

## EMPLOYMENT AGREEMENT

This EMPLOYMENT AGREEMENT (“Agreement”) is entered into by and between Regents of the University of Minnesota (“University”), on behalf of its Department of Intercollegiate Athletics (“Department”), and Philip John Fleck (“Coach”). As of February 2, 2017, this Agreement supersedes all prior agreements and governs the relationship between the parties.

WHEREAS, subject to the terms and conditions of this Agreement, the University desires to employ Coach as head coach of its intercollegiate football team (“Team”) at the University’s Twin Cities campus (“Team”), and Coach is willing to accept such position and perform such services and duties;

NOW, THEREFORE, in consideration of the mutual promises and covenants contained in this Agreement and such other good and valuable consideration, the receipt and sufficiency of which the parties hereby acknowledge, the parties agree as follows:

### I. EMPLOYMENT TERM AND DUTIES

**1.1. Employment Term.** Subject to the terms and conditions of this Agreement, the University hereby employs Coach as head coach of the Team, and Coach agrees to be so employed by the University, for a term commencing on January 6, 2017, and ending on January 31, 2022 (“Term of Employment”).

#### **1.2. Duties.**

**1.2.1.** During the Term of Employment, Coach shall diligently and conscientiously devote his full time, attention, and efforts in performing and discharging the usual and customary duties of a head coach of a National Collegiate Athletic Association (“NCAA”) Division I football team, including, but not limited to, the following duties:

- a. Conducting usual and customary coaching activities;
- b. Recruiting, and managing the recruitment of, student-athletes;
- c. Supervising, evaluating, training, and coaching student-athletes in an effort to develop their character, and compete against major college competition;
- d. Being responsible for all customary coaching decisions, including systems and strategies used on the field (both in practice and actual game play), conduct of practice and training, selection of team members, deployment of players, and all other matters involving football operations;

- e. Diligently seeking to foster the academic progress of student-athletes in the program;
- f. Diligently seeking to maintain conduct (both on and off the field) and enforce disciplinary rules and sanctions fairly and uniformly for all student-athletes in the program in order to encourage academic and moral integrity and excellence;
- g. Representing the University, the Department, and the Team, and cooperating with the Department in fulfilling contacts with or requests from the news media, including appearances on radio and television, but recognizing the greater importance of coaching activities;
- h. Assisting with Department or University fund raising and public relations;
- i. Representing in a positive fashion the University and its athletic programs at all times, in all forums;
- j. Consistent with University policy and the authority of the University's Director of Intercollegiate Athletics ("Director"), supervising assistant coaches and support staff for the football program;
- k. Preparing and administering the budget for the football program, subject to the authority and approval of the Director; and
- l. Performing such other duties normally associated with those of a head coach of a high-level NCAA Division I football team, as reasonably requested by the Director or the Director's designee.

**1.2.2.** Unless otherwise expressly permitted in this Agreement, Coach shall not engage in any other business activity or be employed by any other person, firm, or entity, whether or not such activity is pursued for gain, profit, or other pecuniary benefit, without the University's prior written consent; provided, however, subject to NCAA and University rules, during each year of the Term of Employment, Coach may conduct summer football camps. The University's consent will not be unreasonably withheld.

**1.2.3.** Coach shall not undertake commercial endorsements without the prior written consent of the University (not to be unreasonably withheld, delayed, or unreasonably conditioned). Coach shall not engage in any activity, if identified as the head coach of the Team, that directly implies approval or endorsement of any good or service, including, but not limited to, the wearing of garments which display a manufacturer's trademark, name, or other logo, unless such activity is first approved in writing by the Director. For example, Coach acknowledges that the University has entered into a MultiSport Agreement with Nike USA Inc. which includes the Team. Coach shall comply with the University's obligations under the Nike Agreement.

**1.2.4.** Coach shall not appear on radio, television, or any other media in return for a fee, in cash or in kind, without the prior written consent of the University (not to be unreasonably withheld, delayed, or unreasonably conditioned).

**1.3. Classification.** Coach's employment is a professional appointment subject to the policies and procedures applicable to University of Minnesota Academic Professional and Administrative Employees ("Policies and Procedures"), as the same may be amended from time to time. In the event of a conflict between the terms of this Agreement and the terms of the Policies and Procedures, the terms of this Agreement shall govern.

**1.4. Compliance.** Throughout the term of this Agreement, in conjunction with the University's compliance office, Coach shall use his diligent efforts to comply with the current and hereafter enacted or promulgated laws, policies, rules, and regulations governing the University and its employees, and the current and hereafter enacted or promulgated constitution, bylaws, rules, and regulations of the NCAA, the Big Ten Conference ("Big Ten"), and any other conference or organization with which the University becomes associated or which affects intercollegiate athletics (individually or collectively, "Governing Associations"). Coach shall use his best efforts to ensure that all assistant coaches of the Team, any other University employee for whom Coach is administratively responsible, and representatives of the University's athletic interests comply with the foregoing laws, policies, rules, regulations, constitutions, and bylaws. Coach shall diligently seek to promote an atmosphere of compliance within the football program and shall monitor the activities of all assistant coaches and administrators involved with the program who report, directly or indirectly, to Coach.

**1.5. Other Employment.** During the term of this Agreement, Coach agrees not to personally, or through any agent or other representation, seek, negotiate, or accept other full-time employment without first having provided at least forty-eight (48) hours advance written notice to the Director.

**1.6. Hiring Authority.** Coach understands and acknowledges that he will not have authority to unilaterally make or accept offers of employment for assistant coaches or other support staff, and that ultimate authority over such hiring decisions rests with the Director. Coach further understands and acknowledges that all football program hires, including Coach's hire, are subject to and contingent upon a review of the applicant's background and experience, including any history of NCAA violations, to be conducted by the University. Coach agrees not to make any representation to potential hires, applicants, or anyone else that is contrary to the provisions of this paragraph.

## **II. COMPENSATION**

### **2.1. Base Salary.**

**2.1.1.** Subject to the terms of this Agreement, for all services rendered by Coach on behalf of the University, the University shall pay Coach annualized base salary of one million dollars (\$1,000,000). Coach's base salary shall increase by fifty thousand dollars (\$50,000) on January 1, 2018, and on January 1 of each subsequent year during the Term of Employment.

**2.1.2.** Coach's base salary is subject to furloughs, pay freezes, salary reductions or other similar or related adjustments to the same extent they may be required from time to time of other employees in the Department.

**2.2. Supplemental Compensation.** Subject to the terms of this Agreement, the University shall pay Coach, in equal biweekly installments, annualized supplemental compensation of two million five hundred thousand dollars (\$2,500,000) in recognition of Coach's efforts on behalf of the University for media, fundraising, community involvement, and endorsements of apparel and shoes. The University will receive and control all outside payments relating to apparel, shoes, and media appearances. Coach's supplemental compensation is subject to furloughs, pay freezes, salary reductions, or other similar or related adjustments to the same extent they may be required from time to time of other employees in the Department.

**2.3. Incentive Compensation.**

**2.3.1.** The University shall pay Coach incentive compensation as provided in the Schedule of Incentives, a copy of which is attached hereto as Exhibit A and incorporated herein by reference.

**2.3.2.** The University shall make payment to Coach for competition-related bonuses within thirty (30) days of being earned, and for all other bonuses on or before August 1. No bonus under this section will be earned or paid unless/until the University has determined that the conditions related to the payment have been met, including Coach's compliance with the material terms of this Agreement and any other conditions set forth in the Schedule of Incentives. Further, no competition-related bonus will be earned or paid unless Coach is employed as head coach of the Team on the final day of the regular season or any post-season play for each season, whichever is later; and no other bonus will be earned or paid unless Coach is employed on the final day of classes for the University's spring semester each academic year.

**2.4 Buyout/Early Termination Payment.** The University will cover the cost of any buyout or early termination provision in Coach's current contract of employment with Coach's current employer, up to a maximum of six hundred thousand dollars (\$600,000.00), i.e., any provision in Coach's current contract of employment that requires Coach to make payment to Coach's current employer if Coach leaves employment prior to the end of the contract term. The University and Coach will cooperate with one another, and will exchange information necessary to calculate and confirm the amount of the payment, as well as the terms and conditions that govern the payment. The payment will be made by the University directly to Coach's current employer. The payment will be made in a manner reasonably calculated to satisfy Coach's contractual obligation to Coach's current employer. Coach shall be responsible for any and all tax liability related to the payment.

**2.5 Relocation Expenses.** The University will reimburse Coach for all direct, actual, reasonable expenses associated with the relocation of Coach and Coach's family to the Twin Cities, in accordance with applicable University policy.

**2.6. Benefits.** Unless inconsistent with the terms of this Agreement, the University shall provide Coach with a benefit program as provided generally for its professional and administrative employees, as described in and in accordance with the Policies and Procedures. Notwithstanding any provision of this Agreement to the contrary, the amount of the benefits shall be determined based upon Coach's annual base salary, and shall not take into account any other compensation provided under this Agreement.

**2.7. Automobile.** Subject to University policy applicable generally to its coaches of intercollegiate athletics, the University shall provide Coach the use of an automobile throughout the Term of Employment.

**2.8. Travel.** The University shall provide space for Coach's wife and children on each charter plane trip to away football games, as well as lodging for those individuals to attend such games. Additional spousal travel appropriate for University purposes but unrelated to football games may be authorized by the Director. At Coach's discretion, spouses or significant others of assistant coaches and support staff members who report directly to Coach may travel with the Team to one regular season away game at the University's expense under University travel reimbursement policies. Additional travel-related expenditures for other individuals to attend away football games may be provided at the discretion of the Director.

**2.9. Private Aircraft Use.** Subject to availability, the University agrees to fly Coach by private (non-commercial) aircraft when Coach is making recruiting visits and for other, mutually agreed upon University business that is located more than two hundred (200) miles from the Twin Cities campus. Coach's use of such private aircraft shall not exceed 60 hours (including dead-head legs) in any one fiscal year.

**2.10. Suites and Tickets.** The University shall provide Coach access to the following tickets to University of Minnesota Gopher athletic events: a suite for all football games; up to twenty (20) tickets to any bowl game in which the Team participates; up to six (6) season tickets to home men's basketball games; up to four (4) season tickets to home men's hockey games; and tickets to other home athletic events for the football program to use at its discretion for the promotion and development of the program. As early as possible, but no later than twenty-four (24) hours prior to each game, Coach shall submit to the Athletic Ticket Office and to the Office of Athletic Compliance a list of the persons to whom Coach provided complimentary tickets for that game.

**2.11. Nike Elite Allotment.** Provided the University has an equipment supply agreement with Nike, and provided Nike offers Nike Elite allotments as part of that agreement in a sufficient amount, the University will provide Coach with an annual Nike Elite allotment of forty nine thousand dollars (\$49,000) for Coach to allocate to the football assistant coaches and support staff at his discretion. Allocations are a taxable benefit and will be reported through the University payroll system.

**2.12. Tax Consequences.** All salary and supplemental compensation under this Agreement shall be paid in accordance with the University's regular payroll procedures for professional and administrative employees, and shall be subject to withholding for applicable federal, state, and local income taxes, federal social security taxes, and other applicable taxes and

deductions. It is understood that there may be personal tax consequences attributable to Coach as a result of additional compensation, benefits, and amenities provided under this Agreement or otherwise associated with Coach's employment as head football coach, and that Coach is personally responsible for any and all such taxes.

**2.13. Indemnification.** If Coach incurs future tax liability related to the payment described above in section 2.4, Coach shall have the right to seek reimbursement for that liability as follows:

- a. Coach will be responsible for the first one hundred thousand dollars (\$100,000.00) of tax liability;
- b. The University will reimburse Coach for additional tax liability up to a maximum of five hundred thousand dollars (\$500,000.00);
- c. Coach will be responsible for any remaining tax liability beyond the University maximum.

Any amount paid by the University pursuant to this section will be added to the applicable Termination Fee established in section 3.6, along with an additional fixed fee of two hundred fifty-thousand dollars (\$250,000.00). If the University terminates this Agreement pursuant to section 3.1, the University will have no further obligation under this section. If the University terminates this Agreement pursuant to section 3.2, or if the Agreement terminates due to Coach's death or disability, the parties' obligations under this paragraph will survive the termination.

**2.14. Exclusive Compensation.** The compensation, cash and otherwise, provided to Coach under this Article II shall constitute the total and exclusive compensation owed by the University to Coach.

### III. TERMINATION

**3.1. The University's Right to Terminate for Cause.** Upon written notice to Coach, the University may, for cause, terminate this Agreement or take other appropriate disciplinary action as permitted herein. "Cause" as used in this Agreement shall include, but not be limited to, the following conduct:

- a. A Level I or II violation of a rule of a Governing Association by or involving Coach as reasonably determined by the University, and for which the University has submitted notice to the Governing Association;
- b. A Level I or II violation of a rule of a Governing Association by an assistant coach of the Team or other individual related to the Team which, in the reasonable judgment of the University, Coach knew or should have known about with reasonable diligence and oversight, and for which the University has submitted notice to the Governing Association;

- c.** Multiple Level III or IV violations of the rules of a Governing Association that, taken together, constitute a Level I or II violation as contemplated under NCAA Bylaws, Art. 19.02, as reasonably determined by the University, and for which the University reasonably determines Coach had actual knowledge or should have known about with reasonable diligence and oversight;
- d.** Failure to report any and all Level I, II, III, or IV violations of the rules of a Governing Association related to the Team, when the University reasonably determines that Coach knew or should have known about such failure with reasonable diligence and oversight;
- e.** A substantial failure to perform material responsibilities under this Agreement following written notice from the Director specifying such failure and providing, where practicable, a twenty (20) day opportunity to cure such failure;
- f.** Material fraud or dishonesty of Coach, as reasonably determined by the University, in the performance of his duties or responsibilities under this Agreement and/or during the hiring process;
- g.** Falsifying or altering documents or records of the University or a Governing Association; or any other documents or records required to be prepared, maintained, or submitted by law, Governing Association rules, or University rules; or any other documents or records pertaining to any recruit or student-athlete; and/or assisting in such acts by any other person; as reasonably determined by the University;
- h.** Failure by Coach to respond accurately and fully, within a reasonable time, to any request or inquiry relating to the performance of Coach's duties hereunder or at any other institution, propounded by the University, a Governing Association, or any other body having oversight or jurisdiction; or as required by law, Governing Association rules, or University rules; as reasonably determined by the University;
- i.** Coach's instruction to any coach, student, or other person to respond inaccurately or incompletely to any request or inquiry; including any instruction to destroy or conceal any evidence or information concerning a matter relevant to the University's students or athletic programs, or those of any other institution of higher learning; propounded by the University, a Governing Association, or any other body having oversight or jurisdiction; or as required by law, Governing Association rules or University rules; as reasonably determined by the University;
- j.** Coach's soliciting, placing, or accepting a bet on any intercollegiate or professional athletic contest; Coach's expressly permitting, condoning, or encouraging any illegal gambling, bookmaking, or illegal betting involving any intercollegiate or professional athletic contest; or Coach's furnishing information or data relating in any manner to football or any other sport to any individual

known by Coach or whom Coach should reasonably know to be involved in gambling, betting, or bookmaking;

- l.** Sale, use, or possession by Coach of any narcotics, drugs, controlled substances, steroids, or other chemicals (excluding any such substances which are prescribed by Coach's physician and taken consistent with the instructions provided by said physician) in violation of law, Governing Association rules, or University rules; or Coach's encouraging or condoning such sale, use, or possession by a student-athlete, assistant coach, Department staff member, or any other person; as reasonably determined by the University.
- m.** Use or consumption by Coach of alcoholic beverages, drugs, controlled substances, or other chemicals (excluding any such substances which are prescribed by Coach's physician, and taken consistent with the instructions provided by said physician), so as to materially impair Coach's ability to perform Coach's duties hereunder, as reasonably determined by the University;
- n.** Failure by Coach to cooperate in the enforcement of any drug testing program established by the University;
- o.** Failure by Coach to obtain prior approval for outside activities, or to accurately report all sources and amounts of income and benefits, as required by this Agreement, Governing Association rules, or University rules, as reasonably determined by the University;
- p.** Coach's refusal to obey and/or carry out any reasonable assignment or directive from the Director following written notice from the Director specifying such failure and providing, where practicable, a five (5) day opportunity to cure such failure; or
- q.** Coach's commission of or participation in any act, situation, or occurrence, which, in the University's judgment, brings Coach or the University into public disrepute, embarrassment, contempt, scandal, or ridicule.

The University shall not be responsible to Coach for any compensation, benefit, or other payment of any kind after the date of any termination for cause under this Section 3.1.

### **3.2. The University's Right to Terminate Without Cause.**

**3.2.1.** The University may terminate this Agreement at any time without cause upon thirty (30) days written notice to Coach. In such event, the University shall pay Coach a Termination Fee equal to the following cumulative amounts for each contract year remaining: three million five hundred thousand (\$3,500,000) for contract year one; three million five hundred thousand (\$3,500,000) for contract year two; two million five hundred thousand for contract year three (\$2,500,000); one million five hundred thousand (\$1,500,000) for contract year four; and one million five hundred thousand (\$1,500,000) for contract year five. It is understood by both parties that any partial year remaining at the time of termination will be prorated. For example, if the termination occurred on the

last day of contract year two, i.e., Dec. 31, 2018, the payment would be five million five hundred thousand (\$5,500,000), or if termination occurred half-way through contract year three, the payment would be four million two hundred fifty thousand (\$4,250,000), i.e., one million two hundred fifty thousand (\$1,250,000) for the remainder of contract year three, and one-million five hundred thousand (\$1,500,000) for each of contract years four and five.

**3.2.2.** Any Termination Fee paid under this Section 3.2 shall be subject to withholding for applicable federal and state income taxes, federal social security taxes, and all other applicable taxes and deductions. The parties agree to discuss in good faith and use reasonable efforts to reach an understanding regarding a payment schedule for the Termination Fee that allows Coach and the University to fulfill their obligations, under the Internal Revenue Code of 1986, as amended, (the "Internal Revenue Code") and otherwise, without significantly increasing or accelerating the tax consequences associated with the Termination Fee. In the event those discussions do not result in an agreement, then the Termination Fee will be paid on a monthly basis in accordance with the following schedule:

a. The first installment will be equal to the amount of federal, state, and local income tax and the amount of FICA withholding that would have been remitted by the University if there had been a payment of wages to Coach on the date of his involuntary termination equal to the income includible by Coach on the Termination Fee under Section 457(f) of the Internal Revenue Code. This installment will be paid within sixty (60) days following the date of his notice of termination.

b. The second and remaining installments will be paid over the remaining Term of Employment in substantially equal amounts by pay period.

**3.2.3.** If the University makes full payment under this Section 3.2, Coach waives the right to seek additional compensation or damages from the University. Termination under this Section 3.2 shall supersede all rights Coach may have under the Policies and Procedures including but not limited to any rights to notice or layoff programs.

**3.2.4.** As a condition of receipt of any payment this Section 3.2., Coach is required to mitigate the University's obligations by making reasonable and diligent efforts (under the circumstances and opportunities then prevailing) to obtain a comparable employment position (for example, but not limited to, media commentator with a national broadcast or cable company, professional football assistant or head coach, head football coach of an NCAA Division I team) as soon as practicable following termination of employment.

**3.2.5.** If Coach is employed post termination (i.e., during the Term of Employment, had this Agreement naturally expired) in a comparable position, then payments under this Section 3.2 shall cease only if Coach's monthly compensation in the comparable position, excluding reasonable and usual non-monetary fringe benefits such as health and life insurance, club memberships and use of vehicles, is equal to or greater

than University's obligation to pay liquidated damages under Section 3.2.1 prorated on a monthly basis. If Coach's monthly compensation, excluding reasonable and usual non-monetary fringe benefits, from such new employment is less than University's monthly obligation to pay liquidated damages under Section 3.2.1 the amount of University's obligation to pay liquidated damages shall be reduced by the amount of Coach's compensation, excluding reasonable and usual non-monetary fringe benefits, from such new employment.

**3.2.6.** Coach agrees that, as a condition of receiving any portion of the Termination Fee under this Section 3.2, Coach or, in the case of any amounts due after Coach's death, the person to whom those amounts are payable (collectively, the "Payee") and the University must execute a release agreement in the format attached as Exhibit B.

**3.2.5.** For purposes of this Section 3.2, any reference to Coach's "termination of employment" by the University (or any form of the phrase "termination of employment") shall mean Coach's "separation from service" within the meaning of Section 409A of the Internal Revenue Code and Treasury Regulation Section 1.409A-1(h).

**3.3. NCAA Enforcement Provisions (NCAA Bylaw 11.2.1).** Notwithstanding any other provision of this Agreement to the contrary, if Coach is found in violation of any NCAA rule or regulation (following all timely appeals), Coach is subject to disciplinary or corrective actions as provided by NCAA enforcement procedures.

**3.4. Disciplinary Procedure.** In the event of any proposed disciplinary action, the Director shall give Coach, orally or in writing, notice of the allegations and an opportunity to present, in person, information relating to the allegations. If the Director then determines that discipline is appropriate, the Director shall, in writing, notify coach of the discipline and the reasons therefore.

**3.5. Limited Liability.** Subject to the terms of this Agreement, in no event shall the University be liable for the loss by Coach of any bonuses, benefits, perquisites, or income, including, but not limited to, those arising out of or relating to consulting relationships, camps, clinics, media appearances, or from any other sources whatsoever, that may ensue as a result of the University's termination of this Agreement, unless otherwise expressly stated herein. The terms of this Section 3.5 shall not release the University from its obligations to Coach under Section 3.2 of this Agreement.

**3.6. Coach's Right to Terminate Without Just Cause.** In the event Coach terminates this Agreement during the Term of Employment without just cause (which is hereby permitted), Coach shall pay the University as a Termination Fee an amount equal to one million dollars (\$1,000,000.00) per season remaining for the Term of Employment. For purpose of this paragraph, "season" means the Team's regular season plus any post-season play if Team is invited to participate. If Coach is employed as the University's Head Football Coach at the completion of a season, then that season shall not be included in the per season remaining calculation. Payment shall be made no later than sixty (60) days from the date of notice of termination or in equal monthly installments over the remaining life of the Agreement (in

Coach's discretion). The University and Coach agree to execute a release agreement in the form attached as Exhibit C in connection with this payment.

#### **IV. REVIEW**

The Parties agree that within sixty (60) days of the end of contract year two they will engage in a good faith review of the contract terms and provisions, including but not limited to the Term of Employment and contract guarantee provisions. Neither Party is obligated to make or accept any changes to the Agreement in connection with this review.

#### **V. BOARD APPROVAL AND BACKGROUND CHECK**

The parties acknowledge and agree that this Agreement is subject to formal approval by the University's Board of Regents (BOR), and the completion of a background check and NCAA review by the University. This Agreement shall not be final or binding until formally approved by the BOR, and until the background check and NCAA review are completed. If the BOR does not approve the Agreement, or if the background check or NCAA review reveal significant negative information, then there will be no agreement between the parties, and the parties will have no further rights or obligations towards one another, under this Agreement or otherwise (e.g., no right to any additional notice, no right to employment, no right to any ongoing compensation or benefits, no termination rights, and no right to any Termination Fee or payout.).

#### **VI. PROVISIONS OF GENERAL APPLICATION**

**4.1. Agreement Renewal.** Prior to the end of the Term of Employment, Coach will be given notice of the renewal or nonrenewal of this Agreement and the terms of any renewal. If the Agreement is not renewed, Coach shall be given thirty (30) days' notice of non-renewal and if such notice is not given thirty (30) days before the end of the term, the Agreement shall be extended to cover the notice period. This provision shall supersede all rights under University Policies and Procedures including but not limited to any notice requirements or layoff programs.

**4.2. Scheduling of Non-Conference Games.** Subject to University rules and delegation of authority and Governing Association rules, the Director or the Director's designee shall contract for and establish the football schedule of the Team, and negotiate the terms of the various football game contracts, and accept invitations for pre-season or post-season play. Coach shall be reasonably consulted by the Director or the Director's designee as to the identity of opponents, playing site, and time of play prior to agreeing or contracting with another institution.

**4.3. Camp Facility Usage.** The University will provide Coach the opportunity to utilize Department facilities for twelve (12) days each year for him to operate football camps, in accordance with University and Department policies and procedures (upon the best terms and conditions offered to any other coach or entity).

**4.4. Assignment of Rights.** Coach acknowledges that the total compensation to be paid to Coach as head football coach is intended to include any and all amounts Coach might have expected to receive from (1) any television and radio shows and advertising revenues derived from those shows; and (2) any arrangements with athletic shoe, apparel, or equipment

companies. It is therefore understood and agreed that any and all rights Coach has in the production and compensation for any television and radio shows and related advertising and any shoe, apparel or equipment arrangements are hereby assigned in their entirety to the University.

In connection with said assignment, Coach:

- a. Grants to the University the right to use the Coach's name and likeness in promoting any television or radio show;
- b. Grants to the University the right to permit others to sell all or a portion of the advertising for any such show;
- c. Grants to the University the right to collect and retain the revenues generated from the sale of advertising on any such show;
- d. Agrees to appear on any such show and to work cooperatively with the producer of such show in scheduling taping sessions and other related production issues; and
- e. Agrees to work cooperatively with any shoe, apparel or equipment company to assist in the fulfillment of the University's obligations under any arrangement with the shoe, apparel or equipment company.

It is further expressly understood that the University may reassign any and all of the rights assigned to it by Coach.

**4.5. Report of Athletically Related Income (NCAA Bylaw 11.2.2).** The University and Coach hereby stipulate that Coach shall annually provide to the Director a written detailed account of all Coach's athletically related income and benefits from sources outside the University including, but not limited to, the following:

- a. Annuity income related in any way to Coach's coaching, recruiting, or educational duties at the University;
- b. Sports camps;
- c. Housing benefits (including preferential housing arrangements);
- d. Country club memberships;
- e. Complimentary ticket sales;
- f. Television and radio programs; or
- g. Endorsement or consultation contracts with athletic shoe, apparel, or equipment manufacturers.

In addition, Coach shall comply with University of Minnesota policy and procedures regarding "Outside Consulting and Commitments by Intercollegiate Athletic Staff." The policies

and procedures include, but are not limited to, receiving prior approval for any endorsement of a product or service, use of University trademarks and outside consulting commitments.

**4.6. Notices/Administration.** All notices, requests, and other communications from one of the parties to the other shall be in writing and, except as otherwise provided herein, shall be considered to have been duly given or served if sent by United States mail, first-class, certified or registered, postage pre-paid, return receipt requested, to the respective party at his or its address set forth below or to such other address set forth below or to such other address as such party may hereafter designate by notice to the other:

As to Coach: Philip John Fleck  
University of Minnesota  
220A Gibson/Nagurski Football Complex  
600 15<sup>th</sup> Avenue Southeast  
Minneapolis, MN 55455

As to the University: University of Minnesota  
Department of Intercollegiate Athletics  
Attention: Director of Athletics  
516 15th Avenue S.E.  
Minneapolis, MN 55455

With copy to: University of Minnesota  
Office of the General Counsel  
Attention: General Counsel  
360 McNamara Alumni Center  
200 Oak Street S.E.  
Minneapolis, MN 55455-2006

**4.7. Amendment.** Any amendment to this Agreement shall be in writing executed and delivered by the parties.

**4.8. Parties in Interest/Assignment.** This Agreement shall be binding upon and the benefits and obligations provided for herein shall inure to the parties hereto and their respective heirs, legal representatives, successors, assigns, transferees, or donees, as the case may be. No portion of this Agreement shall be assignable without the prior written consent of the other party.

**4.9. Effect of Prior Agreements.** This Agreement is intended by the parties as the final and binding expression of their contract and agreement and as the complete and exclusive statement of the terms thereof. This Agreement supersedes and revokes all prior negotiations, representations, and agreements, whether oral or written, relating to the subject matter hereof, except as expressly provided herein.

**4.10. Enforceability.** If any provision contained herein shall be deemed or declared unenforceable, invalid, or void, the same shall not impair any of the other provisions contained herein, which shall be enforced in accordance with their respective terms.

**4.11. Construction.** The headings preceding and labeling the sections of this Agreement are for the purpose of identification only and shall not in any event be employed or used for the purpose of construction or interpretation of any portion of this Agreement. No waiver by any party of any default or nonperformance hereunder shall be deemed a waiver of any subsequent default or nonperformance. As used herein and where necessary, the singular shall include the plural and vice versa, and masculine, feminine, and neuter expressions shall be interchangeable.

**4.12. Applicable Law.** The laws of the state of Minnesota shall govern this Agreement and any construction or interpretation thereof.

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be executed as of the date first shown above.

Date: 2-6-2017

By:   
Philip John Fleck  
Coach

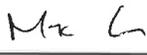
**REGENTS OF THE UNIVERSITY OF MINNESOTA**

Date: 2/7/17

By:   
Eric W. Kaler  
President

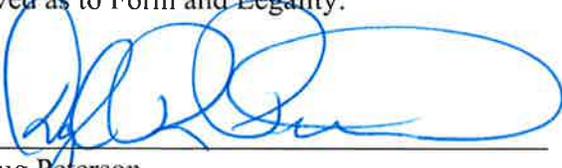
Recommended for Approval:

Date: 2/6/17

By:   
Mark Coyle  
Director of Athletics

Approved as to Form and Legality:

Date: February 7, 2017

By:   
Doug Peterson  
General Counsel

## EXHIBIT A

### SCHEDULE OF INCENTIVES

In lieu of any other performance-based bonus plan the University may adopt for sports coaches or other University employees, the University shall pay Coach the following annual incentive bonuses, consistent with the requirements of Section 2.3 and all other terms of this Agreement:

**I. Incentive compensation for achieving athletic performance goals as follows:**

a) Winning the Big Ten Championship	\$150,000
b) A win or tie for the Championship of a Big Ten Football Division	\$100,000
c) Being Named National Coach of the Year by a nationally recognized organization from a list agreed upon by Coach and the Director (see note below)	\$100,000
d) Being Named Conference Coach of the Year by the Big Ten Coaches Poll or the Big Ten Media Poll	\$50,000

The amounts provided within this paragraph shall be cumulative.

**II. Incentive compensation for receiving an invitation to and participating and coaching in any one of the following bowl games (to be redone if Conference realignment or bowl games change)**

a) College Football National Championship	\$300,000
b) Participate in College Football Play-Off Semi-Final	\$200,000
c) Participate in one of the six College Football Play-Off Bowl Games, but not Semi-Final.	\$150,000
d) Participate in a bowl game and be the first or second teams remaining in the overall conference standings not selected to participate in the College Football Play-off Bowl games.	\$125,000
e) Participate in bowl game not identified in sections a, b, or c above	\$75,000

The amounts provided within this paragraph are not cumulative.

<b>III. If Team wins a bowl game against an opponent from the ACC, SEC, Big 12 or PAC-12</b>	<b>\$50,000</b>
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The team must end the regular season with a minimum of six (6) wins in order for Coach to earn or be eligible for any of the bonuses set forth in Sections II or III above.

**IV. Academic Performance - APR.** The University shall pay Coach a bonus based on the annual Academic Progress Rate (“APR”) for the Team as established each year by the NCAA, beginning at the end of the 2017-2018 academic year, as follows:

a) APR greater than or equal to 960	\$30,000
b) APR greater than or equal to 970	\$50,000
c) APR greater than or equal to 980	\$75,000

The amounts provided within this paragraph are not cumulative.

**V. Graduation Success Rate.** The University shall pay Coach a bonus based on the Graduation Success Rate (“Graduation Success Rate”) for the Team as determined each year by the University consistent with NCAA rules, beginning at the end of the 2017-2018 academic year:

Percentage greater than or equal to 85	\$75,000
Percentage greater than or equal to 75	\$50,000

The amounts provided within this paragraph are not cumulative.

**Note:** Below is the list of nationally recognized organizations for which Coach would receive the National Coach of the Year bonus noted in I. d).

AFCA Coach of the Year  
Associated Press College Football Coach of the Year Award  
Bobby Dodd Coach of the Year Award  
Eddie Robinson Coach of the Year  
George Munger Award  
Home Depot Coach of the Year Award  
Paul “Bear” Bryant Award  
Sporting News College Football Coach of the Year  
Walter Camp Coach of the Year Award  
Bobby Bowden National Coach of the Year

## EXHIBIT B

### RELEASE AGREEMENT

THIS RELEASE AGREEMENT (the "Agreement") is entered into and made effective on this \_\_\_\_ day of \_\_\_\_\_ 20\_\_ between Regents of the University of Minnesota ("University"), on behalf of its Department of Intercollegiate Athletics ("Department"), and Philip John Fleck ("Coach"). The parties identified above may be referred to herein collectively as the "Parties," and any individual party identified above may be referred to herein as a "Party."

#### WITNESSETH

WHEREAS, the Parties entered into an agreement entitled, "Employment Agreement," made effective as of \_\_\_\_\_, 2017 (the "Employment Agreement"); and

WHEREAS, the University formerly employed Coach as the head coach of the University's intercollegiate football team; and

WHEREAS, the University has terminated Coach without cause under the terms of the Employment Agreement; and

WHEREAS, pursuant to the Employment Agreement, the University is obligated, subject to the terms and conditions found therein, to make certain payments to Coach; and

WHEREAS, as one condition precedent to the University's payment obligations to Coach, Coach must execute a release in favor of the University;

NOW, THEREFORE, in consideration of the promises herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

**1. Release.** Coach hereby irrevocably and unconditionally releases, acquits, and forever discharges the University and each of its trustees, officers, representatives, and divisions, (collectively, the "Releasees"), from any and all charges, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts, and expenses of any nature whatsoever, known or unknown, suspected or unsuspected, including, but not limited to, rights arising out of alleged violations or breaches of any contracts, express or implied, or any tort, or any legal restrictions on the University's rights to terminate employees, or any federal, state or other governmental statute, regulation, or ordinance, including but not limited to the Minnesota Human Rights Act, Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, the Age Discrimination in Employment Act, and any other law (the "Claim" or "Claims"), which Coach now has, owns or holds, or claims to have, own or hold, or which Coach at any time heretofore had, owned or held, or claimed to have, had, owned or held, against each or any of the Releasees at any time up to and including the date of this Agreement, which is stated above. It is Coach's express intent that

this release be as broad and general as the law permits. However, it does not include claims for worker's compensation.

**2. Prohibition Against Litigation.** Except as prohibited by law, in consideration of the benefits conferred by this Agreement and by the Employment Agreement, Coach will not sue any of the Releasees on any of the released Claims or join as a party with others who may sue on any such Claims.

**3. Representations and Warranties.** Coach hereby represents and warrants that he has not filed, nor has he assigned to others the right to file, any complaints, charges, or lawsuits against any of the Releasees with any governmental agency or any court, and that Coach will not file, assign to others the right to file, or make any further claims against the Releasees at any time hereafter for actions taken up to and including the effective date of this Agreement, which is stated above.

**4. Representations Regarding Existing Claims.** Coach acknowledges and represents that he has no knowledge of any actions or inactions by any of the Releasees that he believes would constitute basis for a claimed violation of any federal, state, or local law, any common law, or any rule promulgated by an administrative body.

**5. Governing Law.** The laws of the state of Minnesota shall govern this Agreement and any construction or interpretation thereof.

**6. MHRA Rescission Period.** As required by law, this paragraph provides Coach with notice that the release contained in this agreement applies to claims arising under the Minnesota Human Rights Act (MHRA). Coach may rescind the release of MHRA claims within fifteen (15) calendar days of the date of Coach's signature on this Agreement. To be effective, the rescission must be in writing and delivered to: Douglas R. Peterson, Office of the General Counsel, 360 McNamara Alumni Center, 200 Oak Street SE, Minneapolis, MN 55455. The rescission may be delivered by hand or by mail. If delivered by mail, the rescission must be postmarked within the 15-day period; properly addressed; and sent by certified mail, return receipt requested. Otherwise, the rescission will not be effective. If Coach rescinds the release, or any portion of the release, each and every provision of this agreement shall immediately become null and void.

**7. ADEA Rescission Period.** As required by law, this paragraph provides Coach with notice that the release contained in this Agreement applies to claims arising under the Age Discrimination in Employment Act (ADEA). Coach may rescind the release of ADEA claims within seven (7) calendar days of the date of Coach's signature on this Agreement. To be effective, the rescission must be in writing and delivered to: Douglas R. Peterson, Office of the General Counsel, 360 McNamara Alumni Center, 200 Oak Street SE, Minneapolis, MN 55455. The rescission may be delivered by hand or by mail. If delivered by mail, the rescission must be postmarked within the 7-day period; properly addressed; and sent by certified mail, return receipt requested. Otherwise, the rescission will not be effective. If Coach rescinds the release, or any portion of the release, each and every provision of this Agreement shall immediately become null and void.

**8. 21-Day Consideration Period.** Coach understands that, by law, Coach may take up to twenty-one (21) days to consider the terms of this Agreement before signing it. Coach further understands that Coach may choose to sign the Agreement prior to the expiration of the twenty-one (21) day consideration period. If Coach chooses to sign the Agreement prior to the expiration of the twenty-one (21) day consideration period, Coach will waive the remainder of the twenty-one (21) day consideration period.

**9 Right to Consult with Legal Counsel.** Coach is notified by this paragraph that he has the right to consult with legal counsel regarding this Agreement before signing. Coach affirms that he has executed that right to the full extent Coach deemed necessary prior to signing.

**10. Counterparts; Facsimiles.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. For purposes of executing the Agreement, a document signed and transmitted by facsimile machine, electronic mail, or other commercially accepted electronic or mechanical means is to be treated as an original document.

**11. Entire Agreement.** This Agreement contains the entire agreement of the Parties with respect to the matters set forth herein, except the agreement contained in Section 3.2 of the Employment Agreement requiring Coach to mitigate his damages and/or to show good-faith efforts to mitigate, which provision is hereby incorporated by reference as if fully set forth word-for-word herein. Coach shall report on a regular basis, which shall be no less frequent than once per calendar quarter, a detailed description of his efforts to mitigate, and, if Coach obtains any other type of employment, the quarterly reports shall show the dates of employment and the total compensation level. Other than the matters set forth in this Agreement, including this Paragraph 10, there are no agreements, either written or oral, other than those set forth herein with regard to the subject matter of this Agreement.

**12. Severability.** Each provision of this Agreement is severable from all other provisions of the Agreement. If any governmental authority having jurisdiction over the matters herein determines, during or at the conclusion of any litigation, that any provision of the Agreement will be invalid or unenforceable, the provision will be deemed modified only to the extent necessary to render it valid and enforceable, and all remaining provisions of the Agreement will remain in full force and effect.

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

**Regents of the University of Minnesota**

**Coach**

By: \_\_\_\_\_

\_\_\_\_\_  
Philip John Fleck

\_\_\_\_\_  
(print name and title)

## EXHIBIT C

### RELEASE AGREEMENT

THIS RELEASE AGREEMENT (the "Agreement") is entered into and made effective on this \_\_\_\_ day of \_\_\_\_\_ 20\_\_ between Regents of the University of Minnesota ("University"), on behalf of its Department of Intercollegiate Athletics ("Department"), and Philip John Fleck ("Coach"). The parties identified above may be referred to herein collectively as the "Parties," and any individual party identified above may be referred to herein as a "Party."

#### WITNESSETH

WHEREAS, the Parties entered into an agreement entitled, "Employment Agreement," made effective as of \_\_\_\_\_, 2017 (the "Employment Agreement"); and

WHEREAS, the University formerly employed Coach as the head coach of the University's intercollegiate football team; and

WHEREAS, Coach has terminated the Employment Agreement without just cause under the terms of the Employment Agreement; and

WHEREAS, pursuant to the Employment Agreement, Coach is obligated, subject to the terms and conditions found therein, to make certain payments to the University; and

WHEREAS, as one condition precedent to Coach's payment obligations to the University, the University must execute a release in favor of Coach;

NOW, THEREFORE, in consideration of the premises herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

**1. Release.** The University hereby irrevocably and unconditionally releases, acquits, and forever discharges Coach, his estate, and each of their representatives (collectively, the "Releasees") from any and all charges, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts, and expenses of any nature whatsoever, known or unknown, suspected or unsuspected, including, but not limited to, rights arising out of alleged violations or breaches of any contracts, express or implied, or any tort, or any legal restrictions on the Coach's right to terminate the Employment Agreement (the "Claim" or "Claims"), which the University now has, owns or holds, or claims to have, own or hold, or which the University at any time heretofore had, owned or held, or claimed to have, had, owned or held, against each or any of the Releasees at any time up to and including the effective date of this Agreement, which is stated above.

**2. Prohibition Against Litigation.** Except as prohibited by law, in consideration of the benefits conferred by this Agreement and by the Employment Agreement, the University will

not sue any of the Releasees on any of the released Claims or join as a party with others who may sue on any such Claims.

**3. Representations and Warranties.** The University hereby represents and warrants that it has not filed, nor has it assigned to others the right to file, any complaints, charges, or lawsuits against any of the Releasees with any governmental agency or any court, and that the University will not file, assign to others the right to file, or make any further claims against the Releasees at any time hereafter for actions taken up to and including the effective date of this Agreement, which is stated above.

**4. Representations Regarding Existing Claims.** The University acknowledges and represents that it has no knowledge of any actions or inactions by any of the Releasees that it believes would constitute basis for a claimed violation of any federal, state, or local law, any common law, or any rule promulgated by an administrative body.

**5. Governing Law.** The laws of the state of Minnesota shall govern this Agreement and any construction or interpretation thereof.

**6. Counterparts; Facsimiles.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. For purposes of executing the Agreement, a document signed and transmitted by facsimile machine, electronic mail, or other commercially accepted electronic or mechanical means is to be treated as an original document.

**7. Entire Agreement.** This Agreement contains the entire agreement of the Parties with respect to the matters set forth herein, except the agreement contained in Section 3.6 of the Employment Agreement, which provision is hereby incorporated by reference as if fully set forth word-for-word herein, and cannot be altered or modified except by an agreement in writing signed by both Parties.

**8. Severability.** Each provision of this Agreement is severable from all other provisions of the Agreement. If any governmental authority having jurisdiction over the matters herein determines, during or at the conclusion of any litigation, that any provision of the Agreement will be invalid or unenforceable, the provision will be deemed modified only to the extent necessary to render it valid and enforceable, and all remaining provisions of the Agreement will remain in full force and effect.

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

**Regents of the University of Minnesota**

**Coach**

By: \_\_\_\_\_

\_\_\_\_\_  
Philip John Fleck

\_\_\_\_\_  
(print name and title)

## AMENDMENT TO EMPLOYMENT AGREEMENT

This is a contractual amendment to the Employment Agreement between the University of Minnesota (“University”), on behalf of its Department of Intercollegiate Athletics on the Twin Cities campus (“Department”), and Philip John Fleck (“Coach”), dated February 2, 2017 (“Employment Agreement”). The University and Coach do now mutually desire to amend certain terms of the Employment Agreement by entering in to this amendment (“Amendment”), effective November 21, 2017.

**NOW, THEREFORE**, in consideration of the mutual promises and covenants contained in this Amendment, and such other good and valuable consideration the receipt and sufficiency of which the parties hereby acknowledge, the parties agree to amend their Employment Agreement, subject to formal approval of the University’s Board of Regents, as follows:

1. **Paragraph 1.1 is deleted and replaced with the following:**

**1.1 Term.** Subject to the terms and conditions of this Agreement, the University hereby employs Coach as head coach of the Team, and Coach agrees to be so employed by the University, for a term commencing on January 6, 2017, and ending on January 31, 2023 (“Term of Employment”).

2. **Paragraph 3.2.1 is deleted and replaced with the following:**

**3.2.1.** The University may terminate this Agreement at any time without cause upon thirty (30) days written notice to Coach. In such event, the University shall pay Coach a Termination Fee equal to the following cumulative amounts for each calendar year remaining on the contract, as follows: three million five hundred thousand dollars (\$3,500,000) for calendar year January 1, 2018, to December 31, 2018; three million five hundred thousand dollars (\$3,500,000) for calendar year January 1, 2019, to December 31, 2019; two million five hundred thousand dollars (\$2,500,000) for calendar year January 1, 2020, to December 31, 2020; one million five hundred thousand dollars (\$1,500,000) for calendar year January 1, 2021, to December 31, 2021; and one million five hundred thousand dollars (\$1,500,000) for calendar year January 1, 2022, to December 31, 2022. It is understood by both parties that any partial year remaining at the time of termination will be prorated. For example, if the termination occurred on December 31, 2019, the payment would be five million five hundred thousand dollars (\$5,500,000); or if the termination occurred half-way through the 2020 calendar year, the payment would be four million two hundred fifty thousand dollars (\$4,250,000), i.e., one million two hundred fifty thousand dollars (\$1,250,000) for the remainder of that

calendar year, and one million five hundred thousand dollars (\$1,500,000) for each of the remaining two calendar years.

3. **Except as expressly provided in this Amendment, each and every term and condition of the Employment Agreement shall remain unchanged.**

IN WITNESS WHEREOF, the undersigned have caused this Amendment to be effective as of the date first shown above.

Date: 11-21-17

  
Philip John Fleck  
Head Coach for Football

REGENTS OF THE UNIVERSITY OF  
MINNESOTA

Date: 11/21/17

By:   
Eric Kaler  
President

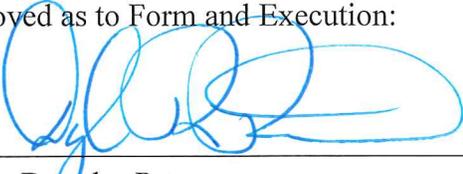
Recommended for Approval:

Date: 11/21/17

By:   
Mark Coyle, Director  
Intercollegiate Athletics

Approved as to Form and Execution:

Date: November 22, 2017

  
By:   
Douglas Peterson  
General Counsel

## SECOND AMENDMENT TO EMPLOYMENT AGREEMENT

This is a second contractual amendment to the Employment Agreement between the University of Minnesota ("University"), on behalf of its Department of Intercollegiate Athletics on the Twin Cities campus ("Department"), and Philip John Fleck ("Coach"), dated February 2, 2017 ("Employment Agreement"), as previously amended effective November 21, 2017 ("First Amendment"). The University and Coach do now mutually desire to further amend certain terms of the Employment Agreement by entering in to this second amendment ("Second Amendment"), effective December 15, 2017.

**NOW, THEREFORE**, in consideration of the mutual promises and covenants contained in this Second Amendment, and such other good and valuable consideration the receipt and sufficiency of which the parties hereby acknowledge, the parties agree to amend their Employment Agreement as follows:

1. **Paragraph 2.9 is deleted and replaced with the following:**

**2.9. Private Aircraft Use.** Subject to availability, the University agrees to fly Coach by private (non-commercial) aircraft when Coach is making recruiting visits and for other, mutually agreed upon University business that is located more than two hundred (200) miles from the Twin Cities campus. Coach's use of such private aircraft shall not exceed sixty (60) hours (including dead-head legs) in any one fiscal year, unless fund-raised dollars (enhancement funds) ear-marked for recruiting expenses are used to cover costs of additional private flights. Any use beyond the sixty (60) hours threshold is subject to approval by the Athletic Director, which can be withheld at the University's sole discretion.

2. **Except as expressly provided in this Amendment, each and every term and condition of the Employment Agreement shall remain unchanged.**

**IN WITNESS WHEREOF**, the undersigned have caused this Amendment to be effective as of the date first shown above.

Date:

1-11-18



Philip John Fleck  
Head Coach for Football

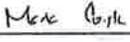
**REGENTS OF THE UNIVERSITY OF  
MINNESOTA**

Date: 1/24/18

By:   
Eric Kaler  
President

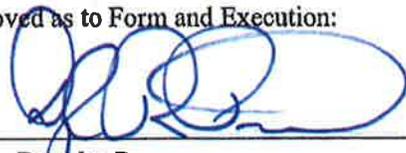
**Recommended for Approval:**

Date: 12/12/17

By:   
Mark Coyle, Director  
Intercollegiate Athletics

**Approved as to Form and Execution:**

Date: January 16, 2018

By:   
Douglas Peterson  
General Counsel