

First Amendment to Employment Agreement

This First Amendment to Employment Agreement (this “First Amendment”) is made and entered into by and between Jeffrey S. Brohm (the “Coach”) and Purdue University (“Purdue”), and it amends the Employment Agreement entered into by and between the Parties effective December 5, 2016, (the “Agreement”). Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Agreement.

RECITALS

WHEREAS, the Coach and Purdue have established a long-term relationship based on a shared commitment to Program continuity and success; and

WHEREAS, Purdue desires to continue the employment of the Coach as the head coach of the Program and to extend such employment beyond the Initial Term (as previously defined to expire on December 31, 2022), and the Coach similarly desires to continue his employment by Purdue in that capacity; and

WHEREAS, Purdue and the Coach continue to recognize, as they did when first entering into the Agreement in 2016, that head coaches of intercollegiate teams at Purdue conduct their professional activities under circumstances unique among Purdue employees, including evaluation and scrutiny of Team performances by the public and media, and including the applicability of NCAA Regulations and Big Ten Regulations, as well as Purdue Regulations, to the Coach’s activities and to the Program; and

WHEREAS, both Parties also continue to recognize that these factors highlight the need for job security for the Coach, as well as the critical importance to Purdue of the Coach’s long-term commitment to enable Purdue to operate and maintain a stable athletic program; and

WHEREAS, both Parties wish to memorialize the extension of their relationship by amending the Term and by adjusting certain other provisions of the Agreement in the manner described herein:

NOW THEREFORE, in consideration of the foregoing recitals and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

SECTION 1. Amendments

- (a) The following definitions in Section 1.0 (Definitions) are hereby amended and restated to read as follows:

The term “‘Administrative/Professional Position Description’ and its accompanying definition is changed to the following: “Management Position Description’ means the description attached as **Exhibit A** to this Agreement, as the same may be amended by Purdue from time to time.”

“Initial Term” means the period beginning on the Effective Date and ending on December 31, 2024.”

“Term” means the Initial Term.”

- (b) The definitions of “Loan” and “Extension Term” in Section 1.0 are hereby deleted in their entirety.
- (c) A new definition for “Expense Reimbursement” is added to Section 1.0 and reads as follows:

“Expense Reimbursement” means a reimbursement of expenses in the principal sum of \$900,000 provided to Coach by Purdue as a reimbursement of business expenses owed by Coach to Western Kentucky, which will be repaid by Coach in accordance with the provisions of Section 3.1 below.”

- (d) Section 3.1 is hereby amended and restated to read in its entirety as follows:

3.1 Expense Reimbursement. A necessary element of inducing Coach to accept employment with Purdue is Purdue’s commitment to pay up to \$900,000.00 of the expense that Coach would incur as a result of terminating his contract with Western Kentucky University and commencing employment with Purdue. Purdue shall reimburse Coach for this expense and shall treat said payment as reimbursement of an expense under an “accountable plan” as that term is defined by Treasury Regulation 1.62-2 (26 C.F.R. § 1.62-2(c)). Purdue specifically acknowledges that payment of this expense is necessary to obtain the services of Coach and, therefore, substantially benefits the University and shall be treated as an ordinary and necessary expense of Purdue University. Purdue shall pay said sum directly to Western Kentucky University and report these funds to the Internal Revenue Service as a reimbursement to Coach.

Coach shall repay Purdue the Expense Reimbursement if he terminates this Agreement during the Initial Term by exercising his rights under Section 5.2.2. Coach’s obligation to repay shall be in accordance with the following schedule:

If on or before December 31, 2018	\$600,000
If after December 31, 2018 but on or before December 31, 2019	\$450,000
If after December 31, 2019 but on or before December 31, 2020	\$300,000
If after December 31, 2020 but on or before December 31, 2021	\$150,000

Coach shall have no obligation to repay the Expense Reimbursement if he terminates the agreement after December 31, 2021. If Purdue terminates this Agreement on or before December 31, 2021, Coach shall have no obligation to repay the Expense Reimbursement.

- (e) Section 3.2 is hereby amended and restated to read in its entirety as follows:

“3.2 Assistant Coaches’/Support Staff Compensation. Purdue will provide Coach with an annual compensation pool of up to \$3,900,000.00 for assistant coaches, to be allocated as Coach determines. As soon as practicable following the Effective Date, Coach will evaluate current staff, and if Coach wants to propose changes, these decisions will be mutually agreed upon between Coach and the Athletic Director, with the latter’s approval not to be unreasonably withheld.”

(f) Section 4.2 is hereby amended and restated to read in its entirety as follows:

“4.2 General Duties. Under the supervision and control of the Athletic Director, Coach will perform all duties and responsibilities attendant to the position of head football coach properly, efficiently, and to the best of his ability, including the duties and responsibilities set forth in the body of this Agreement and in the Management Position Description, or such other duties consistent with the foregoing assigned from time to time by the Athletic Director. Coach's duties and responsibilities include using his best efforts to operate the Program in a manner that meets the revenue, personnel, and operational objectives established by the Athletic Director from time to time, and to comply with Purdue's contractual obligations requiring Coach's participation in marketing and sponsorship activities. Coach is expected to work closely with a variety of athletics department and Purdue staff on all matters affecting the Program or that or otherwise connected with the discharge of his duties under this Agreement.

(g) Section 5.1 is hereby amended and restated to read in its entirety as follows:

“5.1 Term. Unless terminated earlier pursuant to the following provisions, this Agreement shall remain in force during the Initial Term.”

(h) Section 5.2.1 is hereby amended and restated to read in its entirety as follows:

“5.2.1 Termination by Purdue. If Purdue elects to terminate this Agreement without Cause under this Section 5.2, Purdue will (i) pay or provide any Base Salary, Retirement Contributions, Benefits, Supplemental Stipend, and Bonus which have accrued and/or been earned through the date on which termination takes effect, and (ii) pay Liquidated Damages in equal monthly installments over the remainder of the Initial Term to Coach in an amount equal to the difference of \$25,000,000 minus the amount of Base Salary and Supplemental Stipend received by Coach on or after January 1, 2018. For purposes of calculating the Liquidated Damages, the difference shall not take into account any amount of Base Salary and Supplemental Stipend received by Coach on or before December 31, 2017.

This difference may be further reduced and offset as described in Section 5.2.1.1. If, however, Coach is terminated after he has already received \$25,000,000 or greater in combined Annual Base Salary and Supplemental Stipend since January 1, 2018, Purdue shall not owe any Liquidated Damages for such termination.”

- (i) Sections 5.2.2.2 through 5.2.2.5 are hereby amended and restated to read in their entirety as follows:

“5.2.2.2. If Coach makes such an election at any time on or after the first anniversary of the Effective Date but before the second anniversary of the Effective Date, the amount of Liquidated Damages payable by Coach to Purdue will be \$4,400,000.00.”

“5.2.2.3. If Coach makes such an election at any time on or after the second anniversary of the Effective Date but before the third anniversary of the Effective Date, the amount of Liquidated Damages payable by Coach to Purdue will be \$3,300,000.00.”

“5.2.2.4. If Coach makes such an election at any time on or after the third anniversary of the Effective Date but before the fourth anniversary of the Effective Date, the amount of Liquidated Damages payable by Coach to Purdue will be \$2,200,000.00.”

“5.2.2.5. If Coach makes such an election at any time on or after the fourth anniversary of the Effective Date but before the fifth anniversary of the Effective Date, the amount of Liquidated Damages payable by Coach to Purdue will be \$1,100,000.00.”

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- (j) A new Section 5.2.2.6 is added to read in its entirety as follows:

“5.2.2.6. If Coach makes such an election at any time on or after the fifth anniversary of the Effective Date but before the end of the Initial Term, the amount of Liquidated Damages payable by Coach to Purdue will be \$1,000,000.00.”

- (k) Section 2.0 of **Exhibit B** is hereby amended and restated to read in its entirety as follows:

“**2.0 Supplemental Stipend.** In further consideration of Coach's (i) performance of his duties under this Agreement, (ii) appearances on television and radio programs produced by or for Purdue, (iii) assistance with Purdue's web site or other media participation related to his position as head coach, and (iv) other personal development and marketing appearances on behalf of Purdue (including appearances/clinics related to Purdue's shoe and apparel agreements), Purdue shall pay Coach an annual Supplemental Stipend and talent fee in accordance with the following schedule:

- 2.1 from January 1, 2018 through December 31, 2018: \$3,500,000 per year (in equal monthly installments);
- 2.2 from January 1, 2019 through December 31, 2019: \$3,600,000 per year (in equal monthly installments);
- 2.3 from January 1, 2020 through December 31, 2020: \$3,700,000 per year (in equal monthly installments);

- 2.4 from January 1, 2021 through December 31, 2021: \$3,800,000 per year (in equal monthly installments);
- 2.5 from January 1, 2022 through December 31, 2022: \$4,000,000 per year (in equal monthly installments);
- 2.6 from January 1, 2023 through December 31, 2023: \$4,100,000 per year (in equal monthly installments);
- 2.7 from January 1, 2024 through December 31, 2024: \$4,200,000 per year (in equal monthly installments);

Any revenues generated by the activities described in this Section 2.0 shall be received by and belong to Purdue.”

SECTION 2. Effectiveness; Limited Effect.

All modifications set forth in this First Amendment shall take effect on January 1, 2018 and shall not affect the Parties’ performance or payments made under the Agreement prior to such date. Except as expressly amended and modified by this First Amendment, the Agreement shall continue in full force and effect in accordance with its terms, and nothing contained in this First Amendment is intended to affect the parties’ existing or continuing rights or obligations under the Agreement from and after January 1, 2018, except as expressly modified hereby. The includes without limitation the definition of Effective Date in the Agreement, which shall remain December 5, 2016.

SECTION 3. Governing Law.

This First Amendment shall be governed by and construed in accordance with the substantive laws of the State of Indiana, without giving effect to the conflict of laws principles thereof.


SECTION 4. Counterparts.

This First Amendment may be executed in any number of counterparts, each of which shall be considered an original but all of which, taken together, shall constitute but one and the same instrument.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have signed this Agreement on the dates written below.

Purdue University

By: 
Michael A. Bobinski, Vice President
and Director of Intercollegiate
Athletics

Date: 5/2/18

Coach

By: 
Jeffrey S. Brohm

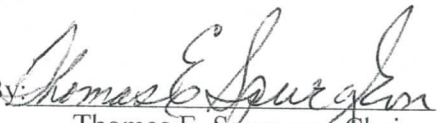
Date: 5/11/18

Approved:

By: 
Mitchell E. Daniels, Jr., President

Date: 5/16/18

Purdue Board of Trustees

By: 
Thomas E. Spurgeon, Chair
Compensation Committee

Date: 5-16-18