term so long as such services do not interfere with the timely provision of Services hereunder and may seek out and performing any other business opportunities during the Contract Term. Consultant hereby warrants, represents and covenants to the Athletic Corporation that: (a) Consultant has the right and authority to enter into this Agreement and to perform fully all of her obligations herein, (b) Consultant has all necessary or required licenses, permits and approvals necessary to perform the Services; and (c) Consultant is not a party to any other agreement or under any other obligation to any third party which would prevent Consultant from entering into this Agreement and complying with the terms and conditions set forth herein.

5.03 Assignment. Neither this Agreement, any right hereunder, nor any interest herein, shall be assigned or transferred by Consultant without the express written consent of the Athletic Corporation, in its sole and absolute discretion.

5.04 Hold Harmless. The Athletic Corporation agrees to hold Consultant harmless and indemnify Consultant from all expenses, any claims, liabilities, judgments, suits, demands, losses, expenses or damages, including reasonably attorneys' fees and court costs, arising out of the performance by Consultant of his duties hereunder ("Claims"), excepting therefrom claims caused by the negligence, gross negligence or willful misconduct of Consultant, or his breach of this Agreement ("Excluded Claims"). Consultant agrees to hold Athletic Corporation, its officers, directors, consultants, stockholders and representatives ("Athletic Corporation Parties") harmless and indemnify the Athletic Corporation Parties from all expenses, any claims, liabilities, judgments, suits, demands, losses, expenses or damages, including reasonably attorneys' fees and court costs, arising out of the Excluded Claims. It is expressly understood and agreed that the provisions of this paragraph shall survive the termination of this Agreement to the extent the cause arose prior to termination. It is expressly agreed the liability of any party under this Agreement shall be limited in all cases to actual compensatory damages (excluding special, indirect, exemplary, consequential, punitive and similar damages).

5.05 Governing Law. This Agreement and the rights and obligations of the parties hereunder shall be construed in accordance with and governed by the internal, substantive laws, of the State of California, without giving effect to the conflict of law principles thereof.

5.06 Jurisdiction, Venue and Service of Process. The parties agree that the state and federal courts sitting in Fresno, California will have exclusive jurisdiction over any action arising out of or related to this Agreement. By execution and delivery of this Agreement, each of the parties hereto accepts for itself and in respect of its property, generally and unconditionally, the exclusive jurisdiction of the aforesaid courts.

5.07 WAIVER OF JURY TRIAL. ANY ACTION, DEMAND, CLAIM OR COUNTERCLAIM ARISING UNDER OR RELATION TO THIS AGREEMENT WILL BE RESOLVED BY A JUDGE ALONE AND EACH OF THE PARTIES WAIVE ANY RIGHT TO A JURY TRIAL.

5.08 Remedies for Breach. Consultant agrees that money damages will not be a sufficient remedy for any breach of the obligations under this Agreement by the Consultant and that the Athletic Corporation shall be entitled to injunctive relief and to specific performance as remedies for any such breach. Consultant agrees that the Athletic Corporation shall be entitled to such relief, including temporary restraining orders, preliminary injunctions and permanent injunctions, without the necessity of proving actual damages and without the necessity of posting a bond or making any undertaking in connection therewith. Any such requirement of a bond or undertaking is hereby waived by Consultant and Consultant acknowledges that in the absence of such a waiver, a bond or undertaking might otherwise be required by the court. Such remedies shall not be deemed to be the exclusive remedies for any breach of the obligations in this paragraph, but shall be in addition to all other remedies available at law or in equity which other remedies shall not be prejudiced. In any action taken by the Athletic Corporation to enforce its rights under this Agreement, the Athletic Corporation shall be entitled to recover its costs incurred in connection with such enforcement from Consultant, including, without limitation, reasonable attorneys' fees.

5.09 Entire Agreement. This Agreement is the entire agreement of the parties and supersedes any prior agreements between them, whether written or oral, with respect to the subject matter hereof. No waiver, alteration, or modification of any of the provisions of this Agreement shall be binding unless in writing and signed by duly authorized representatives of the parties hereto.

5.10 Severability. The invalidity or unenforceability of any provision of this Agreement, or any terms thereof, shall not affect the validity of this Agreement as a whole, which shall at all times remain in full force and effect.

5.11 Waiver. Failure or delay on the part of either party hereto to enforce any right, power, or privilege hereunder shall not be deemed to constitute a waiver thereof. Additionally, a waiver by either party or a breach of any promise hereof by the other party shall not operate as or be construed to constitute a waiver of any subsequent waiver by such other party.

5.12 Headings. The headings of the paragraphs contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of any provision of this Agreement.

5.13 Counterparts. This Agreement may be executed in one or more counterparts, none of which need contain the signature of more than one party hereto, and each of which shall be deemed to be an original, and all of which together shall constitute a single agreement.

CONSULTANT:

DeRuyter, Inc.

By: Timothy J. DeRuyter Dated: 4-18-14
Timothy J. DeRuyter, President

KEY EMPLOYEE:

By: Timothy J. DeRuyter Dated: 4-18-14
Timothy J. DeRuyter

ATHLETIC CORPORATION:

By: Thomas Boeh Dated: 4/17/14
Thomas Boeh, Director of Athletics

By: Cynthia T. Matson Dated: 4/17/2014
Cynthia Teniente-Matson, Ed.D., Chair, Athletic Corporation