

**FLORIDA ATLANTIC UNIVERSITY
SECOND AMENDED HEAD COACHING AGREEMENT
(Men's Football Program)**

This Second Amended Head Coaching Agreement ("Agreement") is made and entered into by and among the Florida Atlantic University Board of Trustees ("University" or "FAU"), a public body corporate of the State of Florida, and Lane Monte Kiffin ("Coach") (collectively the "Parties") as follows:

1. PURPOSE. It is the purpose of this Agreement, which is based upon the mutual intent of the Parties, for Coach to serve as the head coach for the University's Men's Football Program ("Program") under the terms and conditions set forth herein, in accordance with all applicable University regulations and policies. It is further the intent of the Parties that the Coach will be responsible for administering all aspects of the Program, reporting to and subject to the oversight and supervision of the University's Athletics Director, and will consult with the University's National Collegiate Athletic Association ("NCAA") Compliance Officer in developing and maintaining the University's Program in compliance with the regulatory criteria of the NCAA and Conference USA or other successor conference ("Conference") (collectively the "Athletic Requirements"), and the University's regulations and policies.

2. COACH'S REPRESENTATIONS. Coach warrants and represents to the University the following:

- A. He has the necessary knowledge, skills, qualifications, and experience and is physically fit to serve as the head coach of the Program and to manage its football operations.
- B. He is legally competent and able to enter into this Agreement and there exist no conflicting obligations or agreements with another college, university, or other individual or entity that prevent him from entering into this Agreement and fully performing the duties required by this Agreement.
- C. He is familiar with and shall comply with all Athletic Requirements regarding the University and his coaching responsibilities. Coach further acknowledges and agrees that he is familiar with and shall comply with all the University's regulations and policies regarding his employment and the University regulations and policies applicable to the student athletes under his direction.
- D. He has fully disclosed to the Athletics Director: 1) any and all past investigations of alleged violations of Athletic Requirements in which he has been involved directly, indirectly, as a witness or in some other capacity; 2) any lawsuits, criminal investigations, or administrative proceedings filed against him in his official or personal capacity; or 3) any and all instances in which he was investigated for misconduct related to the performance of his employment, including any alleged inappropriate misconduct involving former co-workers or the student athletes under his direction.

3. TERM. The Parties agree that Coach will serve as the head coach of the Program for a term commencing December 21, 2017, and ending December 31, 2027 ("Term"), unless this Agreement is otherwise modified or terminated by the Parties in accordance with the requirements set forth in this Agreement. Coach hereby accepts such employment on the terms and conditions set forth in this Agreement. This appointment shall be subject to prior termination as provided for in this Agreement.

4. **DUTIES.** Coach agrees that throughout the Term he will devote his full time efforts and abilities for the exclusive benefit of the University and serve as the head coach of the Program and manage its football operations. Coach's duties and obligations shall include, but not be limited to, the following:

- A. Coach acknowledges and agrees that he must abide by any and all applicable laws, Athletic Requirements, and University regulations and policies, including without limitation those relating to the conduct, administration and control of the Program as it is now constituted or as it may develop in the future. Coach acknowledges and agrees that he is responsible for the day-to-day operations and administration of the Program; the fiscally-responsible management of staff, budget and other resources; the hiring, management, and termination of assistant coaches, Program operations director, and Program administrative staff necessary and appropriate to assist Coach in meeting his responsibilities hereunder; managing the actions of all assistant coaches and administrators who report, directly or indirectly, to Coach; and developing, implementing, and adhering to the Program's annual budget, subject to the Athletics Director's approval. University agrees that it will offer all assistant coaches who have employment agreements a termination without cause clause that imposes reciprocal notice provisions for the assistant and the University in the event that Coach ceases to serve as Head Coach of the program, such notice period to be not less than thirty (30) days following Coach's termination date. Coach agrees to attend all required University or Athletics Department meetings; to pass the NCAA recruiting examination on an annual basis; to exercise fiscal integrity at all times; and to ensure that he and all assistant coaches show appropriate respect for all University students, faculty and staff and that Coach and his assistant coaches conduct themselves in a manner that positively represents the University and its educational mission.
- B. Coach acknowledges and agrees that if at any time during this Agreement he becomes aware, or has reasonable cause to believe, that any player, coach, or assistant coach of any of the University's athletics programs, or any University student, faculty, staff member, agent or any outside individual or volunteer who reportedly is acting on behalf of the University has violated, or allowed or caused to be violated, any Athletic Requirements or University regulations or policies, or if Coach receives notice or information that the NCAA or the Conference intends to investigate or review any alleged violations of the Athletic Requirements of one of the University's athletics programs, or if Coach receives notice or information that any state or federal law is alleged to have been violated by any player, coach, or assistant coach of any University athletics program (excluding minor traffic offenses), he must immediately report his knowledge or belief of the situation to the Athletics Director and the University's NCAA Compliance Officer. If the Athletics Director appears to be responsible for the violation, the Coach shall immediately notify the University President.
- C. Coach acknowledges and agrees that in the event that the University receives information that indicates, in the University's reasonable discretion, that he or any coach at his direction has violated applicable laws, Athletic Requirements, or University regulations or policies regarding required conduct, the University may take disciplinary or corrective action up to and including suspension without pay or termination of his or her employment pursuant to the terms and conditions contained herein with respect to such actions.

- D. Coach acknowledges and agrees that he and all individuals under his direction, including assistant coaches, administrative personnel and student athletes in the Program, must cooperate with and support the University's faculty and administration in meeting the educational mission of the University. The University has primary responsibility and places a high priority on the academic success of its student athletes, and Coach agrees to support this objective by using his best efforts to ensure all classroom attendance, study table, grade point average, and graduation requirements are met by the student athletes under his direction, and agrees to coordinate and cooperate with any academic advisor designated to work with the individual student athletes. Subject to the provisions of Section 8.A.4. below, Coach acknowledges and agrees that he is responsible for the Program maintaining the minimum multi-year and single year Academic Progress Ratings ("APR") required of Division I men's football programs by the NCAA.
- E. Coach acknowledges and agrees that his responsibilities also include, without limitation: (i) the maintenance and cultivation of effective relations with the governing boards, associations, conferences, and committees that have regulatory oversight or authority over the University's intercollegiate athletics programs; institutional alumni; the media; the public; and students, faculty, staff and friends of the University; (ii) teaching the mechanics and techniques of football to team members, coaching and recruiting student-athletes, overseeing daily practices, analyzing and instructing student-athletes in areas of deficiency; (iii) making fundraising appearances and public relations appearances for the University as designated by the Athletics Director and in coordination with the University's advancement efforts; (iv) performing all other duties customarily performed by a head football coach of commensurate rank serving other NCAA member institutions; and (v) performing such other program-related duties as may be reasonably assigned by the Athletics Director and/or his designee.
- F. Coach acknowledges and agrees that the University shall own all broadcasting and telecasting rights to all live and recorded coach's shows, call-in programs, post-game and pre-game interviews, highlight shows, replay shows and other programs (collectively the "Programs") that may be offered currently or in the future on media outlets, including but not limited to, radio and all forms of television, internet, satellite, cable, broadband, high definition TV, DVD, video cassette, wireless & video-on-demand. The University shall be entitled, at its option, to produce and market the Programs or negotiate with third parties for the production and marketing of the Programs. Coach agrees to work with the University in an effort to make the Programs successful. Coach also agrees to, and hereby does, conditionally assign to the University or its then-current rights holder of one or more of the Programs all right, title and interest in his name, nickname, initials, facsimile signature, likeness, photograph, and derivatives thereof, and his picture, image and resemblance and other indicia closely identified with Coach in connection with the Programs, such assignment to be in effect during the Term hereof only.
- G. Coach grants to University, for a duration not to extend beyond the expiration date of the Agreement, an exclusive, worldwide right and license to use, copy, reproduce, exhibit, display, and sub-license for the purpose of managing opportunities for the licensing of the publicity rights of Coach including, but not limited to, the name, image, quotes, voice recording, signature, and biographical information of Coach, in relation to creating, producing, promoting, and/or selling merchandise associated with Coach's employment as head coach of the Program. University may manage the rights granted herein itself or through its agent, service company, publishers, sub-licensees, distributors, or other parties for commercial and non-commercial purposes. Coach further grants University a

non-exclusive, worldwide right to enforce the publicity rights of Coach against unauthorized uses by third parties. Such enforcement rights may include, but are not limited to, the initiation, maintenance, settlement, or other resolution of an enforcement action undertaken by University in its discretion and at its expense. Coach agrees that University is not obligated to monitor the infringement activities of third parties and University may abandon its enforcement of the publicity rights of Coach at its sole discretion. Coach agrees to reasonably cooperate with University in connection with the rights set forth herein, and provide approvals and/or signatures to powers of attorney or license agreements, as reasonably necessary. Notwithstanding the language contained herein, University acknowledges and agrees that Coach shall not be prohibited from engaging in any personal marketing or endorsement activities, for commercial or charitable purposes, with any third party, so long as (i) Coach (or Coach's representative) obtains prior written approval of the Athletics Director in advance of such activity as required under Section 6 herein, (ii) such activity does not conflict or compete with any current or existing University or Departmental marketing and endorsement relationship, and (iii) such activities are in compliance with the terms and conditions contained in Section 6 herein.

- H. Coach acknowledges and agrees that the University maintains a strict policy of non-discrimination that prohibits unlawful discrimination or harassment based upon an individual's race, color, religion, sex, national origin, age, disability, veteran status, marital status, sexual orientation, gender identity or expression, or other protected status as prohibited. Discrimination on the basis of sex in education programs and activities receiving federal financial funding as set forth in Title IX of the Education Amendments of 1972, as amended ("Title IX") is included in the University's definition of prohibited discrimination, and Coach agrees to comply with all nondiscrimination regulations and policies of the University and to promote a Program (including the maintenance and enforcement of disciplinary rules for on and off field behavior) that complies with all federal requirements, including without limitation those of Title IX, the Violence Against Women Act, the Clery Act, and all regulations and guidance related thereto.

5. COMPENSATION & OTHER BENEFITS.

- A. Annual Salary. Coach will be entitled to an annual base salary in the amount of nine hundred fifty thousand dollars (\$950,000.00). Coach's base salary, any increases thereto, any Performance Incentive payments, and any Retention Incentive payments are subject to appropriate deductions for taxes and benefits pursuant to regular University payroll practices, and further subject to the availability of funds in the University's athletics department's annual budget or the University Foundation's Football Excellence Fund.
- B. Business Vehicle. For the period that Coach is head coach of the Program, the University will provide an automobile for use by Coach. The business and personal use of the automobile will be reported to the office of the University's Vice-President for Financial Affairs in a format determined by that office. The personal use of such automobile will be valued according to guidelines of the Internal Revenue Service and reported as income to Coach. Coach shall be required to pay expenses of maintenance, operation, fuel and insurance of the vehicle.
- C. Club membership. The University will provide Coach an annual membership at the Boca Raton Resort & Club for as long as Coach is employed by the University as head coach of the Program.

D. Performance Incentives. When the Program is recognized in any of the following ways while Coach is head coach of the Program and remains head coach of the Program through the following March 30th within the Term, Coach will be paid a one-time lump sum Performance Incentive pursuant to regular University payroll practices in the amounts indicated below. All such payments (other than those based upon NCAA APR rates) will be made in the first regular University pay cycle after March 30th following the end of the season (including any post-season games) for which the Program was recognized. Performance Incentives based upon NCAA APR rates are deemed to be achieved on the annual date that the NCAA announces all member institutions' APR scores, and Performance Incentive payments for such achievements shall be made within ninety (90) days of the date of the achievement. The Performance Incentives included within each "Group" listed below are not cumulative within each Group; the Coach is awarded based on the highest level achieved within each Group, if applicable.

1. Group 1:

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|---|-------------|
| a. Appearance in the Conference Championship Game* | \$20,000 |
| b. Receiving an at-large bowl game invitation* | \$30,000 |
| c. Winning the Conference Championship and receiving a non-CFP (or successor) bowl game invitation* | \$40,000 |
| d. Winning the Conference Championship and receiving a CFP (or successor) bowl game invitation* | \$100,000 |
| e. Earning a top 25 final college coaches' poll national ranking: | \$50,000 |
| f. Earning a top 10 final college coaches' poll national ranking: | \$100,000 |
| g. Earning a top 10 final college coaches' poll national ranking for three consecutive seasons | \$1,000,000 |
| h. Appearance in a CFP (or successor) semi-final game* | \$250,000 |
| i. Appearance in the CFP (or successor) championship game* | \$500,000 |
| j. Winning the CFP (or successor) national championship* | \$1,000,000 |

*Coach must also coach the game to be eligible

2. Group 2:

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| a. Winning the AP, AFCA, or Home Depot National Coach of the Year Award: \$100,000 (maximum annual potential) | |
| b. Winning the Conference Coach of the Year (as determined by the Conference office): | \$15,000 |

3. Group 3:

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|---|-----------|
| a. Earning a single year APR greater than or equal to 940:** | \$10,000 |
| b. Earning a single year APR greater than or equal to 950:** | \$20,000 |
| c. Earning a single year APR greater than or equal to 960:** | \$30,000 |
| d. Earning a single year APR greater than or equal to 970:** | \$40,000 |
| e. Receiving a top 10% NCAA APR recognition: | \$50,000 |
| f. Receiving a top 10% NCAA APR recognition for three consecutive seasons | \$250,000 |
| g. Earning a team GPA of 3.0 or above | \$25,000 |

**Beginning with the first full academic year following the execution of this agreement as determined and reported solely by the Director of the SACAE. Report will be based on fall, spring and summer semesters of academic year.

If any performance incentive achieved is subsequently vacated due to NCAA, Conference, or other violations, no payments for the vacated incentive shall be due to Coach and the net, after-tax value of any amounts already paid, if applicable, shall be returned by Coach to the University within sixty (60) days of any final decision.

- E. Retention Incentive. It is the intent of the University to provide sufficient incentive to Coach to serve as head coach of the Program for the full term of this Agreement. In support of this objective, beginning on January 15, 2018, and on each January 15 thereafter while Coach remains head coach of the Program, Coach will be paid a one-time lump sum Retention Incentive pursuant to regular University payroll practices in the amount of fifty thousand dollars (\$50,000.00). All such payments will be made in the first regular University pay cycle following each January 15.
- F. Complimentary Tickets. For the period that Coach is head coach of the Program, the University will provide Coach the following complimentary tickets. For each home football game, Coach is entitled to the use of a box or suite, along with tickets for the number of seats available in the box or suite, at the stadium where the Program's home football games are played. Subject to availability, University will provide coach with twelve (12) tickets to Program away games and bowl games in which the university participates. Subject to availability and in conformance with Athletics Department's ticket distribution policy, the University will provide Coach with twenty (20) additional tickets located in the athletics staff section to Program home games for coach to use to help promote the program within the business community. Coach will also be entitled to use up to four (4) complimentary tickets to all other home FAU athletics events that occur on the FAU campus.
- G. Athletic Products. Coach and all assistant coaches shall receive retail gear as part of the University's athletic department-wide arrangement. Coach agrees that the University has the exclusive right to select footwear, apparel and/or equipment for the use of its student-athletes and staff during practice and games, and Coach and all assistant coaches shall abide by the terms of any applicable athletic gear agreement executed by the University.
- H. Cell Phones. Cell phone services (or reimbursements) will be provided for Coach and his assistant coaches in the reasonable discretion of the University and in accordance with existing University policy and applicable law.
- I. Benefits. Coach is employed by the University as an FLSA exempt Contract Employee with employment terms governed by this Agreement. Coach is not an Administrative, Management and Professional (AMP) or Support Personnel (SP) employee; however, Coach will receive any and all other regular employment benefits provided by the State of Florida or the University to AMP non-tenure earning at-will employees at the University. Coach agrees that he shall be subject to the same University regulations, policies and payroll practices applicable to AMP employees unless expressly waived or superseded by the terms of this Agreement. Coach agrees that he is not eligible and will not accrue vacation and sick leave time through the term of this Agreement or be eligible for such leave payout upon termination that may otherwise be due to AMP employees if accrued. Coach acknowledges that all regular AMP employment benefits may be adjusted from time to time as provided for by the State of Florida and/or the University. Nothing in this sub-section shall prevent Coach from managing his own schedule (including vacation or sick time as needed) in accordance with the provision of his duties set forth in Section 4 above and under the supervision and with approval of the Athletics Director.

- J. Assistant Coaches and Staff Salary. Coach shall be provided with a salary pool of \$2,150,000.00 per year for ten (10) on-field assistant coaches and a strength and conditioning coach. Moving expenses of Program assistant coaches shall be paid by the University according to the University's moving expense policy. On an annual basis, in the event that any balance remains in the afore-mentioned salary pool after allocating the annual salaries of such on-field assistant coaches and a strength and conditioning coach, Coach may allocate all or any portion of such balance to supplement the salaries of program-related staff. All such supplemental allocations must be approved by the Athletics Director, in his or her sole and reasonable discretion, and implemented in accordance with University and Departmental budgetary and payroll policies and procedures.

6. OUTSIDE ACTIVITIES. Coach acknowledges and agrees that the performance of coaching duties of Program is his primary responsibility to the University, and further agrees that he will not engage in other activity that may reflect detrimentally on or adversely affect the reputation of the University or that is in conflict with the Coach's primary responsibilities as head coach of the Program or with the University's interest or educational mission. Further, Coach acknowledges and agrees he must obtain prior written approval of the Athletics Director before engaging in any outside employment or other non-paid activities other than Coach's responsibilities to the University. Coach shall annually report to the Athletics Director outside employment for compensation, including but not limited to all athletically-related income and benefits from sources outside the University and the time spent on all outside employment. The report shall include a detailed accounting of all income received by Coach for participation in any outside activities. The date by which such reports must be submitted shall be determined by the University. Coach shall notify outside employers that any approved outside employment is Coach's responsibility and that Coach does not act as an agent or representative of the University in such outside employment. University facilities, property, staff, or team images shall not be used in such outside employment except with permission of the Athletics Director, and payment of appropriate fees may be required. Under no circumstances shall the University guarantee any such outside employment. All outside employment shall be independent of Coach's employment at the University, and the University shall have no responsibility or liability for claims arising therefrom. In the event University dismisses Coach or terminates this Agreement, regardless of the reason or timing of such action, Coach acknowledges and agrees that he shall have no claim or cause of action against University or its guarantors for loss of any contract or income Coach may have otherwise received from outside employment.

- A. Sports Camps and/or Clinics. Subject to the department's policies and procedures, Coach has the opportunity to conduct sports camps and/or clinics related to his particular sport on the University's campus, pending the availability and the University's facilities use policies. Such sports camps/clinics, while independent of Coach's direct employment with the University, shall be conducted as follows:

1. For any sports camp or clinic conducted by Coach on the University campus or property or at any other site using the University's name, he agrees that he will be solely responsible for any taxes or expenses and liability incurred in operating such camps and/or clinics, and provide the Athletics Director and/or the University's NCAA Compliance Officer with proof of full liability insurance, including workers' compensation insurance, or any other insurance that may be required by law no later than seventy-two (72) hours prior to the start of any sports camp/clinic. Such insurance must specifically provide coverage in an amount not less than

\$2,000,000.00 per incident for the University, the Board of Governors, the State of Florida, and any of their officers, employees, or agents, or the successors of any and each of them, against any and all claims or exposure which may result from any camp and/or clinic activities. Coach further agrees to indemnify and hold the University, the Board of Governors, the State of Florida, and any of their officers, employees, or agents, or the successors of any and each of them, harmless from any liability which may result from any camp and/or clinic activities, including any attorney's fees and costs which might be incurred as a result of any legal action.

2. Prior to the start of any camp/clinic Coach agrees to perform any and all necessary background checks regarding any individual who will be working at the camp/clinic in accordance with Florida law and University regulations and policies, including without limitation University Policy on Pre-Collegiate Programs. Coach acknowledges and agrees that the failure or inability to provide proof of insurance, the background checks, or any provisions of the University Policy on Pre-Collegiate Programs prior to the start of any camp/clinic will constitute grounds for the University to withdraw authorization for the use of its name and facilities until proof of insurance or completed background checks are provided.
3. Coach agrees to provide an annual financial statement to the Athletics Director and/or the University's NCAA Compliance Officer within thirty (30) days of the end of camp. Coach further agrees that the University will have the right to audit business records of the camp(s) upon ten (10) days written notice to Coach of its intent to do so.

B. Coach's Use of Marks. Coach has the right to use certain registered University logo(s) and mark(s) for the marketing, advertising or promotional materials for any camp activity or clinic in which he is the primary participant or with which he is affiliated. Such usage is provided without charge to the Coach and may not be transferred to any third party or entity. Use of any registered University logos or marks must be approved in writing by the Athletics Director or his designee. Upon approval Coach agrees that he will use only those registered University logos or marks that he has been granted written permission to use, and that all such use shall be in accordance with University policies and any licensing agreement between the University and its outside intercollegiate athletics licensing entity. Coach will be solely responsible for any obligations resulting from the use of the University's name, registered service marks and/or logos, and any University facility or field.

7. SOLICITATION OF GIFTS. Coach may not solicit or accept personal gifts of cash or items of substantial value, or accept anything other than reasonable social hospitality from any outside individual in accordance with Florida law (Chapter 112, Florida Statutes), Athletic Requirements, and the University's regulations and policies, including its Code of Ethics.

8. TERMINATION OF EMPLOYMENT & OTHER DISCIPLINARY ACTIONS. The Parties agree and acknowledge that the services Coach will provide as head coach of the University's Program are the essence of this Agreement. Coach acknowledges and agrees that the position of head coach of the Program is one in which his statements and conduct are highly likely to impact the reputation of FAU. The Parties recognize that except as provided herein, separation of Coach's employment is governed by the University's regulations and policies.

A. Prohibited Activities. In addition to the conduct proscribed in the University's regulations and policies, the following is a list of prohibited activities for a coach to engage in which if

violated may lead to discipline for Coach, including but not limited to suspension for a period of time with or without pay or termination of employment and this Agreement for Cause:

1. Subject to Coach's ability to cure any such default within a reasonable time after being notified by the University, the failure or refusal by Coach to comply with any terms of this Agreement, neglect by Coach of any duty required by this Agreement, an unwillingness to perform any required duties to the best of Coach's ability, or other material breach of this Agreement;
2. Any significant violation by Coach or failure by Coach to report such a violation of which he becomes or should have become aware by any assistant coach, staff member, student-athlete or any other person under the Coach's supervision and/or control, of the Athletic Requirements. For purposes of this subsection, a "significant violation" must be a Level I or Level II Violation (as those terms are defined in the then current NCAA Division I Manual) if the resulting discipline for Coach is suspension with or without pay for a period of time beyond those set forth in Section 8.C. below, or termination of employment.
3. Any misleading response, or failure to timely and accurately respond, to any requests or inquiries by the NCAA, the Conference, the University or any other governing body concerning or related to the supervision of the Program or any other college or university athletics program with which Coach may have been involved in the past.
4. Failure of the Program to maintain for more than two consecutive seasons (i) the then-applicable minimum multi-year APR required of Division I men's football programs by the NCAA or (ii) a single year APR of 930 or above (or any then-applicable minimums established by the NCAA).
5. Directing or otherwise instructing any coach, student athlete, or any other individual to mislead, or to fail or refuse to respond or provide information or documents in response to any requests or inquiries by the NCAA, the Conference, the University or any other governing body concerning or related to the Program or any other college or university athletics program with which Coach may have been involved in the past;
6. Failure or refusal by Coach to report immediately to the Athletics Director and/or the University's NCAA Compliance Officer when Coach knows or has reasonable cause to believe that any of the following events have occurred, or may be about to occur:
 - (a) Any member of the Program, including but not limited to any student athlete, coach, assistant coach, or staff member, has or may have violated, or allowed or caused to be violated, any Athletic Requirements, law or University regulations or policies, or has engaged in any serious or intentional violation of the law, or the University's regulations or policies;
 - (b) The NCAA or the Conference intends to investigate or review any alleged violations of Athletic Requirements by the Program or any other University sports program; or
 - (c) Any student, faculty or staff member, agent of the University, or any outside individual reportedly acting on behalf of the University who has a direct relationship

with Coach has, or may have, violated, or allowed or caused to be violated, or is alleging to know of a violation of any Athletic Requirements, law or University regulation or policy;

7. Any fraud or dishonesty by the Coach while performing the duties required under this Agreement, including, but not limited to, falsifying, altering or otherwise fraudulently preparing any document(s) or record(s) of, or required by, the University, the NCAA, or the Conference pertaining to recruits or student athletes, transcripts, eligibility forms, compliance reports, financial or expense reports, or any other document pertaining or related to the Program;
8. Engaging in, assisting, encouraging, or soliciting others to engage in bookmaking, illegal gambling, or betting or other wagering of any type involving any intercollegiate or professional athletic contest;
9. Possession, use, sale, or manufacture of any narcotics, drugs, or other controlled substances or steroids or other chemicals in a manner prohibited by law or applicable Athletic Requirements, or allowing, encouraging, or condoning the possession, use, sale, or manufacture of any narcotics, drugs, or other controlled substances or steroids or other chemicals by any student athlete, coach, assistant coach, or staff member, in a manner which is prohibited by law or by the Athletic Requirements, or failure or refusal to fully participate and cooperate in the University's implementation and enforcement of any drug/alcohol testing program, including random personal testing;
10. Engaging in egregious conduct which, in the sole and reasonable determination of the University, violates any law (except for minor traffic offenses) or University regulation or policy; or engaging in any other egregious conduct which, in the sole and reasonable determination of the University, is contrary to or adversely affects the mission, operations, or reputation of the University, including but not limited to, acts of dishonesty, misrepresentation, fraud, violence, inappropriate use of alcohol or drugs, domestic violence or spousal abuse, or other acts of violence, assault, or moral turpitude. Also, any conduct which results in a plea of guilty or nolo contendere by Coach for any crime (except for minor traffic offenses), conviction of Coach for any crime (except for minor traffic offenses), or criminal charge for which adjudication or prosecution was deferred or withheld (except for minor traffic offenses); or
11. Willful failure to fully and accurately report all additional sources of income in accordance with law, Athletic Requirements, University rules, regulations and policies, and this Agreement, or any other egregious conduct of the Coach which in the sole and reasonable determination of the University reflects adversely on the University, including but not limited to information learned by the University after executing this Agreement that the Coach was found to have violated Athletic Requirements at any previous college, university or employer.

B. Termination Obligations.

1. Termination by University Without Cause. The University may terminate this Agreement at any time, without cause, by providing Coach with thirty-six (36) months written notice of such termination. If, at the time the University desires to terminate without cause, there are less than thirty-six (36) months remaining on the Term, the required notice obligation will be reduced to be equal to the period remaining in the

Term. In the event this Agreement is terminated by the University without cause, Coach's employment with the University shall cease on the effective date of the termination (i.e., the end of the required notice period) and Coach shall be entitled to receive compensation only during the period of time he is employed prior to the effective date of termination. During the notice period, Coach may be assigned to any other position for which Coach is qualified to perform, in the sole and absolute discretion of the Athletics Director (or person performing in that role). Notwithstanding any other provision of the Agreement, during the notice period, no additional compensation, benefits, or obligations beyond those contemplated during such notice period, including but not limited to bonuses, lump sum or base salary increases, performance or other benefit payments, or any benefits set forth in Sections 5.B through 5.G of this Agreement, will be due and owing from either party, except as required by law. In the event Coach is no longer serving as head coach and terminates this Agreement without cause during the notice period, (i) Coach's employment with the University shall cease on the date he provides notice of the termination; (ii) Coach will be paid a lump sum severance amount equal to the base salary Coach would earn for the lesser of twenty (20) weeks or the remainder of the notice period; (iii) Coach shall be entitled to receive compensation he earned during the period of time he was employed prior to the effective date of termination; and (iv) Coach shall not be entitled to any additional compensation or benefits whatsoever except as required by law.

2. Termination by University For Cause. In the event this Agreement is terminated by the University for Cause (as defined herein), Coach's employment with the University shall cease on the date that written notice is delivered. Coach shall be paid his Annual Salary as set forth in Section 5.A. above earned through the date that written notice of termination is delivered. Coach shall not be entitled to any further compensation or benefits whatsoever except as required by law. For the purposes of this Agreement, "Cause" shall be defined as insubordination or derogatory comments that adversely affect the University, the Program or the University's athletics department; egregious conduct that is offensive to generally accepted standards of behavior (including but not limited to illicit drug use or public intoxication) and that leads the Athletics Director (or individual performing in that role), in his or her sole and reasonable discretion, to believe that continued association with Coach may subject the University or the Program to ridicule, contempt, controversy, embarrassment, scandal, or public disrepute in any form; or those activities prohibited by Section 8.A. above. "Cause" is further defined to include any reckless or knowing act or omission that is illegal (except for minor traffic offenses), fraudulent, or involves moral turpitude or the inability of Coach to perform the material duties set forth in this Agreement.
3. Voluntary Termination by Coach Without Good Reason. In the event this Agreement is terminated by Coach without Good Reason while Coach is serving as head coach, Coach's employment with the University shall cease and Coach shall pay to the University: (i) \$2,000,000 if terminated before December 31, 2018; (ii) \$1,500,000.00, if terminated before December 31, 2019; (iii) \$1,000,000.00, if terminated before December 31, 2020; and (iv) \$500,000.00, if terminated before December 31, 2021. Any such payment shall be due and payable to the University no later than sixty (60) days after the effective date of termination. For purposes of this section, the effective date of termination shall be the earlier of the date that Coach accepts an offer of employment with another employer or the date that Coach provides notice of termination (whether verbally or in writing) to the University. In the event the current University President is no longer serving in that capacity at any time during the term,

each of the foregoing amounts is reduced by half. The parties agree that all such payments shall not be deemed a penalty, but rather are liquidated damages to compensate the University for all costs, expenses, and damages incurred by Coach's early termination of this Agreement, which costs, expenses, and damages cannot be predicted or calculated with precision but which will include, without limitation, the costs of searching for a replacement, assembling new support staff, maintaining continuity within the Program, and reputational harm.

4. Termination by Coach For Good Reason.

(a) In the event this Agreement is terminated by Coach for Good Reason (as defined in subsection 4(c) below), Coach's employment with the University shall cease on the date that written notice is delivered and Coach shall be entitled to payment of his Annual Salary as set forth in Section 5.A. above for the period of either: (i) twelve (12) months from termination; (ii) the remaining term of this Agreement; or (iii) the date Coach begins employment in any other position, whichever is shortest, but in no event less than twenty (20) weeks. Coach agrees to provide the University advance notice of employment elsewhere. No further compensation or obligations, including but not limited to position reassignment, will be due and owing from either party, except as required by law. For greater certainty, it is acknowledged and agreed by the parties hereto that the payment(s) set forth in this subsection 4(a) shall be Coach's sole remedy in the event of termination of this Agreement for Good Reason by Coach, and Coach is entitled to no other pay, severance or termination payment or any other compensation, remuneration, benefits or other amount from the University.

(b) Any payment(s) referred to in subsection 4(a) above shall be subject to all such withholdings and other deductions as may be required by any and all applicable state, county, local or federal law, and University payroll policies. Furthermore, any payment(s) that may become due under subsection 4(a) are conditioned upon Coach's execution of a Release and Separation Agreement in a form to be provided by (and acceptable to) the University. Upon termination, Coach shall have no further obligations under this Agreement, and Coach shall not be entitled to any other compensation and benefits set forth in this Agreement. Payment made by University as provided above will be in full satisfaction of all claims.

(c) For purposes of subsection 4(a) above, "Good Reason" will mean any failure of the University to pay any of the sums or benefits contemplated under this Agreement when such sums are more than thirty (30) days overdue, provided however, that Coach has made a written demand to the Athletics Director that any sum or benefit due under this Agreement be paid and such sums remain unpaid for an additional thirty (30) day period.

- C. Other Disciplinary Actions. The University may take other disciplinary or corrective action short of termination in the event of the occurrence of any act or omission which could be grounds for termination for Cause or for any act or omission short of a grounds for termination for Cause, including without limitation minor or nonmaterial violations of any Athletic Requirements, any term of this Agreement, or University regulations or policies. Other disciplinary or corrective action may include, but is not limited to, suspension without pay for up to thirty (30) days, suspension with pay for up to ninety (90) days (extendable an additional thirty (30) days upon written notice), or other disciplinary or corrective action

which may be authorized by University regulations or policies or the provisions of the NCAA enforcement procedures.

- D. **Notice and Appeal.** In the event the Athletics Director determines that suspension without pay or termination for cause is warranted, the Athletics Director will provide Coach with written notice of the basis for the disciplinary action. Within five (5) business days after the implementation of the disciplinary action, Coach may submit a written appeal of the Athletics Director's disciplinary action to the University President. The University President may request further information from Coach, the Athletics Director, or any other source, and may take such further action in consideration of Coach's appeal as he or she determines in his or her sole and absolute discretion. The University President shall provide Coach written notice of his or her disposition of Coach's appeal. This appeal process is Coach's sole method to negotiate or dispute any disciplinary action; Section 14 shall not apply. The University President's decision shall constitute the University's final action with respect to any such appeal.

9. **SEVERABILITY.** If, for any reason, any portion of this Agreement is held invalid or unconstitutional by any court of competent jurisdiction, such portion will be deemed a separate, distinct, and independent provision, and such holding will not affect the validity of any remaining portion of this Agreement.

10. **WAIVER OF CLAIMS.** The Parties agree that any and all claims any party may have against another are exclusively set forth in this Agreement and that no further damages or remedies will be owed as result of any actual or consequential loss of the Parties which might result from the termination of this Agreement, or from the exercise of any right set forth at Section 8 above. Such losses include, but are not limited to: loss of income or compensation; loss of any collateral income or benefits, or other business opportunities which resulted from Coach's position at the University; loss of camp, clinic or other outside activity fees; loss of expected income or opportunities; or damages that may allegedly be sustained for any alleged humiliation or defamation resulting from any termination of this Agreement, or any exercise of any right set forth at Section 8 above, or any statements or documents which may be released to the press or public as a result thereof or the release of any documents required by law. Coach agrees and acknowledges that he will have no right of injunctive relief.

11. **WAIVER OF DEFAULT.** Any waiver of the Parties of any default or breach of any term or condition of this Agreement will not be deemed or construed as a waiver of any other default or further breach of the same, or any other, term or condition of this Agreement.

12. **SOVEREIGN IMMUNITY.** The Parties expressly agree and acknowledge that nothing contained in this Agreement is intended to constitute a waiver of sovereign immunity by the University, and that nothing will be construed or considered to constitute a waiver or relinquishment of any of the exemptions, rights, privileges or immunities as may be provided to the University or its offices, employees, or agents by federal or state law.

13. **GOVERNING LAW.** This Agreement shall be interpreted and construed and the rights and obligations of the parties hereto shall be determined in accordance with the laws of the State of Florida, excluding its choice of law rules.

14. **DISPUTE RESOLUTION.**

- A. **Negotiation**. The parties shall attempt in good faith to resolve any dispute arising out of or relating to this Agreement promptly by negotiations between representatives of each party. Any party may give the other party written notice of any dispute not resolved in the normal course of business. If the matter has not been resolved within thirty (30) days of the disputing party's notice, either party may initiate arbitration of the controversy or claim as provided hereinafter. If a party intends to be accompanied at a meeting by an attorney, the other party shall be given reasonable notice of such intention and may also be accompanied by an attorney. All negotiations pursuant to this Section shall be treated as compromise and settlement negotiations for the purposes of the federal and state rules of evidence and procedure.
- B. **Arbitration**. The parties hereby agree and consent that any dispute arising out of or relating to this Agreement or the breach, termination or validity thereof, that has not been resolved as provided above shall be heard by and finally settled by arbitration conducted expeditiously in accordance with the American Arbitration Association ("AAA") Rules, including the AAA Rules for Arbitration Appeals. The parties hereby irrevocably waive all right to trial by jury in any action, proceeding or counterclaim (whether based in contract, civil responsibility/tort or otherwise) arising out of, or relating to, this Agreement. The parties agree and consent that Palm Beach County, Florida shall be the jurisdiction and venue for any such arbitration and appeal. Any arbitrator not appointed by a party shall be appointed from the AAA Roster of Neutrals. The arbitration shall be governed by the United States Arbitration Act and any judgment upon the award decided upon by the arbitrators and any arbitration appeal thereof may be entered by any court having jurisdiction thereof. The arbitrators are not empowered to award damages in excess of compensatory damages and each party hereby irrevocably waives any damages in excess of compensatory damages but the arbitrators may, in their discretion, award a party's reasonable costs and expenses (including, without limitation, the costs of the arbitration and any appeal thereof, as well as reasonable attorneys' fees and disbursements) in connection with such party successfully prevailing in a dispute. The Parties agree that this Agreement is entered into and shall be performed primarily within Palm Beach County, Florida, and that any court of competent jurisdiction located in Palm Beach County, Florida will be the appropriate venue and jurisdiction for the resolution of any dispute arising from this Agreement.

15. PERSONAL CONTRACT. The rights, obligations and duties of Coach shall be personal and not succeeded to, assignable or delegable in any manner whatsoever. In addition, the parties acknowledge that it is not their intent to create or confer any rights or obligations in or upon any third person or entity under this Agreement. The parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against either of the parties based upon this Agreement.

16. NO TRUST FUND. Nothing contained in this Agreement and no action taken pursuant to the provisions of this Agreement shall create or be construed to create a trust of any kind. To the extent that Coach acquires a right to receive payments from the University under this Agreement, the University's obligation to make such payments represents an unfunded promise or covenant to pay such amount running from the University to Coach.

17. TOTALITY OF AGREEMENT. This Agreement, the applicable Athletic Requirements, and the University's regulations and policies represent the entire agreement pertaining to the employment of Coach and it supersedes any and all other prior oral or written agreements between the Parties, including but not limited to the Florida Atlantic University Head Coaching

Agreements entered into by the parties on December 13, 2016, and December 1, 2017. Additionally, each Party acknowledges and agrees that they have entered into this Agreement knowingly and voluntarily after having had the opportunity to review the Agreement and to seek the advice of counsel regarding their respective rights in the Agreement. Further, this Agreement will be construed equally against the Parties and may not be modified or amended without the express written consent of all Parties to the Agreement.

18. PUBLIC RECORDS. The parties agree and acknowledge that this Agreement and other applicable documents are subject to the Florida public records law, Ch. 119, Florida Statutes.

19. TAXES. All compensation and benefits received by Coach from the University, including but not limited to automobile, tickets, and use of stadium, may be treated as taxable income and subject to taxation in accordance with IRS guidelines.

20. RECORDS AND INFORMATION. All materials or articles of information, including, without limitation, personnel records, recruiting records, Program information, films, statistics or any other material or data, furnished to Coach by University or developed by Coach on behalf of University or at University's direction or for University's use or otherwise in connection with Coach's employment hereunder are and shall remain the sole property of University. Within seventy-two (72) hours of the expiration of the Term or its earlier termination as provided herein, Coach shall immediately cause any such materials in his possession or control, including, but not limited to, all University building/facility keys, University issued credit cards, telephones and computers (including all other University issued technological devices) to be delivered to University.

21. DEATH AND DISABILITY. Notwithstanding any other provisions of this Agreement, this Agreement shall terminate automatically and shall be null and void upon the death of Coach or if Coach becomes disabled (as defined in Section 409A (a)(2)(C) of the Internal Revenue Code) or is otherwise unable to perform any one of the essential functions of the job, with or without a reasonable accommodation for a period of ninety (90) consecutive days.

22. INTERFERENCE WITH ATHLETICS. In the event of termination of this Agreement for any reason, Coach agrees that he will not interfere with University's student-athletes or verbally committed recruits, or otherwise obstruct University's ability to transact business within University's Program. If Coach violates this provision, Coach will not be entitled to any applicable post-termination benefits and will be required to return any that have been disbursed.

23. MISCELLANEOUS. The headings in this Agreement are for convenience only and shall not be used in construing or interpreting this Agreement. The term "University" as used herein, where applicable or appropriate, shall be deemed to include any duly authorized board, committee, officer, or employee of said entity. Whenever the context requires, the masculine shall include the feminine and neuter, the singular shall include the plural, and conversely.

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IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the dates indicated below.

Florida Atlantic University Board of Trustees

By: 
Dr. John Kelly, President

Date: 6-20-18

By: 
Brian White, Athletics Director

Date: 6-13-18

Coach


Lane Monte Kiffin

Date: 6-13-18

