

## **AMENDED AND RESTATED EMPLOYMENT AGREEMENT**

This employment agreement ("Agreement") is made effective as of January 1, 2025 (the "Effective Date") by and between Iowa State University ("University") and T.J. Otzelberger, ("Coach" or "Otzelberger") (collectively "the Parties"). This Agreement modifies and supersedes all other agreements between the Parties including the Employment Agreement dated March 19, 2021, Amendment 1 on May 6, 2022, and Amendment 2 on April 10, 2023. In consideration of the mutual covenants and promises of the Parties hereto, the sufficiency of which the Parties hereby acknowledge, the Parties agree as follows:

### **I. TERM OF EMPLOYMENT**

Coach's term of employment shall begin on the Effective Date and will continue through June 30, 2032, subject to the terms provided herein (the "Term"). Throughout the Term, Coach shall use his best efforts to carry out the duties set forth herein as Head Coach of the University's Men's Basketball team for the exclusive benefit of the University. Each period from July 1 – June 30 during the Term shall be referred to as a "Contract Year

### **II. COMPENSATION**

1. During the Term of the Agreement, Coach will receive base compensation from the University ("Base Compensation") for services performed as Men's Head Basketball Coach at the annual rate of \$500,000, payable in monthly installments.

2. Coach will also receive additional guaranteed compensation during the Term of the Agreement ("Additional Compensation") for the secondary services outlined in Paragraphs II(2)(a) and (2)(b) at the annual rate of \$3,500,000, payable in monthly installments. For purposes of this Agreement, the Base Compensation and Additional Compensation shall be referred to in the aggregate as "Total Compensation."

Payments of Additional Compensation shall be made on a pro-rata basis at the end of each month. Coach specifically understands that the Additional Compensation is separate from Coach's Base Compensation, and therefore is not subject to any additional benefits such as retirement contributions.

In exchange for Additional Compensation:

(a) Coach agrees to participate in the public relations and endorsement activities set forth herein ("Activities"), and in weekly coach's television and radio shows as reasonably designated by the University and approved by the Director of Intercollegiate Athletics ("Director"). For purposes of this Agreement, the Activities shall include, but not be limited to: making public appearances on behalf of certain University sponsors, speaking at Cyclone Club and fund raising events, facilitating and maintaining important University-corporate relationships, speaking at University related sports and service-oriented activities, and participating in various University or College advertisement, endorsement, or promotional initiatives. Such appearances and speaking engagements shall be reasonably limited and

coordinated, and also shall not interfere with Coach's primary duties and schedule as the head men's basketball coach.

(b) The University will enter into or arrange for separate contracts with sports equipment and apparel firms providing for Coach's endorsement and appearances in relation to the firms' products. Coach shall reasonably cooperate and assist in securing such contracts. Coach agrees to use such equipment and apparel in practices, camps and games in accordance with the terms of such separate contracts (unless required otherwise by NCAA or the Big 12 Conference rules, or Coach reasonably determines that use of such equipment or apparel may jeopardize the health or safety of the University's student-athletes or camp participants, as the case may be). Coach agrees that any equipment, basketballs, clothing, shoes or paraphernalia (collectively, "Equipment") provided by the firms shall be distributed by Coach for use by the University's men's basketball program ("Men's Basketball Program"), student-athletes, and camp participants, and such property shall not be considered the property of Coach; provided that, Equipment distributed to Coach for his personal use under contracts for sponsorship and endorsement shall be assigned to Coach so that the Parties can meet the requirements of such contracts.

In case the University elects not to continue programs under Paragraphs II(2)(a) and 2(b) which require Coach's duties, the University agrees Coach's Additional Compensation shall not be reduced as a result of the University's election and Coach will be paid as if all such duties had been fully performed.

3. In addition to the above Total Compensation, the University guarantees and agrees to pay the following financial performance incentives ("Performance Incentives") for the corresponding achievements set forth below:

(a) Coach shall receive the highest applicable amount based on the Team's Big 12 Conference regular season finish beginning with the 2024-2025 men's basketball season:

(i) \$250,000 if the Team is the number one seed at the conclusion of the Big 12 Conference regular season; or

(ii) \$100,000 if the Team is the number two seed at the conclusion of the Big 12 Conference regular season; or

(iii) \$50,000 if the Team is the number three seed at the conclusion of the Big 12 Conference regular season; or

(iv) \$25,000 if the Team is the number four seed at the conclusion of the Big 12 Conference regular season.

(b) Coach shall receive \$100,000 if the Team is the Big 12 Conference Tournament Champion beginning with the 2024-2025 men's basketball season.

(c) Coach shall receive \$50,000 if the Team does not win the Big 12 Conference

Tournament Championship but does receive an at large selection to the NCAA Tournament beginning with the 2024-2025 men's basketball season.

(d) Coach shall receive the highest applicable amount based on the Team's NCAA Tournament finish beginning with the 2024-2025 men's basketball season:

\$50,000 for every win in the NCAA Tournament.

(e) Coach shall receive \$25,000 if Coach is selected as the Big 12 Conference Coach of the Year (including sharing of any such honor) as awarded by the Big 12 Conference.

(f) Coach shall receive \$50,000 if Coach is selected as the National Coach of the Year (including sharing of any such honor) as awarded by the Associated Press, USBWA, NABC or Naismith organization.

4. Except as specifically provided in this Agreement, the Parties agree that Coach's Total Compensation (as defined below) and Performance Incentives shall be subject to the University's usual and customary payroll deductions in accordance with University regulations and practices for similar employees. The Performance Incentives shall be paid by the University within sixty (60) days of the end of the season in which they are earned. Coach shall be entitled to participate in University's group medical insurance program, retirement program, voluntary payroll deduction program, vacation time, sick leave, and all other group employment benefits, in accordance with University plans, regulations, and practices applicable to the University's Professional and Scientific ("P&S") employees. Notwithstanding the above, upon termination of employment for any reason, Coach agrees that the University shall not make any payment on account of accrued but unused vacation time.

5. In addition to Coach's annual compensation and benefits as described above, Coach shall be provided with use of one (1) automobile representative of a head basketball coach in the Big 12 Conference, as part of the Department's car program, which is provided to facilitate Coach in carrying out his duties hereunder.

6. The Parties entered into a Supplemental Death Benefit Agreement effective July 1, 2021 (the "Loan Agreement"), a copy of which is attached hereto as Exhibit A (capitalized terms used in this Paragraph II(2)(b)(6) shall have the meanings given to them in the Loan Agreement). Coach acknowledges that the University has made eight (8) semi-annual Premium Advances aggregating \$800,000 (the "Liability") up to the Effective Date. University and Coach acknowledge and agree that no further Premium Advance payments shall be made by the University pursuant to the Loan Agreement. Coach acknowledges that the University has fulfilled all of its obligations under the Loan Agreement, and nothing herein affects the University's rights to repayment of the Liability as set forth in the Loan Agreement and Note executed and delivered to the University pursuant to Article II.D of the Loan Agreement, or its rights under the Collateral Assignment executed and delivered to the University pursuant to Article III of the Loan Agreement. The Parties further agree to negotiate in good faith with each other regarding the ultimate disposition of the Loan Agreement and shall use all reasonable best efforts to take, or cause to be taken, all actions necessary or expedient to assist and cooperate with each other to carry out the intent and purposes of any mutually agreed upon disposition of the Loan Agreement.

### **III. EMPLOYMENT DUTIES & STANDARDS OF PERFORMANCE OF COACH**

1. In furthering his responsibilities to the University as defined in this Agreement, Coach agrees to provide a dedicated effort in management and oversight of the Men's Basketball Program, and to use reasonably diligent efforts in seeking to comply with all rules, regulations, policies, and decisions established or issued by the Board of Regents, State of Iowa (the "Board of Regents") or the University. University agrees to exercise reasonably diligent efforts to inform Coach of the applicable policies of the Board of Regents and the University.

2. Coach shall conduct such travel as is necessary or customary to carry out his duties as head men's basketball coach, and shall be entitled to reimbursement for all transportation costs and expenses incurred pursuant to his performance of duties and services under this Agreement, consistent with University regulations and within the budget allowed.

3. Coach shall use reasonably diligent efforts in seeking to adhere to the academic standards and requirements of the University in regard to the recruiting and eligibility of prospective and current student-athletes. Coach agrees to use reasonable efforts to supervise the Men's Basketball Staff (as defined below) with the goal that the Men's Basketball Staff understand it is their duty to adhere to the academic standards and requirements of the University in regard to the recruiting and eligibility of prospective and current student-athletes. For purposes of this Agreement, the persons supervised by Coach, collectively called "Men's Basketball Staff," are defined as the assistant coaches; all Men's Basketball administrative, recruiting, strength and conditioning and operational support staff; and the Men's Basketball graduate assistants, volunteers, interns and student managers.

4. Coach shall carry out the general responsibilities for operation of the Men's Basketball Program, including the budget and the recruiting, training, supervision, and evaluation of student-athletes and Men's Basketball Staff. Coach shall be responsible for evaluating, recruiting, training, and coaching student-athletes participating in the Men's Basketball Program. Coach shall use reasonable judgment in fairly administering disciplinary regulations, as they apply to student-athletes in the Men's Basketball Program. Coach shall use reasonable judgment with respect to protecting the health and welfare of the student-athletes under his supervision.

5. Coach shall use reasonably diligent efforts in seeking to adhere to the constitution, bylaws, rules, regulations, and policies, and the official interpretations thereof, of the Big 12 Conference or its successor conference ("the Big 12 Conference") and the National Collegiate Athletic Association ("NCAA") as now constituted or as the same may be amended during the Term, provided Coach has received reasonable prior notice of all such items, including without limitation as set forth in this subparagraph. Coach shall take reasonable steps in seeking to assure that the Men's Basketball Staff follows the procedures adopted by the University's Department of Intercollegiate Athletics ("the Department") to assure compliance with NCAA rules. The University, as through the Department, agrees to use reasonable diligence in informing Coach and his Staff of the Big 12 Conference and NCAA constitution, bylaws, rules, regulations,

policies and official interpretations on an annual basis.

6. Coach shall directly report to the Director. Coach's performance shall be annually reviewed by the Director in writing to take place within sixty (60) business days of the conclusion of each Contract Year. Performance review will be based on several factors, including, but not limited to the factors listed below.

- Meeting and complying with the requirements of this Agreement and any other agreements related hereto;
- Compliance with NCAA, Big 12 Conference, and University rules and regulations;
- Satisfactory athletic performance of the Team, including, but not limited to, the overall win-loss record and win-loss record within the Big 12 Conference;
- Satisfactory academic performance of men's basketball student-athletes including, but not limited to, the GPA and APR scores for the men's basketball team and the number of student-athletes earning scholar athlete status (above a 3.0 GPA);
- Successful management of individuals associated with the Men's Basketball Program, including the on and off-field behavior of the players and the Men's Basketball Staff;
- Responsible and effective budget management; and
- Positive representation of the University and the University's athletic programs in private and public forums.

7. The University agrees to provide dedicated effort and to act in a reasonably diligent manner so as to support Coach in carrying out his responsibilities as head men's basketball coach.

#### **IV. OUTSIDE INCOME**

Coach is authorized to receive compensation for activities that are not a part of his University responsibilities and that are appropriate to the promotion of the positive values of the athletic program. The following general terms and conditions shall apply to each case in which Coach seeks to or makes arrangements to earn outside income as a result of his being the University's head men's basketball coach:

1. Coach must have prior approval from the Director for engaging in activity which results in athletically related income and benefits from outside sources of \$1,000 or greater. Such approval shall not be arbitrarily, capriciously or otherwise unreasonably delayed, conditioned or

withheld. If Coach requests approval from the Director for engaging in an activity, and no denial of approval has been issued within three (3) business days, the activity shall be deemed to be approved. In each case where approval is denied, Coach shall be given a statement of the reasons in writing.

2. In no case shall outside activities materially conflict with the performance of Coach's duties under this Agreement. Activities which have been approved, and are conducted as disclosed, shall not be deemed to materially conflict with Coach's duties. Upon the request of the Director, Coach shall update the Director regarding his marketing, speaking, charitable, public relations, and endorsement activities that are not a part of his University responsibilities.

3. The University shall have no responsibility or liability for any claims arising from Coach's outside activities unless such liability arises from the negligent or other conduct of the University.

4. During the time he remains as head men's basketball coach, Coach is authorized to conduct athletic camps upon the University's campus, and retain the net proceeds thereof, provided such camps are provided in compliance with University and Athletic Department rules, regulations, and procedures. The University agrees to use reasonable diligence in informing Coach and the Men's Basketball Staff of University and Department rules, regulations, and procedures with respect to such camps.

5. Coach agrees to disclose all sources of outside income if required by and in conformity with University and NCAA rules and procedures. Additionally, Coach will complete an annual conflict of interest form in accordance with University policies and procedures.

6. In undertaking such outside activities, Coach shall adhere to NCAA rules and Paragraph VII(2) of this Agreement.

## **V. TERMINATION BY UNIVERSITY**

1. Basis for Termination for Cause or Other Disciplinary Action. The University shall have the right to terminate this Agreement or to exercise other disciplinary or corrective action for Just Cause. As used herein, the term "Just Cause" shall solely be defined as the following acts committed by Coach during the Term of this Agreement:

(a) A serious or intentional breach of his material duties of this Agreement or a serious and continuous refusal to perform such duties.

(b) Any conduct by Coach resulting in a formal filing of criminal charges alleging a felony or crime of moral turpitude (excluding, without limitation, minor offenses unrelated to this Agreement, such as traffic or parking violations or like matters) which has a materially injurious impact on the University and/or its athletic program.

(c) Failure of Coach to reasonably address a serious or intentional violation of any law, rule, regulation, constitutional provision, bylaw, and/or the official interpretations thereof,

of the University, the Board of Regents, the Big 12 Conference, or the NCAA (but specifically excluding minor University rules, laws, regulations, provisions, and policies) by a member of the Men's Basketball Staff, of which violation Coach had prior actual knowledge to or in the exercise of reasonable diligence should have known about; *provided, however*, that this subparagraph shall not apply if Coach has consulted with, and received the concurrence of, the Director or the Director of Compliance on a course of action to deal with the violation (in the event Coach consults with the Director or the Director of Compliance, said director shall, with reasonable promptness appropriate to the circumstances, provide Coach with a recommended course of action);

(d) Prolonged absence from, and/or nonperformance of, his duties, without the consent of the Director, excluding any such absence and non-performance due to a cause governed by Paragraph V(8) below.

(e) Coach engages in:

(i) Misconduct that constitutes a major violation of law and involves moral turpitude (*such as* fraud, embezzlement, theft, assault, illegal use, sale or distribution of drugs, sexual harassment, or racial discrimination); or

(ii) Serious and morally reprehensible conduct which violates widely held community standards and brings gross and harmful disrespect and contempt upon Coach and the University; or

(iii) A pattern of behavior which when viewed as a whole, shows a lack of loyalty to, and contempt for, the University and its mission or goals; or

(iv) Gross and intentional misconduct that involves conduct seriously prejudicial and harmful to the University; or

(v) Knowingly assisting or causing other University employees to engage in conduct described in this Paragraph V(1).

2. As required by NCAA Bylaw 11.2.1, Coach is hereby notified that in addition to the actions the University may take in accordance with this Agreement, Coach is also subject to disciplinary or corrective action by the NCAA as set forth in the provisions of the NCAA enforcement procedures if Coach is found by the NCAA or the University to be in violation of NCAA rules.

3. Termination Process. The occurrence of an act by Coach that qualifies as Just Cause sufficient to satisfy the provisions outlined under Paragraph V(1) hereof shall initially be determined by the Director and shall be subject to the terms and conditions of this Agreement. In making the determination, the Director shall act in good faith.

(a) Basis for Termination. Termination for Just Cause by the University may be invoked only for serious violations of employment duties as set forth in Paragraph V(1).

Termination for Just Cause may not be invoked for:

(i) Coaching decisions representing the exercise of professional judgment generally exercised by head college basketball coaches in the United States; or public unhappiness with such coaching decisions; or

(ii) Team performance, including but not limited to the win-loss record or public unhappiness with win-loss record; or

(iii) Other general displeasure at the direction or success of the Men's Basketball Program; or

(iv) A violation for which Coach has the right to remedy pursuant to Paragraph V(3)(b) and Coach has effectively remedied the violation within the required thirty (30) days.

(b) Right to Remedy Violation. Prior to issuing a notice of termination, the University shall give Coach written notice of a violation and provide Coach the right to remedy it within thirty (30) days unless the violation falls within one or more of the following categories:

(i) The violation is one which would ordinarily be called "gross misconduct" as usually understood and interpreted in employment law in the United States such as conduct causing the University or another person serious loss or injury, acts of violence, acts generally known among college coaches to constitute serious cheating, or acts involving moral turpitude; or

(ii) The results of the violation are such that a reasonable person would conclude that remedial action cannot effectively cure the violation; or

(iii) The violation is one for which Coach has been issued prior disciplinary action, whether under this clause or otherwise, and Coach does not have reasonable justification for the repetition of the violation; or

(iv) The violation is part of a pattern of serious and repetitive violations which, when viewed as a whole, the pattern of violations indicates knowing disregard of the responsibilities outlined in Section III.

(c) Procedure for Termination. Prior to issuing a written notice of termination for Just Cause, Director shall meet with Coach to discuss the allegations that may justify termination (the "First Meeting"). In the event Coach has the right to remedy pursuant to Paragraph V(3)(b), the Director shall meet with Coach again after the close of the remedy period, but prior to issuing a written notice of termination (the "Second Meeting"). Once the Director has reasonably determined termination is warranted pursuant to Paragraphs V(1), V(3)(a) and V(3)(b), the Director shall provide to Coach a written notice of termination for Just Cause, which shall include a short and plain statement of each of the allegations warranting termination. Pending termination (i.e., after any required Second Meeting, but prior to termination becoming effective), Coach shall be suspended from his duties (with pay) effective two (2) working days after Coach's receipt



of such written notice of termination for Just Cause. Coach shall have the right to make a written request for a review and hearing relating to the suspension and termination notice of the Director. The request must be made to the President of University ("the President") within five (5) working days after the effective date of the suspension pending termination. The request shall state the grounds for seeking review. The hearing shall be set for a time no later than thirty (30) days after receipt of the request for review and hearing. Review and hearing will be before the President or the President's designee. Coach shall have the right to have an attorney or other personal representative present with him at and throughout the hearing. If a designee conducts the review and hearing, the designee shall make a recommendation to the President in good faith. If the President appoints a designee, prior to making the University's final decision, the President shall meet with Coach and the Director to hear the Parties' views of the recommended decision. The President shall issue the University's final written decision, indicating the basis for the decision. The President's decision shall be subject to any review required by law or policy of the Board of Regents. If Coach fails to request such review and hearing within such five (5) working days, this Agreement shall be terminated for the causes cited in the original termination notice.

(d) Other Disciplinary Action. In the case of disciplinary action not including termination, Coach shall have the procedural right to make a written request for review and hearing relating to such disciplinary action. No disciplinary action may be instituted unless notice of such action is delivered to Coach in writing, at least seven (7) days prior to the effective date of the action, detailing the reasons for such action. Coach's request for review and hearing must be made to the President within thirty (30) days after notice is delivered. The request shall state the grounds for seeking review. If Coach requests review and hearing, the disciplinary action shall not commence until after the President issues a decision after the hearing. Review and hearing will be before the President or the President's designee. Coach shall have the right to have an attorney or other personal representative present with him at and throughout the hearing. If a designee conducts the review and hearing, the designee shall make a recommendation to the President, who shall meet with Coach and the Director to hear the Parties' views of the recommended decision. The President shall issue a final written decision together with the basis for the decision. The President's decision shall be subject to any review required by law or policy of the Board of Regents. If Coach fails to request such review and hearing as provided above, all rights to a review and hearing set forth in this paragraph are waived.

(i) Limitation on Disciplinary Action. In no case shall any disciplinary action less than termination impose a sanction greater than sixty (60) days' suspension without pay, or a financial penalty (other than suspension without pay) greater than \$50,000. The University may not impose both a suspension and a financial penalty.

4. Waiver of Administrative Procedure Act Procedures. Because of the specialized nature of coaching in intercollegiate athletics, in signing this Agreement, the Parties both waive rights to the hearing procedures of the Iowa Administrative Procedure Act.

5. Effect of Termination with Just Cause. In the event this Agreement is terminated for Just Cause in accordance with the provisions outlined under Paragraphs V(l)

and (3) hereof, all obligations of the University to make further payments and/or to provide any other consideration hereunder shall cease as of the end of the month in which such termination occurs except for monies, salary, Performance Incentives, and expenses previously earned or achieved up to the effective date of termination (even if such amounts [including Performance Incentives] are not yet due and payable as of the effective date of termination), which monies shall be paid within forty-five (45) days of the effective date of termination.

6. Termination without Just Cause. The Parties specifically agree that the University may terminate this Agreement Without Just Cause upon thirty (30) days' written notice, and that upon such termination, the University shall be obligated to pay Coach the amount provided by Paragraph V(7)(a). The University, in its sole discretion, shall have the right to relieve Coach of his duties during the 30-day notice period.

7. Liquidated Damages Payable by University. Whether on the basis of termination without Just Cause, or if it is judicially determined that the University did not have Just Cause for termination, that Coach was constructively discharged or that damages are due for unlawful termination of this Agreement, the Parties specifically agree that damages due to Coach from termination of this Agreement are specifically limited as follows:

(a) The University will be required to pay to Coach an amount equal to 100% percent of the entire Total Compensation remaining for the balance of the Term of this Agreement, as if this Agreement had not been terminated and all services had been fully performed. The amount of the Total Compensation so determined shall be paid in equal monthly installments prorated over the remaining term of this Agreement, and shall not include any benefits such as health insurance, vacation payout or retirement contributions. In addition, the University shall remain obligated to pay Coach all monies, salary, bonuses, and expenses previously earned or achieved up to the effective date of termination (even if such amounts [including Performance Incentives] are not yet due and payable as of the effective date of termination).

(i) Coach agrees that if, subsequent to his termination by University, Coach is hired as a basketball coach (or other comparable position) with another NCAA Division I institution or professional basketball association during the remaining Term, the monthly installments set forth in Paragraph V(7)(a) of this Agreement will be reduced on a dollar for dollar basis by the average annual compensation (excluding the value of fringe benefits and other non-cash compensation) Coach is entitled to receive pursuant to his contract with the hiring institution prorated for any period during the remaining Term.

(b) In no case shall the University be liable to Coach for any loss of any collateral business opportunities or any other benefits, perquisites, or income resulting from activities such as, but not limited to: speaking engagements or other public relations activities; television or radio appearances; basketball manufacturer's contracts, endorsements, camps, apparel or shoe contracts; consulting relationships; or any other sources that may ensue as a result of the University's termination of this Agreement.

Effect of IRC Section 457(f). Notwithstanding the foregoing, with respect to any portion of the liquidated damages that is payable in a calendar year after the calendar year in which the

effective date of termination occurs ("Future Liquidated Damages"), a portion of the Future Liquidated Damages shall be accelerated in an amount equal to the federal and state income tax withholdings that would have to be remitted by the University, if and only to the extent that the Future Liquidated Damages are includible in Coach's income as of the effective date of termination pursuant to Section 457(f) of the Internal Revenue Code. Future Liquidated Damages otherwise payable to Coach will be offset by the amount that such Future Liquidated Damages are accelerated, and such accelerated portion shall be paid by the end of the calendar year in which the effective date of termination occurs. The acceleration described in the preceding sentence, if required, is intended to comply with the requirements of Section 1.409A-3G)(4)(iv) of the regulations promulgated under IRC Section 409A, and shall be administered and construed in a manner necessary to ensure such compliance.

The Parties acknowledge that this provision regarding liquidated damages is agreed to giving consideration to the fact that termination of this Agreement may cause Coach to lose certain benefits or supplemental compensation, which damages are extremely difficult to determine with certainty or fairly or adequately. The Parties acknowledge that this limitation constitutes adequate and reasonable compensation considering other provisions or limitations could have been negotiated between the Parties. The Parties agree that this provision shall not be construed as a penalty. The Parties further agree that said payment by the University shall not be subject to any obligation to mitigate damages by Coach, whatsoever.

8. Automatic Termination upon Death or Disability of Coach. This Agreement shall terminate if Coach dies or if Coach becomes totally disabled, such that he qualifies for full Long Term Disability and/or Life Insurance benefits, as the case may be, under the University's Group Long Term Disability and Life Insurance Policies covering P&S employees; provided, however, that the University shall be responsible for continuation of salary, consistent with University leave policies, through any required waiting period, if any, provided by the University's Group Long Term Disability and/or Life Insurance Policy until such time as disability benefits are payable. The University shall not be obligated to pay remaining compensation after the date of termination, but shall pay all earned compensation, expenses, monies, and incentives due and/or earned up to the time of termination (even if such amounts are not yet due and payable as of the effective date of termination).

9. No Reassignment. The University agrees that it does not have the power to reassign Coach to another position without his prior written consent.

10. Guaranteed Compensation. The Total Compensation provided under Paragraph II(1) and (2) is guaranteed by the University, which for purposes of this Agreement means that Total Compensation shall be paid unless one of the following occurs:

(a) Coach terminates this Agreement, resigns, or accepts other full-time employment or publicly participates in a public announcement of his taking other full-time employment as provided by Section VI; or

(b) This Agreement is validly: i) terminated or Compensation is validly reduced for disciplinary reasons for Just Cause as set forth in Paragraph V(1) and V(3); or ii) a final judicial

determination has been issued finding that the University constructively discharged Coach, and the University paid the liquidated damages under Paragraph (V)(7) together with any statutory or judicially ordered interest; or

(c) Coach dies or is permanently disabled as determined under the applicable P&S Group Long Term Disability and Life Insurance Policies, and the University has met its obligation as set forth in Paragraph V(8); or

(d) A Force Majeure Event prevents the University from complying with an obligation under this Contract. "Force Majeure Event" means an event beyond the reasonable control of the University and incapable of being avoided by the University through the exercise of reasonable care. Neither party shall be considered in default in the performance of its obligations under this Agreement if such performance is prevented or delayed by Force Majeure. "Force Majeure" shall include but not be limited to war, hostilities, revolution, civil commotion, strike, lockout, epidemic, accident, fire, wind or flood or any law, order, proclamation, ruling, regulation or ordinance of any government or subdivision of government or any act of God.

Nothing in this Paragraph V(10) shall be construed as a waiver of Coach's right to seek a remedy in damages for breach of this contract by the University.

## **VI. TERMINATION BY COACH**

1. During the Term, Coach shall provide prior notice to the Director if he enters into negotiations for or publicly expresses bona-fide interest in other employment as head coach in the field of college basketball or as head coach or general manager in the National Basketball Association.

2. Without limiting Coach's other rights of termination, the University acknowledges and agrees that Coach shall have the right to immediately terminate this Agreement for the purpose of accepting employment as an NCAA Division I head college basketball coach or as a head coach or general manager with a team in the National Basketball Association ("NBA") (a "Coaching Termination"). Coach acknowledges that the University has expended significant effort and funds in recruiting and signing Coach to this exclusive Agreement for his services, and that the position as head basketball coach is a unique and key University position. Should Coach terminate this Agreement by resignation for the purpose of accepting employment as an NCAA Division I head college basketball coach or as a head coach or general manager with a team in the NBA prior to the expiration or earlier termination of this Agreement, or should Coach assume duties as an NCAA Division I head college basketball coach or as a head coach or general manager with a team in the NBA prior to the expiration or earlier termination of this Agreement, Coach agrees the University shall be entitled to:

(a) Terminate all unearned compensation and other obligations owed by the University to Coach under this Agreement, effective on the date of Coach's resignation or acceptance of such other employment, or Coach's participation in public announcement of his acceptance of such employment, whichever is earlier. The University's future obligations shall cease, but the University must fulfill all of its outstanding obligations up to that date, including, but not limited to, the payment of all monies, salary, bonuses, and expenses previously earned up

to the effective date of termination (even if such amounts [including Performance Incentives] are not yet due and payable as of the effective date of resignation), shall be made within forty-five (45) days of the effective date of resignation or acceptance of such other employment; and

(b) Liquidated damages in the amount of \$4,000,000. Otzelberger shall make such payment to the University in a lump sum within ninety (90) days of the effective date of termination. The Parties acknowledge that this amount constitutes adequate and reasonable compensation considering other provisions or limitations could have been negotiated between the Parties and, further, represents, a repayment of compensation, perquisites and benefits that were provided to Otzelberger under the premise that Otzelberger would serve as head men's basketball coach of the University through the entire Term. The Parties agree that this provision shall not be construed as a penalty.

3. The Parties acknowledge that Coach was recruited as head men's basketball coach with the understanding that the University's Athletics Director, Jamie Pollard, would continue to serve in that role through the Term. The University also agrees that if Pollard, for whatever reason, is no longer employed as the University's Athletics Director, Coach's liquidated damages as determined Paragraph VI (2) (b) shall be reduced by 50% as of the date of resignation, separation, reassignment or acceptance of such other employment, or Pollard's participation in a public announcement of his acceptance of such employment, whichever is earlier. Further, the Parties acknowledge that Coach was recruited as head men's basketball coach with the understanding that the University does not intend to increase its academic admissibility and/or eligibility standards beyond the academic admissibility and eligibility standards for schools competing in NCAA Division I basketball. If the University does increase its academic admissibility and/or eligibility standards above those required by the NCAA, Coach's liquidated damages, under Paragraph VI(2)(b) shall be reduced to Zero Dollars (\$0).

4. The University also agrees that Coach shall have the right to immediately terminate this Agreement (without penalty) in the event the University materially and seriously breaches this Agreement and fails to cure such breach within thirty (30) days of receiving notice thereof. In such event, there shall be no liquidated damages under Paragraph VI(2)(b). In the event of such a termination by Coach, if it is judicially determined the University's action amounted to constructive discharge, Coach shall be entitled to payment provided under Paragraph V(7).

5. Coach may resign for reasons other than specified above in Paragraph VI(2) without any obligation to pay liquidated damages. Upon Coach's resignation, the University shall have no further obligation to pay Total Compensation except that the University must fulfill all of its outstanding obligations up to that date, including, but not limited to, the payment of all monies, salary, bonuses, and expenses previously earned up to the effective date of resignation (even if such amounts [including Performance Incentives] are not yet due and payable as of the effective date of resignation, which amounts shall be paid or contributed, as the case may be, within forty- five (45) days of the effective date of resignation.

## **VII. MISCELLANEOUS PROVISIONS**

1. Coach shall have the right to select and retain assistant men's basketball coaches

and staff, which decisions shall be made only after consultation with the Director, or the Director's designee. While the day-to-day duties of assistant men's basketball coaches and staff shall be assigned by the head men's basketball coach, it is understood that the head men's basketball coach and all assistant men's basketball coaches and staff are directly responsible, separately and collectively, to the Director, as are all Department employees. The University intends to maintain a salary pool for Men's Basketball Staff that is competitive for a men's basketball program in the Big 12 Conference.

2. Coach does not have the right to permit others to use the name of Iowa State University, ISU, or its trademarks except in the following circumstances: (a) Coach may use, or permit others to use the name and trademarks with approval of the University's Trademark Officer; (b) Coach may permit the name and trademarks to be used as necessary to carry out obligations of a contract approved pursuant to Paragraphs II(2) and IV(1), as long as such use is limited to the use of his likeness wearing apparel with University's names and trademarks and mentioning the University's names or trademarks, so long as such use is consistent with the University's mission and values; and (c) Coach may use the name and trademarks in conducting a University-supported athletic camp as permitted under Paragraph IV(4). Coach specifically shall not have the power to permit commercial use of the property, employees, name, or trademarks of the University in any way which suggests that a product is endorsed or sanctioned by the University, except with prior written permission of the University.

3. None of the terms or conditions contained in this Agreement shall be altered, amended, waived, or abandoned, except by written agreement signed by the Parties.

4. If there is a conflict between this Agreement and University policies incorporated herein, the provisions of this Agreement will govern.

5. This Agreement is made and entered into in Story County in the State of Iowa, and shall in all respects be interpreted, enforced and governed by Iowa law. Any disputes arising out of this Agreement shall be subject to the jurisdiction of the federal or state courts of Iowa with Story County, Iowa as the venue.

6. Notices to the Parties shall be sent via reputable express courier, overnight mail or U.S. Certified Mail to the University at the Director's address and to Coach at his personal address provided to the University with a copy to: Bret Just, WME, 121 W. Wacker Dr., Suite 2250, Chicago, IL 60601.

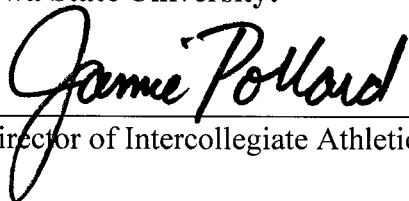
7. The failure of a Party, at any time, to demand strict performance by the other Party of any of the terms, covenants, or conditions set forth herein shall not be construed as a continuing waiver or relinquishment thereof, and a Party may at any time demand strict and complete performance by the other Party of said terms, covenants, and/or conditions.

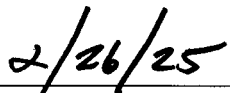
8. Each of the Parties has participated in the negotiation and preparation of this Agreement and therefore waives any rule of law or judicial precedent that provides that contractual ambiguities are to be construed against the Party who shall have drafted the contract in question. If any provision of this Agreement or the application thereof shall be invalid or

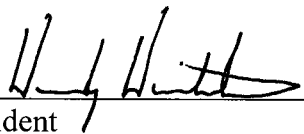
unenforceable to any extent, the remainder of this Agreement or the application thereof shall not be affected, and each remaining provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. Paragraph headings contained hereunder are solely for the purpose of aiding in speedy location of subject matter and are not in any sense to be given weight in the construction of this Agreement.

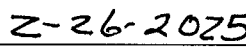
9. Except as specifically provided in this Agreement, neither Party waives any legal right or remedy, whether at law or equity, available to the Party.

**Iowa State University:**

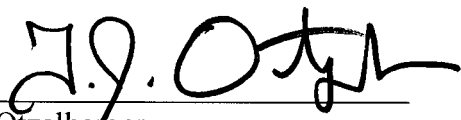
  
\_\_\_\_\_  
Director of Intercollegiate Athletics

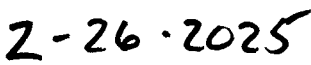
  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
President

  
\_\_\_\_\_  
Date

**Coach:**

  
\_\_\_\_\_  
T. J. Otzelberger

  
\_\_\_\_\_  
Date