

FIRST AMENDMENT TO EMPLOYMENT AGREEMENT

This First Amendment to Employment Agreement (the “First Amendment”) is made and entered into at Salt Lake City, Utah this 30<sup>th</sup> day of October, 2020 by and between the University of Utah, a body politic and corporate of the State of Utah, (the “University”) and Kyle Whittingham, an individual, (“Coach Whittingham”) (collectively, the “Parties”) for the purpose of amending that certain Employment Agreement between the Parties dated January 1, 2019 (the “Agreement”).

WHEREAS, the Parties to the Agreement desire to amend certain provisions of the Agreement:

NOW, THEREFORE, the Parties hereby agree as follows:

1. Terms that are not defined in this First Amendment but that are defined in the Agreement shall have the meanings set forth in the Agreement.

2. Paragraph 4 of the Agreement, Term of Employment, is hereby amended and replaced with the following provision:

4. Term of Employment. The term of this Agreement commenced on January 1, 2019 and will terminate on December 31, 2027 (hereinafter the “Term”)

3. Paragraph 5(A) of the Agreement, Base Salary, is hereby amended and replaced with the following provision:

A. Base Salary. As compensation for the services to be rendered under this Agreement, effective January 1, 2020, the University shall pay Coach Whittingham an annual base salary in the amount of \$1,375,000 (the “Base Salary”). Beginning January

1, 2021, and on January 1 of each year of the Term thereafter, the University will increase Coach Whittingham's Base Salary by \$75,000. The Base Salary shall be paid twice monthly in equal monthly installments in accordance with the University's normal payroll schedule and practices.

4. Paragraph 5(B) of the Agreement, Radio and Television Revenue, is hereby amended and replaced with the following provision:

B. Radio and Television Revenue. As further compensation for the services to be rendered hereunder, effective January 1, 2020, the University shall pay Coach Whittingham during the Term of this Agreement additional compensation from radio and television revenue ("Radio and Television Money") in the amount of \$1,230,000 per year. On January 1, 2021 and on January 1 of each year of the Term thereafter, the University will increase Coach Whittingham's Radio and Television Revenue by \$125,000. The Radio and Television Money shall be payable in a lump sum on or before January 31st of each year of the Agreement. The Radio and Television Money shall constitute compensation for University pension benefits under Agreement subparagraph 6.A.

5. Paragraph 5(C) of the Agreement, Appearance Fees, Public Speaking Engagements, and Fundraising, is hereby amended to increase Coach Whittingham's "Additional Compensation," effective January 1, 2020 to \$1,932,083. All other terms and conditions in Paragraph 5(C) remain the same.

6. Paragraph 9(C) of the Agreement concerning Coach Whittingham's retirement is hereby amended replaced in its entirety as follows:

C. Retirement. In the event that Coach Whittingham elects to retire from his coaching position during the Term of this Agreement, prior to any notice of termination by the University pursuant to Paragraphs 7 or 8 of this Agreement or circumstances justifying termination under Paragraph 7, the University agrees to enter into a new phased retirement agreement with Coach Whittingham on the following terms (the “Special Assistant Contract”):

(i) The term of the Special Assistant Contract shall be as follows:

<u>Retirement Date</u>	<u>Term of Special Assistant Contract</u>
Retirement before 12/31/2024	Eight (8) Years
Retirement between 1/1/2025 and 12/30/2027	Seven (7) Years
Retirement on or after 12/31/2027	Six (6) Years

(ii) Coach Whittingham will serve as Special Assistant to the Athletics Director for the period specified in Paragraph 9(C)(i) above, commencing on the date of his retirement (“Retirement Date”). In this role Coach Whittingham will serve as a consultant to the University’s Athletics Director and services may include, but are not limited to, consulting advice, speaking engagements, fundraising, and meetings with donors and prospective donors. During the term of the Special Assistant Contract, Coach Whittingham shall make himself reasonably available to the Athletics Director for in-person, telephone or electronic consulting. Coach Whittingham shall not be required to provide more than ten (10) hours of consulting in any week.

(iii) Coach Whittingham’s annual compensation under the Special Assistant Contract shall be based upon the number of years he serves in the role of Special Assistant and his total compensation (Base Salary, Radio and Television Revenue, Appearance Fees Revenue, and Outfitter Agreement Compensation (excluding incentive compensation)) as the head football coach on the Retirement Date (“Total Compensation”). His annual compensation for each year of the term of the Special Assistant Contract shall be calculated as follows:

<u>Retirement Date</u>	<u>Annual Compensation</u>
Retirement before 12/31/2024	1/8 of Total Compensation
Retirement between 1/1/2025 and 12/30/2027	1/7 <sup>th</sup> of Total Compensation
Retirement on or after 12/31/2027	1/6 <sup>th</sup> of Total Compensation

(iv) Coach Whittingham shall be entitled to the same health, disability, life insurance, pension plan and other welfare benefits (not sick leave or vacation benefits) that exist on the Retirement Date.

(iv) The Special Assistant Contract will include standard “termination for cause” provisions consistent with this Agreement. It shall be a cause for termination if Coach Whittingham accepts a college or professional coaching job during the term of the Special Assistant Contract.

(v) The Special Assistant Contract will provide that if Coach Whittingham dies before the end of the term of the Special Assistant Contract, the payments provided under that agreement will continue to be paid to his surviving spouse during the remainder of the term.



7. Except as amended by this First Amendment, all other terms and provisions of the Agreement shall continue in full force and effect and are hereby confirmed in all respects. References to the Agreement in both the Agreement and this First Amendment shall refer to the Agreement as amended hereby.

8. This First Amendment may be signed in counterparts, each of which shall constitute an original with the same effect as if the signatures both on the same instrument. This First Amendment shall be governed by and construed in accordance with the laws of the State of Utah without reference to choice of law provisions.

IN WITNESS WHEREOF, the parties hereto have executed this First Amendment as of the day and year first written above.

UNIVERSITY OF UTAH:

By   
\_\_\_\_\_  
MARK HARLAN, Athletic Director

  
\_\_\_\_\_  
KYLE WHITTINGHAM, Coach

## EMPLOYMENT AGREEMENT

This Employment Agreement (the “Agreement”) is made and entered into at Salt Lake City, Utah this 1st day of January, 2019 by and between the University of Utah, a body politic and corporate of the State of Utah, (the “University”) and Kyle Whittingham, an individual, (“Coach Whittingham) (collectively, the “Parties”). This Agreement replaces and supersedes any and all prior employment agreements between the Parties.

### RECITALS

A. The Parties desire to formalize the terms and conditions under which Coach Whittingham shall serve as the University’s Head Men’s Football Coach (“Football Coach”).

B. Coach Whittingham is willing to devote his best efforts and ability to the furtherance of the University’s Men’s Varsity Football Program (“Football Program”).

### AGREEMENT

NOW, THEREFORE, the Parties hereby agree as follows:

1. Employment. The University hereby employs Coach Whittingham and Coach Whittingham hereby accepts employment as Football Coach for the consideration and upon the terms and conditions set forth in this Agreement.

2. Capacity and Duties.

A. Coach Whittingham is hereby employed by the University as Football Coach. Coach Whittingham 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 of Football Coach. Coach Whittingham shall devote his best efforts to performing the duties that are incident to this position and that may be assigned from time to time by the University by agreement between the University and Coach Whittingham. Coach

Whittingham shall support the overall academic mission, goals, and rules of the Athletics Department and the University.

B. Coach Whittingham's responsibilities include, but are not limited to, the following:

1. Supervise assistant coaches, including compliance by such coaches with NCAA and Pac-12 rules and regulations;
2. Participate in the instruction and coaching of student-athletes;
3. Enhance the student-athletes' experience and ensure a positive and safe environment for student-athletes. In this regard, Coach Whittingham agrees and acknowledges that a background check (including a search for criminal and non-criminal behavior) will be conducted annually;
4. Promote an atmosphere of NCAA compliance within the program and monitors the activities of all assistant coaches and staff members involved with the program.
5. Work with media, alumni and civic groups;
6. Work to integrate sports into the entire spectrum of academic life to complement the University and its mission in the community;
7. Work within the confines of rules, regulations, guidelines and policies of the University, the Athletics Department, the NCAA and the Pac-12;
8. Make good faith efforts, working in cooperation with and support of the University's faculty and administrative officials, to encourage student-athletes to achieve their academic requirements;

3. Outside Employment. During the Term of this Agreement, Coach Whittingham shall not engage in any outside employment unless the outside employment is pre-approved in writing by the University, does not violate National Collegiate Athletic Association (“NCAA”) or University rules, and is compatible with the mission and image of the University. Approval of outside employment by the University shall not be unreasonably withheld. The University shall have no right to receive any part of Coach Whittingham’s compensation from outside employment. Coach Whittingham acknowledges that the University’s multi-media rights partner (currently Learfield) holds the right to coordinate third-party and third-party product endorsements by the University, its athletics director and its coaches. Therefore, Coach Whittingham will communicate with the Athletics Director or his designee before entering into any new agreements with third parties for sponsorships and/or product endorsements. Coach Whittingham shall be entitled to engage in employment discussions with other prospective employers, but shall inform the University’s Athletics Director of any serious employment discussions.

4. Term of Employment. The term of this Agreement shall commence on January 1, 2019 and terminate on December 31, 2023 (hereinafter the “Term”).

5. Compensation.

A. Base Salary. As compensation for the services to be rendered under this Agreement, effective January 1, 2019, the University shall pay Coach Whittingham an annual base salary in the amount of \$1,300,000 (the “Base Salary”). Beginning January 1, 2020, and on January 1 of each year of the Term thereafter, the University will increase Coach Whittingham’s Base Salary by \$150,000. The Base Salary shall be paid



twice monthly in equal monthly installments in accordance with the University's normal payroll schedule and practices.

B. Radio and Television Revenue. As further compensation for the services to be rendered hereunder, effective January 1, 2019, the University shall pay Coach Whittingham during the Term of this Agreement additional compensation from radio and television revenue ("Radio and Television Money") in the amount of \$1,105,000 per year. On January 1, 2020 and on January 1 of each year of the Term thereafter, the University will increase Coach Whittingham's Radio and Television Revenue by \$50,000. The Radio and Television Money shall be payable in a lump sum on or before February 1 of each year of the Agreement. The Radio and Television Money shall constitute compensation for University pension benefits under Agreement subparagraph 6.A.

C. Appearance Fees, Public Speaking Engagements, and Fundraising. In addition to the Base Salary and Radio and Television Money, the University shall pay Coach Whittingham, during the Term of this Agreement, additional compensation for appearances, public speaking and fund raising activities ("Additional Compensation") in the amount of \$1,135,000. This Additional Compensation shall be paid in quarterly installments on or before March 11, June 11, September 11, and prior to the date of the last regular game of the football season of each year.

D. Official Outfitter Agreement Compensation. Coach Whittingham shall be entitled to receive \$462,917 from the annual rights fees paid pursuant to the University's official all sports outfitter agreement (currently with Under Armour). This outfitter agreement compensation shall be paid on July 15<sup>th</sup> of each year. If the University should



receive any increases after January 1, 2019 to the annual rights fees paid by the official outfitter, Coach Whittingham shall be entitled to receive an increase to his share of the annual rights fees in the same percentage as his current share has to the current annual rights being paid by the official outfitter.

E. Incentive Based Compensation. The University shall pay Coach Whittingham the following incentive based compensation if the following events occur during the Term of this Agreement:

(1) Coach Whittingham shall be entitled to no more than one of the following bonuses per year for bowl participation:

(a) \$400,000 if the University's Men's Varsity Football Team ("Team") participates in the New Years 6 or playoff bowl games.

(b) An amount equal to two month's Base Salary if the Team participates in any other bowl game.

(2) Coach Whittingham shall be entitled to no more than one of the following bonuses per year for Pac-12 conference achievement:

(a) \$100,000 if the Team is a Pac-12 Conference Division Champion and plays in the Pac-12 championship game

(b) \$50,000 if the Team is a Pac-12 Conference Division Champion but does not play in the Pac-12 championship game.

(3) Coach Whittingham shall be entitled to a bonus of \$100,000 if the Team wins a New Year's 6 bowl game.

(4) Coach Whittingham shall be entitled to no more than one of the following bonuses per year for NCAA Academic Progress Rate ("APR") achievement:

- (a) \$75,000 if the Team's APR is at least 980.
- (b) \$50,000 if the Team's APR is at least 970.
- (c) \$25,000 if the Team's APR is at least 960.
- (d) \$10,000 if the Team's APR is at least 950.

(5) Coach Whittingham shall be entitled to no more than one of the following bonuses per year for NCAA Graduation Success Rate ("GSR") achievement:

- (a) \$75,000 if the Team's GSR is at least 80%.
- (b) 50,000 if the Team's GSR is at least 70%.
- (c) \$25,000 if the Team's GSR is at least 60%.
- (d) \$10,000 if the Team's GSR is at least 50%.

(6) Coach Whittingham shall be entitled to no more than one of the following bonuses per year for top 25 Team status:

(a) \$100,000 if the Team is listed in the top 25 in the final year-end AP Top 25, the College Football Playoff Rankings, or the Coaches poll.

(b) \$15,000 if the Team is listed in the top 25 of any of the polls listed in 6(a) above at any time during the year.

(7) \$150,000 if Coach Whittingham is named National Coach of the Year.

(8) \$55,000 if Coach Whittingham is named Pac-12 Coach of the Year or Co-coach of the year.

(9) Budget Bonus: Coach Whittingham shall be entitled to additional compensation for remaining within/under his Football Program budget in a given year. In the spring of each year, the Athletics Department will work with the Football staff to determine the appropriate budget for the year. The final discretion for setting the budget

shall remain with the Athletics Director. If the Football Program remains within the set budget, Coach Whittingham shall earn a \$25,000 bonus. If costs for the Football Program are under budget for the year by \$50,000, Coach Whittingham shall earn an additional \$5,000 bonus. For each additional \$50,000 increment that the Football Program costs are under budget, Coach Whittingham will earn an additional \$5,000. For example, if the Football Program is under budget by \$100,000 in a given year, Coach Whittingham would earn a total budget bonus of \$35,000.

The bonuses specified above shall be earned when each of the above events occurs. The bonuses shall be payable on or before July 15 of each academic year in which the bonuses are earned, or within 30 business days of the date the event occurs, whichever is later. Bonuses are contingent upon Coach Whittingham's satisfactory performance of the duties and responsibilities set forth in Paragraph 2 of this Agreement and receipt of a satisfactory rules compliance evaluation from the Athletics Director or Assistant A.D. for Compliance.

6. Benefits.

A. University Benefits. During the Term of this Agreement, Coach Whittingham shall be entitled to receive the same health, disability, life insurance, sick leave, pension plan, and other welfare benefits that the University presently maintains or may subsequently establish during the Term of this Agreement that are provided to other similarly situated full-time staff members of the University. Coach Whittingham shall not be entitled to accumulate vacation time under other University policies. The pension benefits will be calculated at the rate allowed by Federal Law based upon Coach Whittingham's compensation, including Base Salary, Radio and Television Money, and

any other compensation covered by the terms of the University's pension plans. These pension plan benefits will be fully funded to the maximum extent authorized by law, including, without limitation, Internal Revenue Code sections 403(b) and 401(a). The University shall reimburse Coach Whittingham for reasonable out of pocket expenses incurred as a result of performing his duties as Football Coach.

B. University Tuition Benefits.

(1) Children. During the Term of this Agreement, Coach Whittingham shall be entitled to an additional 50% tuition benefit for his college eligible children for attendance at the University of Utah. Together with the University's regular half-tuition benefit, Coach Whittingham will receive free tuition for his college eligible children (unmarried dependent children age 26 and younger). The additional 50% tuition benefit provided under this provision shall constitute taxable income to Coach Whittingham. This benefit shall cease upon termination of Coach Whittingham's employment under Paragraphs 7 or 9 of the Agreement.

(2) Grandchildren/Great Grandchildren. During Coach Whittingham's lifetime, his grandchildren (including great grandchildren) may receive a tuition benefit from the University on the following terms. Grandchildren who are admitted to the University of Utah as in-state students, and for as long as they are unmarried and 26 years of age or less, may receive a 50% reduction in their in-state undergraduate base tuition (excluding graduate tuition and tuition differentials). This benefit shall cease 1) upon the death of Coach Whittingham; 2) upon a for-cause termination under this Agreement or under the Special Assistant Contract; or 3) in the event Coach Whittingham accepts a college or professional coaching job with another organization. The tuition discount



provided under this provision shall constitute taxable income to Coach Whittingham.

C. Automobile. The University, at its sole expense, shall provide to Coach Whittingham for his use during the Term of this Agreement an automobile that is mutually acceptable to the Parties for use by the Football Coach in performing the services to be rendered pursuant to this Agreement. The University shall pay for insurance for this automobile. The University shall reimburse Coach Whittingham for gasoline expenses. The value of this benefit is subject to all withholding requirements of state and federal law for wages. Coach Whittingham may keep and submit to the Athletics Department contemporaneous documentation of his business and personal use of the automobile in which case Coach Whittingham will only be taxed on the value of his personal use of the automobile. Absent contemporaneous documentation, the full value of the benefit will be included in Coach Whittingham's taxable income. .

D. Second Automobile or Stipend. During the Term of this Agreement, the University shall provide Coach Whittingham with a second automobile that is mutually acceptable to the Parties for his University business use, or alternatively and at the University's sole choice and discretion, a \$1200/month stipend for the rental/purchase/operation of an automobile. If the University elects to provide a stipend, rather than a second vehicle, the stipend shall be provided to Coach Whittingham on the same terms and conditions (e.g., insurance requirements) as are required of all other coaches who are provided a stipend in lieu of a vehicle. If the University elects to provide a second automobile, the same tax treatment shall apply as described in Paragraph 6(C) above.



E. Health or Social Clubs. The University shall provide Coach Whittingham with the use of an equity membership to the Salt Lake Country Club (the “Equity Membership”) during the Term. University will cover fees for dues and for any mandatory food allowance required by the memberships unused during each dues period by Coach Whittingham. The value of this benefit is subject to all withholding requirements of state and federal law for wages. Coach Whittingham may keep and submit to the Athletics Department contemporaneous documentation of his business and personal use of the membership in which case Coach Whittingham will only be taxed on the value of his personal use of the membership. Absent contemporaneous documentation, the full value of the benefit will be included in Coach Whittingham’s taxable income.

At the end of the Term, or upon any termination without cause, the University shall assign to Coach Whittingham all of University’s rights, title and interest in and to the Equity Membership and shall pay the cost of any transfer fee for the Equity Membership. Thereafter, Coach Whittingham shall own all rights to the Equity Membership and shall be entitled to use the Equity Membership for any purpose consistent with the general policies and procedures of the country club and all dues and expenses owed on the Equity Membership and any other rights and responsibilities associated with such Equity Membership shall belong exclusively to Coach Whittingham. Coach Whittingham shall bear any tax liabilities associated with the transfer of the Equity Membership from the University to Coach Whittingham. Promptly following a request from any party to this Agreement, each party agrees to execute such additional

documentation, if any, as may be necessary to effectuate the transaction described in this Paragraph.

F. Tickets and Private Box. During the Term of this Agreement, the University shall provide Coach Whittingham with twenty-eight (28) University men's varsity football season tickets in the section typically reserved for coaches families, a private stadium box for all home football games, eight (8) University men's varsity basketball season tickets, and a parking pass for the football and basketball seasons. In the event that Coach Whittingham retires from his head coaching position pursuant to Paragraph 9 of this Agreement, Coach Whittingham will receive ten good tickets to University of Utah Athletics events.

7. Termination by University for Cause. Upon the happening of any of the following events and with ten (10) days written notice and an opportunity to meet with the Director of Athletics, the University may terminate this Agreement and Coach Whittingham's employment without pay and without any further obligations:

A. A determination by the University, the NCAA, the Pac-12, any other equivalent body, or a court of law that Coach Whittingham has committed a major violation of the constitution, bylaws, rules, or regulations of the University, the NCAA, the Pac-12, or any other rule-making body having jurisdiction over the activities of the Football Program.

B. A determination by the University, the NCAA, the Pac-12, any other equivalent body, or a court of law that any assistant coach of Coach Whittingham has committed a major violation of the constitution, bylaws, rules, or regulations of the University, the NCAA, the Pac-12, or any other rule-making body having jurisdiction

over the activities of the Football Program, and that Coach Whittingham 1) had directed that such violation(s) occur, 2) had prior knowledge of the violation(s) and failed to take appropriate actions to prevent such violation(s); and/or 3) failed to timely report such violation(s) to the University after they became known to Coach Whittingham.

C. A conviction of, or plea of guilty or *nolo contendere* to a felony.

D. A violation by Coach Whittingham of a material term or condition of this Agreement that is seriously prejudicial to the reputation and best interests of the University and/or its intercollegiate athletics program.

E. Any other violation by Coach Whittingham of a material term or condition of this Agreement if not corrected within twenty (20) days from written notice from the Athletics Director.

8. Termination by University without Cause.

A. Notwithstanding any other provision of this Agreement, this Agreement shall terminate automatically if Coach Whittingham dies or becomes totally or permanently disabled (as defined by University) such that he cannot perform the duties of his position with or without an accommodation. If Coach Whittingham becomes disabled, he shall continue to receive his salary and benefits for the six month period from the date of disability. Thereafter, all obligations of the University to make further payments and/or provide other consideration hereunder shall cease except those obligations to which Coach Whittingham is entitled as part of his university benefits package.

B. The University shall be entitled to terminate this Agreement without cause prior to the end of the Term. Termination without cause shall mean termination of this



Agreement by the University on any basis other than those set forth in Paragraph 7 and 8.A. If the University terminates this Agreement without cause, Coach Whittingham shall be entitled, as his sole remedy, damages only as provided in Paragraph 8.C.

C. Upon termination of this Agreement by the University without cause, the University shall pay Coach Whittingham, as liquidated damages, \$3.0 Million per year for each year remaining under the Term of the Agreement (prorated for any partial year). Coach Whittingham shall also be entitled to receive any bonuses that have been earned by Coach Whittingham but not yet paid at the date of termination. If the University terminates Coach Whittingham in the final year of the Term of this Agreement, the University shall pay Coach Whittingham \$4.0 Million (or such prorated portion depending upon the date of the termination).

The University shall pay such liquidated damages in lieu of any and all other legal remedies or equitable relief available to Coach Whittingham. This obligation shall be paid in monthly installments and shall be prorated over the remaining term of this Agreement. The Parties have bargained for and agreed to the foregoing liquidated damages provision, giving consideration to the fact that termination by the University without cause prior to the end of the Term may cause Coach Whittingham to lose certain benefits and supplemental compensation outside of University employment, which damages are extremely difficult to determine with certainty or fairly or adequately. The Parties agree that the liquidated damages provided for are not a penalty but are adequate and reasonable compensation to Coach Whittingham for any damages suffered because of the termination of this Agreement.

D. Notwithstanding the foregoing damages provisions, Coach Whittingham agrees to make reasonable, good faith, and diligent efforts to obtain comparable employment, such as a coaching position (not necessarily as a head coach) at a university that competes on the NCAA Division 1 FBS or FCS level or with a professional team, as soon as reasonably possible after the termination of this Agreement. After Coach Whittingham obtains new employment, University's financial obligations under this Agreement, including damages, shall cease or be limited to the difference between Coach Whittingham's compensation under this Agreement and compensation at his new employment.

9. Voluntary Termination/Retirement by Coach

A. In the event Coach Whittingham voluntarily terminates his employment with the University during the Term of this Agreement, the University shall be discharged of any and all further obligations under this Agreement to Coach Whittingham, except as expressly provided in Subparagraphs 6.B, 6.F, and/or 9.C of this Agreement. The University shall further be entitled, as its sole remedy, to damages only as provided in Paragraph 9.B.

B. Termination for Other Coaching Employment. In the event Coach Whittingham voluntarily terminates his employment during the Term of this Agreement and assumes a college or professional football coaching position within one year of the date of termination, Coach Whittingham shall pay the University as liquidated damages the following amount for a voluntary termination in the specified year:

2019 or 2020: \$2.0 Million

2021: \$1.75 Million



2022: 1.5 Million

Coach Whittingham shall pay such liquidated damages in lieu of any and all other legal remedies or equitable relief available to the University. Coach Whittingham may pay these liquidated damages as a lump sum or as fixed monthly payments over the remainder of the Term. The Parties have bargained for and agreed to the foregoing liquidated damages provision, giving consideration to the fact that voluntary termination by Coach Whittingham prior to the end of the Term may cause the University to incur certain losses and expenses, which damages are extremely difficult to determine with certainty or fairly or adequately. The Parties agree that the liquidated damages provided for are not a penalty but are adequate and reasonable compensation to the University for any damages suffered because of the termination of this Agreement.

C. Retirement. In the event that Coach Whittingham elects to retire from his coaching position during the Term of this Agreement, prior to any notice of termination by the University pursuant to Paragraphs 7 or 8 of this Agreement or circumstances justifying termination under Paragraph 7, the University agrees to enter into a new phased retirement agreement with Coach Whittingham on the following terms (the “Special Assistant Contract”).

(i) Coach Whittingham will serve as Special Assistant to the Athletics Director for a period of eight (8) years, commencing on the date of his retirement (“Retirement Date”). In this role Coach Whittingham will serve as a consultant to the University’s Athletics Director and services may include, but are not limited to, consulting advice, speaking engagements, fundraising, and meetings with donors and prospective donors. During the term of the Special Assistant Contract, Coach

Whittingham shall make himself reasonably available to the Athletics Director for in-person, telephone or electronic consulting. Coach Whittingham shall not be required to provide more than ten (10) hours of consulting in any week.

(ii) Coach Whittingham's annual compensation under the Special Assistant Contract shall be based upon his total compensation (Base Salary, Radio and Television Revenue, Appearance Fees Revenue, and Outfitter Agreement Compensation (excluding incentive compensation)) as the head football coach on the Retirement Date ("Total Compensation"). His annual compensation as Special Assistant shall be calculated at one eighth (1/8) of his Total Compensation for each year of the term of the Special Assistant Contract.

(iii) Coach Whittingham shall be entitled to the same health, disability, life insurance, pension plan and other welfare benefits (not sick leave or vacation benefits) that exist on the Retirement Date.

(iv) The Special Assistant Contract will include standard "termination for cause" provisions consistent with this Agreement. It shall be a cause for termination if Coach Whittingham accepts a college or professional coaching job during the term of the Special Assistant Contract.

(v) The Special Assistant Contract will provide that if Coach Whittingham dies before the end of the eight year term of the Special Assistant Contract, the payments provided under that agreement will continue to be paid to his surviving spouse during the remainder of the term.

10. Termination, Discipline and Appeals. In the event that the University determines to terminate Coach Whittingham for cause, or to take any other disciplinary action against Coach

Whittingham for violations of this Agreement, NCAA rules, or any other policies of the University, the University will provide written notice of any such violations and of the intended action before such action is taken. Coach Whittingham may appeal any such discipline or action to the Chief Human Resources Officer or his/her designee by providing the Chief Human Resources Officer or designee with a written statement of his appeal within (5) five business days of the action from which he appeals. The decision of the Chief Human Resources Officer or designee shall be the final decision of the University on the discipline. The University's general grievance procedures shall not apply to Coach Whittingham's employment under this Agreement. Coach Whittingham shall have no right to appeal from a termination without cause or for non-renewal of this Agreement.

11. NCAA Provisions.

A. NCAA Enforcement Provisions Apply. Coach Whittingham hereby acknowledges that if he violates any NCAA regulation, he shall be subject to disciplinary or corrective action as set forth in the provisions of the NCAA enforcement procedure. Coach Whittingham further acknowledges that for any major NCAA infraction he may be suspended for a period of time, without pay, and/or terminated as provided in Paragraph 7 of this Agreement.

B. Annual NCAA Rules Compliance Evaluation. Pursuant to the University's commitment to the NCAA, Coach Whittingham shall meet as requested during each academic year with the Athletics Director, Sport Administrator, and/or the Assistant A.D. for Compliance and discuss his NCAA rules compliance-related activities for the past year. Coach Whittingham must receive satisfactory annual NCAA rules compliance



evaluations in order to receive any raises or bonus determinations contemplated by this Agreement.

C. Athletically Related Income. Coach Whittingham is required to receive annual prior written approval from the chief executive officer of the University of all athletically related income and benefits he will receive from sources outside the institution. Coach Whittingham's request for approval shall also be in writing and shall include the amount and the source of the income. The University shall not unreasonably withhold its approval for the requested athletically related income and benefits. The University will keep this information confidential and will not disclose this information unless required to do so by federal or state law or NCAA regulation.

12. Appearances and Speaking Engagements. Coach Whittingham shall participate in the television and radio shows scheduled pursuant to the University's contracts with television and radio stations. Coach Whittingham shall also participate in the appearances required by, and scheduled pursuant to, the University's official outfitter agreement (currently with Under Armour, Inc.). Coach Whittingham shall also attend Crimson Club luncheons as requested, and up to five other Crimson Club activities (if and as requested), each year during the Term of this Agreement. Coach Whittingham shall be excused from attendance and participation in such events only in the event of family or health obligations or when Coach Whittingham has another important University related obligation which conflicts with these events.

13. Acknowledgement of and Agreement with Outfitter Agreement. Coach Whittingham acknowledges the existence of the University's Official Outfitter Agreement with Under Armour, Inc. ("Outfitter Agreement"). The Outfitter Agreement requires the University to grant Under Armour certain rights, and to incur certain obligations, that are personal to Coach

Whittingham, and that require his participation and cooperation. These rights and obligations include but are not limited to the following: 1) an appearance obligation; 2) the obligation for Coach Whittingham, his staff and the men's football team to use Under Armour Products; 3) the obligation of Coach Whittingham, his staff and the men's football team not to use or endorse the Products of Under Armour's competitors; and 4) the right to use Coach Whittingham's name, nickname, signature, voice, photograph, likeness and other publicity rights. Coach Whittingham hereby grants to the University any rights that are necessary for the University to fulfill the Outfitter Agreement. Coach Whittingham further agrees to support the University's obligations under the Outfitter Agreement and to take no actions that would cause the University to be in breach of the Outfitter Agreement. Coach Whittingham agrees to undertake similar obligations that may be contained in any revised or superseding official outfitter agreement.

14. Miscellaneous.

A. University Policy and Procedure. This Agreement contains the primary understanding between the University and the Coach Whittingham. However, Coach Whittingham shall be required to know and abide by any additional and consistent terms of the University's Regulations Library. To the extent that any terms between this Agreement and the Regulations Library conflict, the terms of this Agreement shall govern.

B. Notice. Any notice required or permitted to be given under this Agreement shall be sufficient if in writing and if personally delivered to the known location of Coach Whittingham or if Coach Whittingham's location is not known, then sent by United States mail or fax to the residence of Coach Whittingham or to the legal



representative of Coach Whittingham's estate with a copy to Coach Whittingham's agent, Bruce Tollner, at the following address:

Bruce A. Tollner, Esq.  
Partner  
Rep 1 Sports Group  
80 Technology  
Irvine, CA 92618  
Tele: (949) 748-6000  
Fax: (949) 748-6001

C. Entire Understanding. This Agreement embodies the entire understanding between the Parties with respect to the subject matter hereof, and there are no other understandings, arrangements, or agreements between the Parties either oral or written, except as contained in this Agreement.

D. Governing Law. This Agreement shall be governed by and construed according to the laws of the state of Utah without reference to choice of law provisions. The location of any lawsuit brought pursuant to this Agreement shall be Salt Lake County, Utah.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first written above.

UNIVERSITY OF UTAH:

By  \_\_\_\_\_

Mark Harlan  
Director of Athletics

 \_\_\_\_\_

Kyle Whittingham