



University at Buffalo *The State University of New York*

The Employment Agreement is made this May 1, 2011, between the University at Buffalo and Phillip R. Witherspoon and it cancels and replaces any and all prior employment agreements between the two parties.

Article I – Purpose

The University and Employee have entered into this Employment Agreement because the University desires to hire Employee for a period of five (5) years with the Employee's assurance that he will serve the entire term of this Employment Agreement, a long-term commitment by the Employee being critical to the University's desire to run a stable athletics program. The University and the Employee agree that head coaches of intercollegiate athletic teams at the University conduct their professional activities under circumstances unique in the family of University employees, including evaluation and scrutiny of teams performances by the public and the media and control by external rules and regulations. These circumstances justify job security and commitment by the Employee longer than one year but less than a permanent appointment. The Employee desires to obtain the opportunities of employment with the University which are set forth in this Employment Agreement. For these reasons, the University has agreed to employ the Employee and the Employee has promised to be employed by the University upon the following terms and conditions.

Article II – Confidentiality

It is the desire of the parties that the terms and conditions of this Employment Agreement shall be kept strictly confidential. Thus, each party agrees to keep the terms and conditions of this Employment Agreement confidential and to refrain from disclosing the terms and conditions of this Employment Agreement without the advance written permission of the other party, unless disclosure by the University is required by law. However, the Employee may disclose the terms and conditions of this Agreement to his legal, Tax and Financial advisers and to his immediate family. Furthermore, it is understood and agreed that disagreements between the parties over any term or condition of this Employment Agreement shall be treated confidentially and that the parties and their representatives shall not publicize to third persons, other than immediate family or those participating directly in negotiations over the matter, the fact of a disagreement or its submission to arbitration. The parties further agree that they will not give access to this Agreement to anyone without the prior written consent of the other party hereto. It is agreed, however, that the University as required by the Mid-American Conference ("MAC"), will share the terms and conditions of this Agreement with the Conference office under the policies dictated by the Mid-American Conference. Furthermore, if it is the desire of the employee, the University and the Employee shall issue a joint press release concerning this Employment Agreement and any extension or modification thereof in general terms and the parties may thereafter repeat the details set forth in the press release, but otherwise the parties shall treat the details of this Employment Agreement confidentially.

Article III – Position

3.01 Description of Employee's Responsibilities

- a. **Recognition of Duties.** The Employee agrees to devote his reasonable best efforts full time to the performance of his duties for the University, to give proper time and attention to furthering his responsibilities to the University and to comply with all rules, regulations, policies, and decisions established or issued by the University. The Employee recognizes that his statements about the University and its administrators are often publicized and he agrees to use his

reasonable best efforts to keep positive and constructive in tone any public comments he makes about University policies or actions taken by administrators. The Employee also agrees that notwithstanding the provisions of Sections 5.05, during the term of this Employment Agreement, he will not engage, directly or indirectly, in any business that would detract from his ability to apply his reasonable best efforts to the performance of his duties hereunder.

- b. **General Duties and Responsibilities of Employee.** During the period in which the University employs the Employee as Head Coach of the University's intercollegiate men's basketball team, the Employee agrees to undertake and perform properly, efficiently, using all reasonable best efforts and consonant with the standards of the University all duties and responsibilities attendant to the position of Head Coach of the University's men's basketball team as set forth in Section 3.01.c. The Employee further agrees to abide by and comply with the constitution, bylaws and interpretations of the National Collegiate Athletic Association ("NCAA"), Mid-American Conference (or any other athletic conference with which the University may become affiliated) and the University. The Employee will comply with all rules and regulations relating to the conduct and administration of the men's basketball program, including recruiting rules, as now constituted or as any of the same may be amended during the term hereof. In the event that the Employee becomes aware, or has reasonable cause to believe, that violations of such constitution, bylaws, interpretations, rules or regulations may have taken place, he shall report the same promptly to the Director of Athletics of the University. The Employee agrees to adhere to, to respect and to follow the academic standards and requirements of the University in regard to the recruiting and eligibility of prospective and current student-athletes for the men's basketball program. All academic standards, requirements and policies of the University shall also be observed by the Employee and members of his staff, including assistant coaches, at all times and shall not be materially compromised or violated at any time.
- c. **Specific Duties and Responsibilities While Employed as Coach.** As of the beginning of this Employment Agreement, the duties and responsibilities assigned to the Employee in connection with the position as Head Coach of the University's men's basketball program will be contained in the Employee's official performance program. The Employee's performance program will be reviewed by the Employee and his direct supervisor on an annual basis throughout the term of this Agreement.

3.02 Employee May Be Disciplined for Violations of NCAA Rules and Regulations.

If the Employee is found to be in violation of material NCAA rules and regulations, while employed by the University, the Employee shall be subject to disciplinary action as provided in Section 6.01.b hereof. The University reasonably considers serious or deliberate NCAA material violations to be misconduct and any resulting disciplinary action will be conducted under the provisions of Article 19 of the State of New York UUP collective bargaining agreement.

3.03 Reporting Relationship

The Employee shall report to the Director of Athletics. The Director of Athletics will communicate the job duties and responsibilities as Head Coach of the men's basketball team to the Employee in the Employee's official performance program on an annual basis. Furthermore, the performance of the Employee shall be formally evaluated in writing by the Director of Athletics once each year during the length of this Agreement.

Article IV – Term of Employment

4.01 Term of Agreement

The Employee's employment hereunder shall commence May 1, 2011 and shall continue until this Agreement terminates on April 30, 2016; provided that this provision is subject to the terms and conditions of Article VI hereof concerning termination and neither party shall have any right to terminate this Agreement prior to April 30, 2016 except as provided therein.

4.02 Potential Roll-Over of Agreement Term

If, during the term of this Agreement, the University decides to discontinue the men's basketball program as a Division I NCAA program, the term of this Agreement under Section 4.01 shall automatically be extended by an additional two years, up to a maximum of five years from the date of the triggering event.

4.03 Right to Reopen

Effective May 1, 2013 the Employee has the right to reopen negotiations with respect to all terms and conditions of this Agreement and both parties agree to then negotiate in good faith with respect to same.

4.04 Annual Extension of Agreement Term

Contingent upon the Employee's satisfactory performance of his full range of responsibilities, the University agrees that the term of this Agreement may be extended for one year on May 1st of each year commencing May 1, 2012. These one-year extensions shall assure that the remaining term of the Agreement shall be not less than three and no more than five years. If the University decides TO grant a one year renewal to Employee, the Employee will be provided with at least thirty days notice. Such notice will be a letter from the Director of Athletics to the Employee.

Article V – Compensation

In consideration for the promises he has made in entering into this Employment Agreement, the Employee shall be entitled to the following forms of compensation: basic annual salary; additional annual compensation, the opportunity for discretionary salary increases; fringe benefits; opportunities to earn outside income; and opportunities to earn supplemental compensation as a form of incentive bonus. Each of these items is described below. Consistent with NCAA legislation, the Employee must notify the University's Director of Athletics and obtain prior approval for any outside income opportunity. All payments from the University are subject to normal deductions and withholding for state, local and federal taxes and for any retirement or other benefits to which the Employee is entitled or in which he participates, and are subject to the terms and conditions of Article VI hereof concerning termination of this Agreement.

5.01 Basic Annual Salary.

The guaranteed base salary paid by the University to the Employee for services and satisfactory performance of the terms and conditions of this Employment Agreement shall be at the rate of \$188,194.00 per year payable in 26 installments by the University to the Employee on the schedule established for all State employees on the administrative payroll by the NYS Department of Audit and Control. Additionally, the basic annual salary will be increased by any negotiated salary increases in accordance with the Employee's Collective Bargaining Unit.

5.01a Additional Compensation

The Head Coach will receive Additional Compensation for his television, radio, internet and services relating to sporting equipment or apparel. The employee shall receive compensation in the amount of no less than \$81,000.00 in each year of this Agreement. This amount shall be payable in 26 "also

receives” installments by the University to the Employee which shall be eligible for University retirement contributions. Additionally, the additional compensation will be increased by any negotiated salary increases in accordance with the Employee's Collective Bargaining Unit.

5.02 Discretionary Salary Increases Based on Periodic Evaluations.

During the term of this Employment Agreement, the Employee shall be eligible for discretionary salary increases (above the basic annual salary amount set forth in Section 5.01 hereof) based on the following terms and conditions:

- a. **Periodic Personal Evaluations.** The Employee's performance of his job duties and responsibilities, distinguished from his won-loss record and other incentive-driven performances, will be evaluated by his reporting superior annually on the same basis as performance evaluations are done for the other employees of the Employee's classification within the University. These evaluations also will take into account prior evaluations and the expectations and goals set for the Employee in such prior evaluations. In addition, each year that he serves as Head Coach of the University's men's basketball team, the members of that team will evaluate the Employee on his effectiveness as Head Coach of the University's men's basketball program. This will be a component of the annual personal evaluation conducted by the Employee's reporting supervisor.
- b. **Eligibility for Discretionary Salary Increase.** The Employee shall be eligible to be paid a discretionary salary increase (above the basic annual salary amount set forth in Section 5.01 hereof) in accordance with the established policy of the current State of New York UUP collective bargaining agreement.

5.03 Fringe Benefits.

During the term of this Employment Agreement, the University will provide the Employee with the fringe benefits described in this Section 5.03, and no others.

- a. **Standard University Fringe Benefits.** The Employee shall be entitled to the standard University fringe benefits appropriate to the Employee's classification as outlined in the UB Human Resources benefits package.
- b. **Expenses.** The University will reimburse the Employee for all travel and out-of-pocket expenses reasonably incurred by him for the purpose of and in connection with the performance of his duties under this Agreement, including but not limited to expenses incurred while recruiting. Such reimbursement shall be in accordance with the standard procedures of the University upon presentation to the University of vouchers or other statements itemizing such expenses in reasonable detail.
- c. **Automobile.** During the term of this agreement while Employee is performing the responsibilities of men's basketball coach, the Employee will be provided a vehicle allowance of \$400.00 per month to transact his official duties under this Agreement in accordance with New York State law and University regulations. The Employee will be responsible for all insurance, maintenance and fees associated with ownership and use of an automobile. The University will reimburse the fuel expenses incurred by the Employee in operating such vehicle while on official University business.
- d. **Season Tickets.** The University will provide the Employee with 50 tickets to each of the University's men's basketball regular and post-season home games. Ticket locations will be determined by the University and this allotment is the total complimentary allotment for the

men's basketball staff. The Employee's ticket allotment for regular and post-season away contests will be determined based on availability and at the discretion of the Athletic Director.

5.04 Conditional Retention Incentive – 457(f) Plan

- a. As of September 1, 2004, the University established on its books a deferred compensation account (the "Account") for the purpose of measuring its obligation to pay Employee the amounts described herein. This Agreement is intended to be a deferred compensation plan described in section 457(f) of the Internal Revenue Code of 1986, as amended, and shall be interpreted and administered accordingly.
- b. As of January 1, 2012 and on each January 1 thereafter during the term of this Agreement, provided that Employee remains employed as head coach of the men's basketball team of the University as of such January 1, the University shall credit \$10,000.00 per year to the Account on Employee's behalf.
- c. The amounts equal to the credits described in Section 5.04(b) above will be invested by the University or a University related entity in such mutual funds or other measuring investments as the University and Employee agree upon. The allocation of assets among such measuring investments will be made pursuant to Employee's written election from time to time. The University or the University related entity will be the sole owner of these measuring investments, which at all times will remain part of the University's or University related entity's general assets. The measuring investments will be used for the sole purpose of determining the amount of the University's liability for deferred compensation under this Agreement.
- d. From time to time the University will adjust the Account to reflect the credits described in Section 5.04(b) above and the measuring investment experience of such credits pursuant to Section 5.04(c) above. The Account will continue to be so adjusted until the entire amount due under this Agreement has been paid to Employee or his beneficiary or has been forfeited. Upon full payment (or forfeiture) of benefits, the balance of the Account will be reduced to zero and no further amounts will be due under this Section.
- e. If Employee remains employed as head coach of the men's basketball team of the University through October 30, 2011, his interest in the Account will become fully vested and non-forfeitable, and the entire balance will be distributed to him as soon as practicable thereafter. If Employee remains employed as head coach of the men's basketball team of the University thereafter, his interest in the Account will become fully vested and non-forfeitable as of April 30, 2015, and every two-year anniversary thereafter (e.g., April 20, 2017) for so long as he is so employed, and the entire balance will be distributed to him as soon as practicable thereafter.
- f. If Employee's employment as head coach of the men's basketball team is terminated by the University pursuant to Section 6.01(d) or if his employment terminates pursuant to Section 6.01(a) on account of his total and permanent disability or death his interest in the Account shall become fully vested and non-forfeitable. Within 90 days of such termination of employment, the entire balance of the Account shall be distributed in a lump sum payment to Employee, or, in the case of his death, to such beneficiary as he may designate in writing to the University. If the Employee fails to designate a beneficiary, or if he is not survived by his designated beneficiary, the Account will be distributed to his surviving spouse, or, if none, to his estate.
- g. If, prior to the vesting dates described in Section 5.04.e, Coach Witherspoon voluntarily resigns his position as head coach of the men's basketball team or is terminated by the University

pursuant to Section 6.01(b) for "cause," he will forfeit his entire interest in the Account established pursuant to this Agreement.

- h. Any amount payable under this Section will be reduced by withholding taxes and other legally required withholdings.
- j. This Section will not obligate the University to keep Employee in its employ, and will not obligate Employee to continue his employment with the University, nor does this Section change the terms and conditions of Employee's employment.
- k. Employee's rights under this Section will be solely those of an unsecured general creditor of the University.
- l. The benefits that Employee or his beneficiaries may expect to receive under this Section will not be alienable by assignment or any other method and may not be taken by Employee's (or his beneficiaries') creditors by any process whatsoever, and any attempt to cause such interest to be so subject will not be recognized, except to the extent required by law

5.05 Opportunities to Earn Outside Income.

While the Employee is representing the University as Head Coach of its intercollegiate men's basketball team, he shall have the opportunity to earn outside income as a result thereof, but only upon the following terms and conditions.

- a. **General Provisions Concerning Outside Income.** The following general terms and conditions shall apply to each case in which the Employee seeks to or makes arrangements to earn outside income as a result of his being Head Coach of the University's men's basketball team.
 - i. Employee's Professional Obligation. All outside activities shall be conducted in compliance with Article XI, Title H, §4 which states that "no employee may engage in other employment which interferes with the performance of the employee's professional obligation."
 - ii. NCAA Rules Control. In no event shall the Employee accept or receive directly or indirectly any monies, benefit or any other gratuity whatsoever from any person, corporation, University booster club or alumni association or other benefactor if such action would violate NCAA legislation or the constitution, bylaws, rules and regulations or interpretations thereof of the NCAA and the MAC as now or hereafter enacted. Changes of such legislation, constitution, bylaws, rules and regulations or interpretations thereof shall automatically apply to this Agreement without the necessity of a written modification.
 - iii. Prior University Approval Is Required. The Employee shall obtain the advance written approval of the Director of Athletics or the University President's designee before entering into such agreements, which approval shall not be unreasonably withheld. All such agreements must be in writing.
 - iv. University Is Not Liable. Such activities are independent of the Employee's University employment, and the University shall have no responsibility or liability for any claims arising therefrom. The Employee agrees to insert a clause in each outside income agreement stating that: "Neither the University nor the State of New York are liable for any of the Employee's obligations under this agreement and that the Employee is not acting on behalf of the University or the State of New York".
 - v. Employee Retains All Revenues. Except for the limitations on such outside compensation as established by or set forth in this Agreement and in the constitution, bylaws, rules and

- regulations and interpretations thereof of the University, the MAC and the NCAA, the Employee shall be entitled to retain all revenue generated by such outside activities.
- vi. In addition to NCAA Rules, Public Officers Law sections 73 and 74 govern a New York State employee's ability to earn outside income and impose statutory reporting requirements.
- b. **Commercial Endorsements.** Subject to the provisions of 5.05a hereof, the University and the Employee agree that the Employee may undertake commercial endorsements of products and services in which he identifies himself as the Head Coach of the University's men's basketball team during such time as the Employee is employed by the University, but that he may not otherwise associate the University's name with an endorsement and provided that all such endorsements must cease at the termination of this Agreement.
- c. **On-Campus Summer Camp**
The Employee shall have the opportunity to use University facilities in connection with a summer youth basketball camp run by the Employee and using his name for up to two (2) weeks each summer, provided that the University is reimbursed by the Employee for its actual and overhead expenses incurred, which may include costs of insurance, in making the facilities available, with the understanding that the two (2) week period shall be designated by the University upon consideration of the preferences of the Employee, upon such conditions as may be required from time to time by the University's administration. Currently, the fee for use of the University's facilities during normal business hours is \$24.00 per registered camper/per week. Said fee is subject to review and revision annually by the University. All financial transactions associated with summer camp(s) and/or instructional clinics as permitted under the terms of this agreement must be processed through the Athletics Business Office and the University at Buffalo Foundation. The employee may receive the profits made by this enterprise as additional compensation processed through the Athletics Business Office and the UB Foundation. The Employee may request the use of such facilities for more than two (2) weeks and the University may grant such request in its discretion.
- d. **Shoe, Apparel and Equipment Contracts**
Subject to the provisions of section 5.05.a hereof, the Employee shall be entitled to retain monies or benefits specifically articulated for the men's basketball program in agreements between shoe, apparel or equipment manufactures or sellers and the University within the term of this Agreement. As required by these agreements, the men's basketball team shall wear its shoes, apparel or equipment during practice and/or competition and the Employee shall wear, promote, endorse or consult with the manufacturer or seller concerning the design and/or marketing of such shoes, apparel or equipment, provided such agreements are in writing, and do not extend beyond the term of this Agreement.
- e. **Disclosure of Outside Income.** The Employee shall report annually, in accordance with NCAA Bylaw 11.2.2, and in writing to the President of the University through the Director of Athletics, on or before July 1 of each year, all athletically-related income from sources outside the University including, but not limited to, income from annuities, sports camps, housing benefits, complimentary ticket sales, country club memberships, television and radio programs and equipment manufacturers or sellers, and the University shall have reasonable access to all records of the Employee necessary to verify such report.

5. 06 Supplemental Compensation Through Incentives.

Supplemental compensation paid to the Employee by the University for incentives achieved during any period of this Agreement shall only occur with the written consent of the Director of Athletics.

All supplemental compensation earned through the achievement of the established standards contained in section 5.06 herein, will be paid to the employee within 90 days following the completion of the men's basketball team's competitive season. Such supplemental compensation will not be added to the Employee's basic annual salary.

- a. **Win-Loss Record in the MAC.** During his employment as Head Coach of the University's men's basketball team, the Employee shall have the opportunity to receive the following supplemental compensation in consideration of his efforts in contributing to the exceptional performance of the men's basketball team. The Employee shall receive supplemental compensation in the amount of \$1000.00 per victory for each victory during the regular season MAC schedule that is more than half of the total wins available for that regular season MAC schedule and each assistant coach shall receive an additional \$250. For example, if there are 18 games in MAC regular season competition (i.e., 16 total wins available), 9 wins would warrant a \$1000.00 bonus, 10 wins would warrant a \$2,000.00 bonus, and so forth.
- b. **Victories Over Programs Ranked in the Top 25.** During his employment as Head Coach of the University's men's basketball team, the Employee shall have the opportunity to receive the following supplemental compensation in consideration of his efforts in contributing to the exceptional performance of the men's basketball team and the team's ability to achieve victories over programs with an RPI ranking in the top 25. In any year within the term of this Agreement that the University's men's basketball team shall win a regular season contest against a team ranked in the top 25 of the College RPI.com ranking at the end of week in which the game is played, the Employee shall receive supplemental compensation in the amount of \$2000.00 and each assistant coach shall receive an additional \$500.
- c. **UB Basketball Team Ranked in Top 25.** During his employment as Head Coach of the University's basketball team, the Employee and his assistant coaches shall have the opportunity to receive the following supplemental compensation in consideration of his efforts in contributing to the exceptional performance of the basketball team and the team's ability to receive a Top 25 ranking by ESPN MBB Coaches Poll or AP Top 25 MBB Poll. In any year within the term of this Agreement that the University's basketball team receives a Top 25 ranking in either poll listed above, the Employee shall receive \$5,000 and his assistant coaches shall receive supplemental compensation in the amount of \$1,000.
- d. **Regular Season East Division Conference Championship.** During his employment as Head Coach of the University's men's basketball team, the Employee shall have the opportunity to receive the following supplemental compensation in consideration of his efforts in contributing to the exceptional performance of the men's basketball team and the team's ability to have the best record (or tie for best record) in the East Division at the conclusion of the MAC Conference Regular Season. In any year within the term of this Agreement that the University's men's basketball team shall be the winner of a regular season east division conference championship, the Employee and each of his assistants shall receive supplemental compensation in the amount of 1/24 of his base salary.
- e. **Regular Season Conference Championship.** During his employment as Head Coach of the University's men's basketball team, the Employee shall have the opportunity to receive the following supplemental compensation in consideration of his efforts in contributing to the exceptional performance of the men's basketball team and the team's ability to have the best record (or tie for best record) overall in the MAC Conference at the conclusion of the Regular Season. In any year within the term of this Agreement that the University's men's basketball team

shall be the winner of a regular season conference championship, the Employee and each of his assistants shall receive supplemental compensation in the amount of 1/12 of his base salary.

- f. **Home Game Attendance.** During his employment as Head Coach of the University's men's basketball team, the Employee shall have the opportunity to receive the following supplemental compensation in consideration of his efforts in contributing to the exceptional performance of the men's basketball team and the team's ability to increase the attendance of home contests. Accordingly, in any year within the term of this Agreement that the average home game paid attendance for the University's men's basketball team's home contests exceeds 2,500, the Employee shall receive supplemental compensation in the following non-cumulative amounts:
- 2500 – 2999 tickets the Employee shall receive \$2000.00 in supplemental compensation.
 - 3000 – 3999 tickets the Employee shall receive \$3000.00 in supplemental compensation.
 - 4000 – 5000 tickets the Employee shall receive \$4000.00 in supplemental compensation.
 - Over 5000 tickets the Employee shall receive \$5000.00 in supplemental compensation.
- g. **Mid-American Conference (MAC) Post-Season Tournament.** During his employment as Head Coach of the University's men's basketball team, the Employee shall have the opportunity to receive the following supplemental compensation in consideration of his efforts in contributing to the exceptional performance of the men's basketball team and the team's ability to win the MAC Post-Season Tournament. In any year within the term of this Agreement that the University's men's basketball team shall win the MAC Post-Season Tournament, the Employee and each of his assistants shall receive supplemental compensation in the amount of equivalent to 1/12 of their base salary for a MAC Tournament championship.
- h. **National Collegiate Athletic Association (NCAA) Tournament Appearances.** During his employment as Head Coach of the University's men's basketball team, the Employee and each of his assistants shall have the opportunity to receive the following supplemental compensation in consideration of his efforts in contributing to the exceptional performance of the men's basketball team and the team's ability to receive an automatic or at-large bid to the NCAA Tournament and win NCAA Tournament games. In any year within the term of this Agreement that the University's men's basketball team shall receive an automatic or at-large bid to the NCAA Tournament, the Employee and each of his assistants shall receive supplemental compensation in the amount of:
- i. For NCAA Tournament appearance 1/12 of base salary
 - ii. For NCAA "Sweet 16" appearance 1/12 of base salary
 - iii. For NCAA Final Four appearance 1/6 of base salary
 - iv. NCAA Championship 1/1 of base salary
- i. **Post-Season Men's National Invitation Tournament (NIT).** During his employment as Head Coach of the University's men's basketball team, the Employee shall have the opportunity to receive the following supplemental compensation in consideration of his efforts in contributing to the exceptional performance of the men's basketball team and the team's ability to receive a bid to the Post-Season NIT. In any year within the term of this Agreement that the University's men's basketball team shall receive a bid to the Post-Season NIT, the Employee and each of his assistants shall receive supplemental compensation in the amount of 1/24 of his base salary. For

an NIT Championship the Employee and each of his assistants shall receive supplemental compensation in the amount of 1/12 of his base salary.

- j. **Professional Recognition.** During his employment as Head Coach of the University's men's basketball team, the Employee shall have the opportunity to receive the following supplemental compensation in consideration of his efforts in being recognized as the Coach of the Year from the following organizations:

Mid-American Conference Coach of the Year	\$10,000.00
NABC District Coach of the Year	\$10,000.00
NABC National Coach of the Year	\$25,000.00

- j. **Graduation of Scholarship Players.** During his employment as Head Coach of the University's men's basketball team, the Employee shall have the opportunity to receive the following supplemental compensation in consideration of his efforts in contributing to the academic performance of the men's basketball team's student-athletes on scholarship and the scholarship student-athletes ability to graduate. In any year within the term of this Agreement that at least 75% of the men's basketball student-athletes from an entering class of three or more graduate, the Employee shall receive supplemental compensation in the amount of \$750.00. In any year within the term of this Agreement that 100% of the men's basketball student athletes from an entering class of three or more graduate, the Employee shall receive supplemental compensation in the amount of \$1500.00. For purposes of this incentive, the entering class is defined as scholarship student-athletes who entered the University during the same academic year.
- k. **Grade Attainment of Student-Athletes.** During his employment as Head Coach of the University's men's basketball team, the Employee shall have the opportunity to receive the following supplemental compensation in consideration of his efforts in contributing to the academic performance of the men's basketball team. In any year within the term of this Agreement that the student-athletes on the University's men's basketball official team roster achieve a cumulative semester grade point average of 2.75 or better at the end of any academic semester, the Employee shall receive supplemental compensation in the amount of \$1,000.00.
- l. **APR.** During his employment as Head Coach of the University's basketball team, the Employee shall have the opportunity to receive the following supplemental compensation in consideration of his efforts in contributing to the APR of the basketball team. In any year within the term of this agreement that the basketball program earns an APR score within the top 10% of all NCAA basketball programs, the Employee shall receive supplemental compensation in the amount of \$1,000.
- m. **Most Improved Team GPA.** In any year within the term of this Agreement that the student-athletes on the University's official NCAA Squad List for the Men's Basketball team achieve the most improved accumulative grade point average of all the University's varsity teams during any regular academic semester, the Employee shall receive supplemental compensation in the amount of \$500.

Article VI – Termination

6.01 Termination by University

There are certain limited circumstances that may make it appropriate for the University to terminate this Agreement prior to the completion of its entire term. This action, if deemed necessary will be

governed by Article 19 of the State of New York UUP collective bargaining agreement and/or Article XI of the Policies of the Board of Trustees.

- a. **Automatic Termination upon Death or Disability of Employee.** This Employment Agreement shall terminate automatically if the Employee dies, or if the Employee is discontinued from service in accordance with the provisions of the State University Group Disability Insurance Program. If this Agreement is terminated pursuant to this section because of the Employee's death, the Employee's basic annual salary and all other benefits shall terminate in accordance with the rules of the NYS Department of Audit and Control.
- b. **Termination through Formal Discipline.** The University shall have the right to seek termination of the Employee's employment prior to its normal expiration on March 31, 2011. Such formal disciplinary action shall be in accordance with Article 19 of the State of New York - UUP collective bargaining agreement.
- c. **University's Obligations Upon Termination for Cause.** In the event the Employment Agreement is terminated for material disciplinary reasons, all obligations of the University to make payments for supplemental compensation and basic annual compensation shall cease immediately. Notwithstanding the foregoing, the Employee shall be entitled to all compensation earned but unpaid as of the date of such termination. The preceding sentence shall not apply to compensation earned pursuant to Section 5.04(b). In no case shall the University be liable to the Employee for his loss of any collateral business opportunities or any other benefits, perquisites or income resulting from activities such as, but not limited to, camps, clinics, media appearances, apparel or shoe contracts, consulting relationships or from any other sources.
- d. **Terminations before End Date.** Pursuant to Article XI of the Policies of the Board of Trustees, the University may elect to terminate this employment agreement prior to its normal expiration on April 30, 2016.
- e. **Compensation upon Termination before End Date by University.**
If the University terminates this employment agreement without cause prior to its normal expiration on April 30, 2016, the University's sole obligation shall be to continue the Employee's Basic Annual Salary as defined in section 5.01 for a period not to exceed the time remaining on the employment agreement. Notwithstanding the foregoing, the Employee shall be entitled to all compensation earned but unpaid as of the date of such termination. The Employee agrees that his continued receipt of his Basic Annual Salary, in the period after any termination by the University, is contingent upon his making reasonable and diligent efforts to obtain new employment in a collegiate or professional coaching position. The Employee further agrees that should he find such new employment, the University responsibility under this provision shall be to pay him the difference between the annual salary of his new position and his University Basic Annual Salary.

6.02 Termination By Employee.

- a. **Permission to Contact**
If the employee is seeking employment at another institution of higher education or a professional basketball organization it is agreed that such institution or organization shall first request permission from the University's Director of Athletics to speak with the Employee. This permission will not be unreasonably withheld.

b. Liquidated Damages.

In the event that the Employee terminates the agreement prior to April 30, 2014 to assume a collegiate or professional coaching position, the Employee will pay the University \$100,000 in liquidated damages. Should the employee terminate this agreement subsequent to April 30, 2014 to assume a collegiate or professional coaching position, the Employee will pay the University \$75,000 in liquidated damages.

- c. End of Compensation.** In the event the Employee terminates this Employment Agreement, or it is terminated for disciplinary reasons, all obligations of the University to make payments for supplemental compensation and basic annual compensation shall cease immediately. Notwithstanding the foregoing, the Employee shall be entitled to all compensation earned but unpaid as of the date of such termination. The preceding sentence shall not apply to compensation earned pursuant to Section 5.04(b). In no case shall the University be liable to the Employee for his loss of any collateral business opportunities or any other benefits, perquisites or income resulting from activities such as, but not limited to, camps, clinics, media appearances, apparel or shoe contracts, consulting relationships or from any other sources.

Article VII – University’s Educational Purpose and Support of Program

7.01 University's Educational Purpose is Primary.

The parties agree that, although this Employment Agreement is sports-related, the primary purpose of the University and, accordingly, of all its legal arrangements, including this Employment Agreement, is educational. Thus, the educational purpose of the University shall have priority in the various provisions of this Agreement. Examples of how this purpose is to be applied are set forth below.

- a. It is recognized by the parties that a student-athlete may be declared not eligible for competition for academic reasons, because the University believes he would not be an appropriate representative of the University, as a disciplinary sanction under the University’s student code, or because the University believes that he is not eligible according to the rules for athletic competition specified by the MAC or the NCAA or for similar reasons. In no event shall such an action by the University be considered a breach of this agreement.
- b. In furtherance of its educational purpose, the University hereby agrees to supply the men’s basketball program with the services of an academic counselor, employed by the University, who shall be available to all student-athletes in the men’s basketball program for tutoring, academic assistance and related matters.

Article VIII – Miscellaneous

8.01 Employee Not Entitled to Permanent Appointment

The parties hereby confirm their understanding that the Employee’s employment under this Agreement in the position of Head Coach of the University’s men’s basketball team is not a tenure-track position, and will not lead to permanent appointment.

8.02 Scheduling

While it is the intent of the parties to this Agreement that, during each year that the Employee is the Head Coach of the University’s men’s basketball team, the Employee shall be involved to the greatest extent possible in arranging each season’s men’s basketball schedule for the University’s men’s basketball program and any rescheduling of games involving the University’s men’s basketball program, the University’s Director of Athletics, or the Director’s designee will have final authority and responsibility with regard to the men’s basketball team’s schedule and shall use their best efforts to

ensure that the team's schedule allows the men's basketball program to meet and maintain the University's objectives in all intercollegiate athletics.

8.03 Arbitration and Other Remedies.

The parties agree that disputes between them arising out of this Employment Agreement concerning the provisions dealing with supplemental compensation and outside income shall be resolved by submission of such dispute to arbitration according to the rules of the American Arbitration Association. The parties shall pay their own costs and expenses as well as an equal share of the costs of the Arbitrator. The Arbitrator shall be a member of the National Academy of Arbitrators and only one arbitrator shall be required. The decision of the Arbitrator shall be final and binding on both the Employee and the University.

8.04 Requirement of University Signature and Approval

It is understood and agreed that this Agreement shall not be effective until signed by the University President.

8.05 Choice of Law

It is the intent of the parties hereto that this Agreement shall be governed by and construed in accordance with the laws of the State of New York, and the laws of the State of New York shall govern the validity, performance and enforcement of this Agreement.

8.06 Compensation Conditional

The payment of all forms of compensation set forth in this Agreement is subject to the approval of the annual operating budget by the University's governing body, and the sufficiency of appropriations or the availability of sufficient funds within the Division of Athletics' budget to pay such compensation.

8.07 University Retains All Materials and Records

All materials or articles of information, including, without limitation, personnel records, recruiting records, team information, films, statistics or any other material or data, furnished to the Employee by the University or developed by the Employee on behalf of the University or at the University's direction or for the University's use or otherwise in connection with the Employee's employment hereunder are and shall remain the sole and confidential property of the University. Within five (5) days of the expiration of the term of this agreement or its earlier termination as provided herein, the Employee shall immediately cause any such materials in his possession or control to be delivered to the University.

8.08 Government Immunity Not Waived

It is expressly agreed and understood between the parties that the University is an agency of the State of New York and that nothing contained herein shall be construed to constitute a waiver or relinquishment by the University of its rights to claim such exemptions, privileges and immunities as may be provided by law.

8.09 Employee Will Not Contact University Council Members, Officers or Trustees.


Although it is understood that from time to time the Employee may have social contact with the University Council Members, University Officers (Including the President, Provost and Vice Presidents) and members of the University's Board of Trustees at fund-raisers, media events, receptions or other social functions, the Employee agrees to refrain from contacting directly any council member, officer or trustee of the University or otherwise engage in any direct communication with them about items relating to the men's basketball program or administration of the University's

athletic program. All discussions of items of concern or problems with the men's basketball program and other athletic programs shall be handled in accordance with established administrative procedures.

8.10 Severability

Should any paragraph or portion of this agreement be found illegal or unenforceable to any extent or degree by any court of competent jurisdiction, this shall not affect the validity and enforceability of the remaining paragraphs hereof.

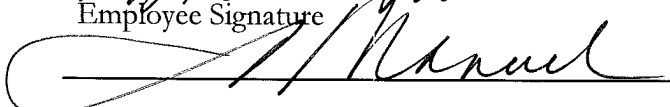
IN WITNESS WHEREOF, the parties hereto have executed this Employment Agreement or caused this Agreement to be executed the day and year first written above, intending to be legally bound by its provision.



Employee Signature

9/23/11

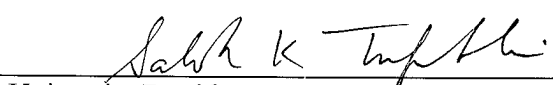
Date



Director of Athletics

9.23.2011

Date



University President

9/29/11

Date