

EMPLOYMENT CONTRACT

This Amended Employment Contract (hereinafter referred to as the "Contract") is hereby made by and between Virginia Polytechnic Institute and State University (hereinafter referred to as the "UNIVERSITY") and BRADLEY WHITNEY BABCOCK (hereinafter referred to as "BABCOCK");

WHEREAS, the UNIVERSITY desires to continue the employment of BABCOCK as Athletic Director of Virginia Polytechnic Institute and State University for a period of time as hereinafter set out; and

WHEREAS, BABCOCK desires to accept employment pursuant to the terms and conditions hereinafter set out;

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the UNIVERSITY hereby extends to BABCOCK a Contract of Employment as Director of Athletics under the following terms and conditions:

ARTICLE I

This Contract is effective September 15, 2016, and ends June 30, 2024, and is subject to the following terms, conditions and provisions: at the end of the term of this Contract, both parties may agree to extend the Contract on a year to year basis, or as otherwise mutually agreed between the parties.

ARTICLE II

COMPENSATION

In consideration of BABCOCK'S services and for his satisfactory performance, as determined by the President of the University or his designee,

of the terms, conditions and duties stated herein, the UNIVERSITY agrees to compensate BABCOCK for his services as Athletic Director in the following manner:

A. Beginning September 15, 2016, the UNIVERSITY will pay BABCOCK an annual salary of Six Hundred Thirty-Five Thousand and 00/100 Dollars (\$635,000.00) subject to all required deductions, payable on the first day and sixteenth day of each month or as State and UNIVERSITY pay periods may change. Provided his performance under this Contract is satisfactory, as determined by the President of the University or his designee, BABCOCK shall also receive a merit raise of not less than five percent (5%) per annum, beginning January 1, 2017 and on the first of each year thereafter for the term of this Contract, subject to BABCOCK'S satisfactory performance, as determined by the President of the University or his designee.

B. BABCOCK shall also receive the annual sum of Two Hundred Thirty Thousand and 00/100 Dollars (\$230,000.00) (exclusive of retirement benefits) as a retention incentive. Said sum is due and payable at the end of each December 31, beginning December 31, 2016, subject, of course, to the provisions of Article VI, herein.

C. BABCOCK shall also receive the annual sum of One Hundred Thousand and 00/100 (\$100,000.00) Dollars as deferred compensation. Said sum shall accrue daily on a calendar year basis and is due and payable each December 31, beginning December 31, 2016, subject, of course, to the provisions of Article IV herein. The UNIVERSITY, in consultation with BABCOCK, shall pay the

deferred compensation as permitted by UNIVERSITY's governing plan documents in effect at the time of the payment and in accordance with the rules and regulations of the Internal Revenue Service and the Commonwealth of Virginia. In the event BABCOCK wishes to resign as the UNIVERSITY'S Athletic Director during the term of this Contract, for any reason other than a documented physical or mental illness of himself or any member of his immediate family (i.e. wife or children), BABCOCK waives any right to accrued, but unpaid, deferred compensation for the year in which he resigns.

D. The parties further agree that in the event that Virginia Tech achieves a Director's Cup ranking of 30, his annual salary, as detailed in Article II, Section A above, shall increase by Fifty Thousand and 00/100 (\$50,000.00) Dollars, effective as of the date of the publication of the ranking. Further, the parties agree that in the event Virginia Tech achieves a Director's Cup ranking of 25, his annual salary as detailed in Article II, Section A above, shall increase by an additional Fifty Thousand and 00/100 (\$50,000.00) Dollars, effective as of the date of the publication of the ranking.

E. BABCOCK shall receive all usual benefits of employment at UNIVERSITY including insurance, sick leave, retirement, annual leave, business expense reimbursement, etc., as provided to other administrative faculty of the UNIVERSITY. Employee benefits are set out in detail in the *Faculty Handbook*, to which reference is herein made and which provisions are incorporated by reference, to the extent those provisions are not inconsistent with the terms of this Contract. In the event of an inconsistency, this Contract prevails.

Additionally, both parties agree to allow BABCOCK to buy his COBRA benefits for eighteen months after separation provided BABCOCK otherwise qualifies for such benefits.

F. The UNIVERSITY will pay the annual dues for his membership in the Blacksburg Country Club and for so long as BABCOCK serves as the University's Athletic Director.

G. During each contract year, BABCOCK shall be eligible to receive, based on team participation, the following:

1. In the event the UNIVERSITY'S football team participates in a post-season bowl game, at the end of the 2016 season and/or thereafter, during the term of this Contract, BABCOCK will be paid additional compensation equal to one and one-half month's salary. Should this bowl game be one of the College Football Playoff contests, the bonus shall equal two (2) months' salary. In addition, should the UNIVERSITY'S football team win the National Championship, BABCOCK shall receive the additional sum of Twenty-five Thousand and 00/100 Dollars (\$25,000.00).

2. In the event either the UNIVERSITY'S Men's or Women's Basketball team wins a National Championship, BABCOCK shall receive a bonus of Twenty-Five Thousand and 00/100 Dollars (\$25,000.00) per national championship team.

3. In the event the UNIVERSITY'S Men's Basketball team makes a post-season NCAA tournament appearance, BABCOCK shall receive the sum of Fifteen Thousand and 00/100 Dollars (\$15,000.00), which sum shall be

increased to a noncumulative total of Twenty-Five Thousand and 00/100 Dollars (\$25,000.00) if the Men's Basketball team advances to the Sweet 16 round of the post-season NCAA tournament.

4. In the event the UNIVERSITY'S Women's Basketball team makes a post-season NCAA tournament appearance, BABCOCK shall receive the sum of Ten Thousand and 00/100 Dollars (\$10,000.00), which sum shall be increased to a noncumulative total of Fifteen Thousand and 00/100 Dollars (\$15,000.00) if the Women's Basketball team advances to the Sweet 16 round of the post-season NCAA tournament.

5. In the event a UNIVERSITY Olympic team sport wins a national championship, BABCOCK shall receive a bonus of Fifteen Thousand and 00/100 Dollars (\$15,000.00) per national championship team.

6. In the event a UNIVERSITY team sport wins or ties for the Atlantic Coast Conference ("ACC") regular season championship or tournament championship, BABCOCK shall receive a bonus of Ten Thousand and 00/100 Dollars (\$10,000.00) per ACC championship team. BABCOCK shall receive the bonus for both the regular season championship and the tournament championship.

7. In the event the cumulative intercollegiate team grade point average is 3.0 or higher at the end of each academic year, BABCOCK shall receive a bonus of Ten Thousand Dollars and 00/100 (\$10,000). In the event the cumulative intercollegiate student athletes achieve an Academic Progress Rate ("APR") 960 or above based on the APR formula of the NCAA at the end of

the academic year, BABCOCK shall receive a bonus of Ten Thousand and 00/100 Dollars (\$10,000.00)

8. UNIVERSITY will pay BABCOCK a ticket sales bonus of Ten Thousand and 00/100 (\$10,000.00) Dollars beginning on June 30, 2018, and each following year on June 30 of this Contract, if gross season ticket sales for men's basketball and football season tickets have increased by 10% for the preceding academic year. The number of tickets sold shall be derived from the computerized ticket system used by the University's Athletic Ticket Office. Season tickets sold to ticket brokers or resellers of any kind shall be excluded from the sales calculation for the purpose of this bonus.

9. All bonuses shall be paid within sixty (60) days of the date giving rise to the amount due.

F. During each year of this Contract, the UNIVERSITY shall provide to BABCOCK expenses for his family for up to five (5) Virginia Tech athletic trips, which BABCOCK attends in his capacity as Athletic Director.

G. The UNIVERISTY shall provide for BABCOCK'S use during the terms of this Contract two (2) automobiles, or at the UNIVERSITY'S option, an automobile allowance shall be paid at the then prevailing rate.

H. Other Benefits and Employment. Nothing contained herein shall in any way limit BABCOCK'S right to participate in or benefit from any pension, retirement, severance, disability or other employee benefit plan or arrangement under which he is or may become eligible by reason of his employment with the

UNIVERSITY. No provision of this Contract shall be construed as conferring upon BABCOCK the right to continue in the employ of the UNIVERSITY.

I. Withholding. Notwithstanding any of the foregoing provisions hereof, the UNIVERSITY may withhold from payments to be made hereunder such amounts as it may be required to withhold under any applicable federal, state or other law.

J. Tax Compliances – Section 409A of the Internal Revenue Code.

Notwithstanding any provision of this Contract to the contrary, all provisions of this Contract shall be construed and interpreted to comply with section 409A of the Code and the regulations thereunder (“Section 409A”), and if necessary, any provision shall be held null and void to the extent such provision (or part thereof) fails to comply with Section 409A or the regulations thereunder. For purposes of Section 409A, all payments to be made upon a termination of employment under this Contract may only be made upon a “separation from service” within the meaning of such term under Section 409A, each payment of compensation made under this Contract shall be treated as a separate payment of compensation, and the right to a series of installment payments under this Contract is to be treated as a right to a series of separate payments. Any amounts payable under this contract solely on account of an involuntary separation from service within the meaning of Section 409A shall be excludible from the requirements of Section 409A, either as involuntary separation pay or as short-term deferral amounts (e.g., amounts payable under scheduled prior to March 31 of the calendar year following the calendar year of involuntary

separation) to the maximum possible extent. To the extent that any amounts payable under this Contract are not excludible from the requirements of Section 409A under the involuntary separation pay exception or as short-term deferral amounts, such amounts shall be payable on fixed dates or pursuant to a fixed payment schedule, as provided in this Contract. In no event shall BABCOCK, directly or indirectly, designate the calendar year of payment. Further, any reimbursements or in-kind benefits provided under this Contract that are subject to Section 409A shall be made or provided in accordance with the requirements of Section 409A, including, where applicable, the requirements that (i) any reimbursement is for expenses incurred during the period of time specified in the employment agreements, (ii) the amount of expenses eligible for reimbursement, or in-kind benefits provided, during calendar year may not affect the expense eligible for reimbursement, or in-kind benefits to be provided, in any other calendar year, (iii) the reimbursement of an eligible expense will be made no later than the last day of the calendar year following the year in which the expense is incurred, and (iv) the right to reimbursement or in-kind benefits is not subject to liquidation or exchange for another benefit. Notwithstanding anything in this Contract to the contrary, any right of the UNIVERSITY to offset or otherwise reduce any sums that may be due or become payable by the UNIVERSITY to BABCOCK or for the account of BABCOCK, by an overpayment or indebtedness of BABCOCK, shall be subject to limitations imposed by Section 409A.

ARTICLE III

DUTIES

BABCOCK'S duties as Athletic Director shall include those principal and incidental duties that are customarily performed by individuals holding comparable positions at institutions similar in size, budget, athletic programs or other relevant characteristics to the UNIVERSITY. Subject to applicable UNIVERSITY policy, BABCOCK'S duties shall specifically include the following and any reasonable and necessary duties as specifically requested by the UNIVERSITY under Article III, Section L, below:

- A. Manage, administer, direct and superintend the business of the UNIVERSITY'S Intercollegiate Athletic Program.
- B. Recommend for hire, discipline or dismissal and otherwise regulate the conduct and employment terms of all athletic department staff, other than himself.
- C. Keep, observe, perform, and administer the UNIVERSITY'S athletic program in compliance with and in a manner consistent with State and Federal laws, as well as with the constitutional provisions, rules, bylaws, policies, regulations and interpretations, as now constituted or as they may be amended of the National Collegiate Athletic Association ("NCAA"), any applicable conferences, and the UNIVERSITY.
- D. Supervise all coaches, assistant coaches and other employees for whom the Athletic Director is administratively responsible to reasonably ensure

compliance with the aforesaid laws, constitutional provisions, rules, bylaws, policies, regulations and interpretations.

E. Report to the UNIVERSITY'S President in regard to financial affairs and budgets; adhere to the approved budget; and keep and maintain such books of accounts and records as may be prescribed or necessary.

F. Assist in fund raising for athletics by soliciting and encouraging contributions to and support for the UNIVERSITY'S Intercollegiate Athletic Program.

G. Oversee the operation and development of intercollegiate athletic teams in men's and women's sports at the UNIVERSITY.

H. Adhere to the relevant academic and admissions standards prescribed by the UNIVERSITY.

I. Represent the UNIVERSITY at appropriate athletic events and meetings, including meetings of the Hokie Club and Alumni Association.

J. Administer and carry out public relations for the UNIVERSITY'S Intercollegiate Athletic Program in a manner that is consistent with the history and traditions of the UNIVERSITY, its alumni, students, faculty and administration. In this connection, BABCOCK shall be allotted an appropriate number of football and basketball tickets, not to exceed 24 per home game to be distributed to others, as he shall decide, in furtherance of the aims of the UNIVERSITY'S Intercollegiate Athletic Program.

K. Inform the UNIVERSITY of planned public announcements involving the UNIVERSITY'S Intercollegiate Athletic Program.

In addition to the duties enumerated above, the UNIVERSITY may from time to time assign to BABCOCK, and BABCOCK shall perform, such other duties relating to the Intercollegiate Athletic Program as the UNIVERSITY believes are reasonable and necessary for the proper operation or improvement of the program. Conversely, the UNIVERSITY may from time to time reduce the duties or responsibilities assigned to BABCOCK as Athletic Director by so informing BABCOCK in advance. Any such change in duties or responsibilities shall in no way alter the compensation provided for herein, and shall not constitute or be construed as a constructive discharge or as a breach of this Contract

ARTICLE IV

CONDITIONS OF EMPLOYMENT

BABCOCK shall serve under and report to the President of the UNIVERSITY. BABCOCK shall also be a member of and attend meetings of the President's Cabinet.

BABCOCK shall devote his entire time, attention, energies and abilities to his duties as the UNIVERSITY'S Athletic Director, and, during his employment, he shall not engage in any other business, activity, occupation or endeavor, regardless of whether or not such business, activity, occupation or endeavor is pursued for profit, gain or other personal advantage, without first obtaining the written approval of the President of the UNIVERSITY or his designee, which approval shall not be unreasonably withheld. In addition, BABCOCK shall conduct himself at all times in a professional and dignified

manner that will reflect credit on himself and on the UNIVERSITY, promoting and favorably representing the image and standards of the UNIVERSITY, its faculty, administration, students, facilities and programs.

BABCOCK expressly agrees that in conducting any and all aspects of the UNIVERSITY'S Intercollegiate Athletic Program, he shall at all times have actual knowledge of, and take all reasonable actions to ensure the UNIVERSITY'S compliance with the constitutional provisions, rules, bylaws, policies, regulations and interpretations as now constituted or as they may be amended, of the UNIVERSITY, the National Collegiate Athletic Association ("NCAA"), or any athletic division or conference of which the UNIVERSITY is or may become a member during the term of this Contract. BABCOCK shall at all times perform his services as the UNIVERSITY'S Athletic Director in a manner consistent with the said constitutional provisions, rules, bylaws, policies, regulations and interpretations. In addition, BABCOCK shall manage and supervise the employees and coaches of the Athletic Department (including any student assistants for whom BABCOCK is responsible administratively) to ensure their compliance with said constitutional provisions, rules, bylaws, policies, regulations and interpretations.

ARTICLE V

DEATH OR DISABILITY

If BABCOCK dies or becomes physically or mentally disabled to such an extent that he is unable to perform satisfactorily his duties as the UNIVERSITY'S

Athletic Director, this Contract shall terminate forthwith, and the UNIVERSITY shall be relieved of all liabilities and/or obligations under this Contract following such termination, except for retention or other bonuses previously earned. The President shall initially determine whether BABCOCK is mentally or physically disabled and shall give notice to BABCOCK. If BABCOCK disagrees with the President's determination, BABCOCK and the UNIVERSITY shall each appoint a licensed physician and those physicians shall appoint a third licensed physician to review the medical evidence. The findings of the majority of the physicians' panel shall be binding.

ARTICLE VI

TERMINATION AND SUSPENSION

Notwithstanding anything to the contrary in this Contract, the UNIVERSITY shall have the right to terminate or suspend BABCOCK as the UNIVERSITY'S Athletic Director, without pay or other compensation, except for retention or other bonuses previously earned, for "good cause". A termination for "good cause" shall immediately relieve the UNIVERSITY of any and all liabilities and obligations to BABCOCK under this Contract. For purposes of this Contract, "good cause" shall be defined as follows:

A. BABCOCK'S participation, directly or indirectly, in violations of Federal or State law, or of the constitutional provisions, legislation, rules, bylaws, policies, regulations or interpretations of the UNIVERSITY, the NCAA, or any athletic division or conference in which the UNIVERSITY is a member, or his

participation, provided that if indirectly, then BABCOCK first knew or should have known that the violations were occurring.

B. BABCOCK'S failure to comply with any of the conditions set forth in this Contract.

C. BABCOCK'S conviction for a felony offense or for any other crime or offense involving fraud, dishonesty, gambling, or moral turpitude. A plea of guilty or no contest shall be conclusive evidence of a conviction.

BABCOCK shall be given forty-five (45) days notice of any termination for "good cause" in the event of a termination based upon paragraphs B above.

Upon receipt of notice, BABCOCK shall be given the opportunity to cure the failure(s) giving rise to the notice of termination. At the end of the forty-five (45) day period, the President of the University shall determine whether BABCOCK has cured the failure(s) which gave rise to the notice of termination.

BABCOCK agrees that no hearing shall be required prior to a termination.

ARTICLE VII

STIPULATED DAMAGES

A. In the event the UNIVERSITY elects to terminate this Contract as Athletic Director without "good cause" (as defined in Article VI) the UNIVERSITY agrees to pay BABCOCK, and BABCOCK agrees to accept as his exclusive remedy, stipulated damages consisting of accrued but unpaid deferred compensation to the last day BABCOCK serves as Athletic Director and the base salary and/or retention or other bonuses previously earned (exclusive of club memberships, car allowance, post season pay and other non-earned bonuses, or retention

incentive as set forth in Article II, and other benefits or entitlements set out herein) remaining to be paid on this Contract. Such sum shall be paid in the same manner, less required holding, as if he were still employed. It is agreed, however, that there shall be offset against any such payment or such benefits any amount or such benefits that BABCOCK earns from any employment he obtains at any college or university in an Athletic Director position.

B. In the event BABCOCK wishes to resign as the UNIVERSITY'S Athletic Director during the term of this Contract, for any reason other than a documented physical or mental illness of himself or any member of his immediate family (i.e. wife or children), BABCOCK agrees to notify the UNIVERSITY President ninety (90) days in advance of the effective date of such resignation. Further, BABCOCK agrees to assist the UNIVERSITY during the transition in hiring and training a new Athletic Director, if requested.

C. The UNIVERSITY and BABCOCK hereby expressly acknowledge that the base salary and other benefits and forms of remuneration set forth above constitute the entire and only compensation to which BABCOCK is or may be entitled under the Contract from the UNIVERSITY, and that entitlement to that compensation immediately ceases in all respects if BABCOCK is terminated for "good cause" as defined in Article VI of this Contract or if BABCOCK resigns for any reason.

D. The parties agree that it is in UNIVERSITY'S interest to retain BABCOCK for the full period of this employment contract in order to build program continuity, develop relations with the conference, University alumni, and to

provide program stability. Furthermore, the parties agree that actual damages are difficult, if not impossible, to quantify or calculate. BABCOCK agrees that the cost of searching for a replacement Athletic Director constitutes an unanticipated expense to the UNIVERSITY. For these reasons, in the event BABCOCK resigns or otherwise terminates his employment for another position in Intercollegiate Athletics BABCOCK agrees to pay the UNIVERSITY, not as a penalty but as stipulated damages, within ninety (90) days of his termination of employment, stipulated damages in the following amounts:

1. If BABCOCK terminates prior to December 15, 2016, BABCOCK will pay UNIVERSITY One Million and 00/100 (\$1,000,000.00) Dollars;
2. If BABCOCK terminates on or after December 15, 2016, and prior to December 15, 2018, BABCOCK will pay UNIVERSITY Five Hundred Thousand and 00/100 (\$500,000.00) Dollars; or
3. If BABCOCK terminates on or after December 15, 2018, BABCOCK will pay UNIVERSITY Two Hundred Fifty Thousand and 00/100 (\$250,000.00) Dollars.

E. Both UNIVERSITY and BABCOCK waive any and all defenses as to the validity of the stipulated damages stated in this Contract as they may appear on the grounds that such stipulated damages are void as penalties or are not reasonably related to actual damages. The parties agree that each has carefully considered the amount of stipulated damages and agree that stipulated damages reflect the amount needed by each party as reasonable compensation for all losses each may incur.

ARTICLE VIII

WAIVER OF BREACH

The waiver by either party of a breach of any provision of this Contract shall not operate or be construed as a waiver by that party of any subsequent breaches.

ARTICLE IX

SEVERABILITY

All agreements and covenants contained herein are severable, and if a Court of competent jurisdiction declares any such agreement or covenant to be invalid, the Contract shall be interpreted and applied as if such invalid agreements or covenants were not contained herein.

ARTICLE X

NOTICE

All notices required under this Contract shall be given in writing by personal delivery or by first-class mail, postage prepaid, to the appropriate address of the party receiving the notice.

ARTICLE XI

GOVERNING LAW

This Contract is governed by the laws of the Commonwealth of Virginia and is subject to the employment policies of the Commonwealth of Virginia and the UNIVERSITY, including official opinions of the Attorney General of the Commonwealth of Virginia and the rules, regulations, constitution and bylaws of

the National Collegiate Athletic Association and any athletic conference in which the UNIVERSITY maintains membership. Should any provision of this Contract be in conflict with a provision of the UNIVERSITY *Faculty Handbook*, the Contract shall take precedence.

ARTICLE XII

ENTIRE AGREEMENT

This Contract contains the entire agreement by and between the UNIVERSITY and BABCOCK, and it supersedes any and all prior or contemporaneous agreements or understandings between the UNIVERSITY and BABCOCK, if any, whether oral or in writing. Oral modifications, additions or supplements to the Contract will have no effect and will not bind the parties. The Contract may be altered only by a later written agreement signed by both the UNIVERSITY and BABCOCK. There are no additional or supplemental agreements, either oral or in writing, between BABCOCK and the UNIVERSITY or BABCOCK and any person or group acting on the UNIVERSITY's behalf that bind the UNIVERSITY or that relate in any way to or provide additional compensation/consideration for BABCOCK'S services as the UNIVERSITY'S Athletic Director.

ARTICLE XIII

RIGHT OF REVIEW AND CONSTRUCTION

BABCOCK agrees that before signing this Contract, BABCOCK has been afforded to have this contract reviewed by counsel of his choice. In addition, BABCOCK and UNIVERSITY agree that both parties, through counsel, have

contributed equally to the drafting of this Contract, and both parties waive any presumption, defense, and/or claim of any kind that the terms of this Contract should be construed against a drafter.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals in duplicate, on the 8TH day of December, 2016.

BY:


BRADLEY WHIT BABCOCK

Virginia Polytechnic Institute and
State University

BY:


TIMOTHY D. SANDS, PRESIDENT