

First Amendment to Employment Agreement and Notice of Appointment for Head Coach

This First Amendment to Employment Agreement and Notice of Appointment for Head Coach, effective March 1, 2020 (the "Amendment Effective Date"), is made between Oregon State University ("University") and Jonathan Smith ("Coach") and amends the Employment Agreement and Notice of Appointment for Head Coach between the parties dated January 10, 2018 by last signature ("Agreement").

I. The parties agree as follows:

A. Section I.C.13. is added to the Agreement as follows:

"13. Responsibility to Cooperate. Coach agrees to cooperate fully with any investigation by the University, Conference, or the NCAA. Coach's obligation to cooperate survives termination or expiration of this Agreement. Such cooperation includes, without limitation, cooperation with any internal University investigation, with NCAA enforcement staff, the NCAA Complex Case Unit, the NCAA Committee on Infractions, the NCAA Independent College Sports Adjudication Panel and the NCAA Infractions Appeals Committee in order to further the objectives of the NCAA, its infractions program, and its independent alternative resolution program. As set forth in NCAA Bylaw 19.2.3, "full cooperation" includes, but is not limited to:

- (a) Affirmatively reporting instances of noncompliance to the NCAA via standard University process (e.g. reporting to Director or Compliance Office) in a timely manner and assisting in developing full information to determine whether a possible violation has occurred and the details thereof;
- (b) Timely participation in interviews and providing complete and truthful responses;
- (c) Making a full and complete disclosure of relevant information, including timely production of materials or information requested, and in the format requested;
- (d) Disclosing and providing access to all electronic devices used in any way for business purposes;
- (e) Providing access to all social media, messaging and other applications that are or may be relevant to the investigation; and
- (f) Preserving the integrity of an investigation and abiding by all applicable confidentiality rules and instructions."

B. Section I.C.14 is added to the Agreement as follows:

"14. Report Outside Income. Coach shall provide a report to the Director at least once annually of all athletically related income or benefits from sources outside the University, including, but not limited to, income from annuities, sports camps, housing benefits, complimentary ticket sales, television and radio programs, and endorsement or consultation contracts with athletic shoe, apparel, or equipment manufacturers.

Reports shall be made at the direction of, and on forms provided by the Director or designee. The Director or designee shall forward reports to the President and a copy shall be retained in the faculty personnel file of the Coach. Coach agrees that the approval of all athletically related income and benefits shall be consistent with the University's policy related to outside income and benefits applicable to all full-time employees."

- C. In Section II.A. of the Agreement, the Term end date is revised from February 28, 2023 to February 29, 2026, the reference to "II.C." is corrected and replaced with "II.B.", and three additional Contract Years are added to the Agreement as follows:

Contract Year 6 -	March 1, 2023 -	February 29, 2024
Contract Year 7 -	March 1, 2024 -	February 28, 2025
Contract Year 8 -	March 1, 2025 -	February 28, 2026

- D. Section II.B. is replaced in its entirety to read as follows:

"B. Extension of Term. For any season in which the Team wins six (6) or more regular season games during Contract Years 3, 4, or 5, the University agrees that one (1) new Contract Year shall be added to the Agreement, subject to the same terms and conditions contained herein, including a commensurate increase in total annual compensation per Section III.A. and Section III.B."

- E. In Section III.A. of the Agreement, Contract Years 6, 7, and 8 are added and the annual base salary beginning in Contract Year 3 is adjusted as follows:

Contract Year 3	\$1,200,000
Contract Year 4	\$1,250,000
Contract Year 5	\$1,300,000
Contract Year 6	\$1,350,000
Contract Year 7	\$1,400,000
Contract Year 8	\$1,450,000

- F. In Section III.B. of the Agreement, Contract Years 6, 7 and 8 are added and the annual non-salary compensation beginning in Contract Year 3 is adjusted as follows:

Contract Year 3	\$1,200,000
Contract Year 4	\$1,250,000
Contract Year 5	\$1,300,000
Contract Year 6	\$1,350,000
Contract Year 7	\$1,400,000
Contract Year 8	\$1,450,000

- G. In Section III.F. incentive compensation amounts for the first three events are adjusted as follows:

1. Win exactly 10 regular season games	\$100,000
2. Win exactly 9 regular season games	\$75,000

3. Win exactly 8 regular season games \$50,000

H. Section III.I. of the Agreement is replaced in its entirety to read as follows:

"I. Cumulative Incentive Compensation. The amounts in III.F. through III.H. are cumulative. Payments made under III.F. through III.H. are to be paid to Coach within 30 days following the end of each football season."

I. Section III.J. of the Agreement is replaced in its entirety with "Reserved".

J. In Section IV.C.2. of the Agreement, Contract Years 6, 7, and 8 are added and the liquidated damages beginning in Contract Year 3 are adjusted as follows:

Notice effective during Contract Year 3	\$3,000,000
Notice effective during Contract Year 4	\$2,000,000
Notice effective during Contract Year 5	\$2,000,000
Notice effective during Contract Year 6	\$1,000,000
Notice effective during Contract Year 7 or thereafter	\$1,000,000

K. Section V.F. is added to the Agreement as follows:

"F. Air Transportation. Coach may use private air transportation for official recruiting activities subject to prior written approval by the Director. The value of such travel shall not exceed \$200,000 annually."

L. Section V.G. is added to the Agreement as follows:

"G. Tax Advice. University will not provide tax advice to Coach regarding the tax effects of this Agreement. University encourages Coach to consult with his own tax advisors concerning the federal, state, and local tax effects of this Agreement. This Agreement is intended to comply with the requirements of Sections 409A and 457(f) of the Internal Revenue Code and, to the maximum extent permitted by law, shall be administered, operated and construed consistent with this intent. Any reimbursements or in-kind benefits provided under this Agreement that are subject to Section 409A of the Internal Revenue Code shall be made or provided in accordance with the requirements of Section 409A of the Internal Revenue Code, including, where applicable, the requirements that (a) any reimbursement is for expenses incurred during Coach's life, but in no event later than the expiration of the term of this Agreement, (b) the amount of expenses eligible for reimbursement, or in-kind benefits provided, during a taxable year may not affect the expenses eligible for reimbursement, or in-kind benefits to be provided, in any other taxable year, (c) the reimbursement of an eligible expense will be made no later than the last day of the taxable year following the taxable year in which the expense is incurred, and (d) the right to reimbursement or in kind benefits is not subject to liquidation or exchange for another benefit. Solely to the extent necessary to comply with Section 409A, a termination of employment shall not be deemed to have occurred unless such termination is also a 'separation from service' within the meaning of Section 409A and for purposes of any such provision of this Agreement, references to a 'termination,' 'termination of employment,' or like terms shall mean 'separation from

service.’ For purposes of Section 409A, Coach’s right to receive any installment payments pursuant to this Agreement shall be treated as a right to receive a series of separate and distinct payments, and each such installment payment shall likewise be treated as a separate and distinct payment for purposes of Section 409A.”

- II. Except as amended by this First Amendment to Employment Agreement and Notice of Appointment, all other provisions of the Agreement remain in full force and effect.

Each party is signing this First Amendment on the date stated opposite that party’s signature to be effective as of the Effective Date.

Agreed to:

OREGON STATE UNIVERSITY

DocuSigned by:
By: S. Scott Barnes
030CC7704704400...
S. Scott Barnes, Vice President/Director of Athletics

12/31/2019 | 12:00:24 PST
Date

DocuSigned by:
By: Susan Capalbo
1E537B42281F47E...
Susan Capalbo, Senior Vice Provost
Appointing Authority

1/6/2020 | 14:05:57 PST
Date

COACH

DocuSigned by:
By: Jonathan Smith
1A822CEAB38D4AB...
Jonathan Smith

1/2/2020 | 15:35:26 PST
Date