

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding ("MOU") is entered into between **THE UNIVERSITY OF TENNESSEE** ("University"), a public educational corporation of the State of Tennessee, for and on behalf of The University of Tennessee, Knoxville ("UTK") and its Athletics Department, and **GREGORY SCHIANO** ("Coach"), and records the agreement of the University and Coach as to the principal terms and conditions under which the University shall employ Coach and Coach accepts employment as UTK's Head Football Coach. This MOU constitutes a binding agreement between Coach and the University, subject to the execution of a formal Employment Agreement, which shall not be inconsistent in any material way with this MOU, and cancels and supersedes all prior existing oral and written agreements between the University and Coach. In consideration of the mutual promises contained herein, the parties agree as follows:

1. TERM, DUTIES & AUTHORITY: Coach shall be employed as UTK's Head Football Coach from _____, 2017 through January 31, 2024 ("Term"), with the duties and authority ordinarily associated with a head football coach at a major university that participates at the NCAA Division I FBS level. As used in this MOU, "Contract Year" means a three hundred and sixty-five (365) day period beginning on February 1 of one calendar year and ending on January 31 of the following calendar year; however, the first Contract Year in the Term shall begin on _____, 2017 and end on January 31, 2019.

2. COMPENSATION & BENEFITS (ALL SUBJECT TO APPLICABLE STATE AND FEDERAL LAWS; DOLLARS STATED IN GROSS AMOUNTS; PARTIAL MONTHS/YEARS PRORATED): The University shall provide Coach with the following compensation and benefits:

- (a) Annual base compensation of \$275,000 ("Base Pay").
- (b) Annual supplemental compensation payable from income earned by the University under various broadcast, endorsement and/or consultation contracts ("Supplemental Pay") pursuant to the following schedule:

<u>Contract Year</u>	<u>Compensation</u>
Contract Year 1	\$4,125,000 (prorated)
Contract Year 2	\$4,175,000
Contract Year 3	\$4,225,000
Contract Year 4	\$4,225,000
Contract Year 5	\$4,275,000
Contract Year 6	\$4,325,000

- (c) Annual incentive compensation for athletic and academic achievements as provided in **Exhibit A**, which is incorporated herein by reference.
- (d) Use of private (non-commercial) aircraft for the Coach's personal, non-business travel and/or that of his guests and family, for forty (40) hours of flight time each Contract Year (in air and dead time inclusive if the University is charged for the dead time hours). Unused flight time in a Contract Year may be carried forward for up to one (1) additional Contract Year. In the alternative, at University's discretion, provision of a thirty (30) hour "jet card" from a premium-level provider of jet card programs (i.e. "NetJets," "Wheels Up," et al) each Contract Year.
- (e) Annual compensation of \$10,000 for summer football camp services.
- (f) Either a monthly vehicle allowance of \$1,600 or two (2) vehicles of a quality, in terms of make and model, similar to vehicles provided to other University head coaches, for Coach's personal use. The University shall be solely responsible for maintaining liability insurance coverage on the vehicle. Coach shall be solely responsible for maintaining full comprehensive and collision insurance coverage on the vehicle, for paying fuel costs, and for otherwise complying with the courtesy vehicle program.
- (g) A one-time moving allowance of \$35,000 in accordance with University rules.
- (h) A temporary housing and relocation expense allowance of \$10,000 per month through June 30, 2018.

- (i) The following complimentary tickets: twenty (20) season football tickets in the lower bowl in Neyland Stadium; use of a suite in Neyland Stadium for use by Coach's family and guests during all home football games, including the sixteen (16) tickets in connection therewith; and four (4) football season parking passes.
- (j) Coach shall be included in the University's athletic play/practice insurance coverage. Coach shall be eligible for participation in the same fringe benefit programs for which other regular full-time employees are eligible. The University shall not be required to compensate Coach for his accrued and unused annual leave upon the termination of his employment for any reason. Coach shall be entitled to the maximum annual amount of retirement contributions by the University allowed by federal and state law.
- (k) An expense allowance in the amount of \$36,000 per Contract Year as a non-accountable expense allowance/reimbursement for other expenses incurred by Coach in fulfilling his duties as Head Coach for which the University does not reimburse, paid pro-rata on a monthly basis.
- (l) Authorization for Coach's spouse and family members to travel at no additional cost to away contests and post-season competitions.

3. TERMINATION FOR CAUSE BY UNIVERSITY: The University has the right to terminate this MOU or the Employment Agreement at any time for cause as determined in the reasonable and good faith judgment of the University. For the purpose of terminating this MOU, "cause" shall be interpreted as generally consistent with its meaning in the most recent head coach's employment agreement, excluding a memorandum of understanding, executed by the University. Termination of the Employment Agreement for "cause" shall be in accordance with the definitive terms and conditions set out in the Employment Agreement, which shall be generally consistent with, but not limited to, those included in the most recent head coach employment agreement, excluding a memorandum of understanding, executed by the University; however, the parties agree to engage in good faith negotiations about the specific for cause provisions in the Employment Agreement. In the event of a termination of either this MOU or the Employment Agreement for "cause," the University shall not be liable to Coach for any unearned or unaccrued payments or benefits after the date of termination. The University may suspend Coach with pay pending an investigation or decision relating to termination for "cause." For any one or more acts, omissions, or events that would be grounds for termination for "cause," the University may take other disciplinary or corrective action against Coach short of termination, including but not limited to suspension without pay (said suspension not to exceed 90 days). Prior to any final determination regarding a possible termination for "cause," the University shall afford Coach notice and an opportunity to meet with the Vice Chancellor and Director of Athletics to respond to any allegations or proposed termination, and where appropriate, shall afford Coach a reasonable opportunity to cure any breach or default. Coach voluntarily waives all rights to a post-termination opportunity to contest a for-cause termination, including but not limited to his rights under the Tennessee Uniform Administrative Procedures Act, Tennessee Code Annotated § 4-5-301 et seq. In the event a termination of this MOU or the Employment Agreement is ultimately found to be a breach of this Agreement by the Tennessee Claims Commission or a court of competent jurisdiction, after any available appeals have been exhausted, then Coach shall be entitled only to the remedies that would be available to him under this MOU or the Employment Agreement if the University terminated this MOU or the Employment Agreement without cause, according to the date of termination, in lieu of all other legal remedies or equitable relief.

4. TERMINATION WITHOUT CAUSE BY UNIVERSITY: In its sole discretion and at any time, the University may terminate this MOU or the Employment Agreement without cause. If the University terminates this MOU or the Employment Agreement without cause at any time during the Term, then the University shall pay Coach seventy-five percent (75%) of the Base Pay and Supplemental Pay which would be payable from the date of termination through the end of Contract Year 6 (the, "University Separation Payment"), without any mitigation obligations incurred by Coach or offset rights attributed to the University following any such termination. The University Separation Payment shall be subject to all applicable state and federal tax reporting and withholding requirements and shall be made in equal monthly installments over a period equal to the number of months remaining in the Term, with the first monthly installment due on or before the thirtieth (30th) day following the date of termination of the MOU or Employment Agreement. The University's obligations to pay the University Separation Payment shall not accrue interest (so long as not in arrears). As a condition of being eligible to receive the University Separation Payment, Coach shall be required to execute a waiver and release of claims. Notwithstanding the language and/or guidelines contained herein, the parties agree to engage in

a good faith discussion and review regarding the applicability of Internal Revenue Code §409A (“§409A”) to such guarantee payment structure and, pending such review, agree to make any necessary accommodations in the Employment Agreement to comply with §409A.

5. TERMINATION WITHOUT CAUSE BY COACH: In his sole discretion and at any time, Coach may terminate this MOU or the Employment Agreement without cause. If Coach terminates this MOU or the Employment Agreement without cause for the purpose of accepting a Head Coaching position with another NCAA institution or an NFL member club, then Coach shall pay the University a separation payment (“Total Coach Separation Payment”) in the amount of: (i) \$5,000,000 in the event such termination occurs prior to December 31, 2018; or (ii) \$3,500,000 in the event such termination occurs prior to December 31, 2019; or (iii) \$2,500,000 in the event such termination occurs prior to December 31, 2020; or (iv) \$1,000,000 in the event such termination occurs on or after December 31, 2020 (with no payment being due in the event such termination occurs on or after December 31, 2022). Payment of the Total Coach Separation Payment shall be paid to the University before the last day of the second month following the month in which the MOU or Employment Agreement was terminated.

6. MISCELLANEOUS:

- (a) In addition to the terms and conditions concerning the matters set out in Paragraphs 1 through 5 above (excluding terms and conditions applicable only while the MOU is in effect), the Employment Agreement shall include, among other things, provisions concerning the following: (i) duties and authority of Coach as Head Football Coach, including but not limited to Coach reporting directly to the Athletics Director and having the authority – subject to University hiring practices, departmental budgetary policies, and the approval of the Athletics Director (which shall not be unreasonably withheld) – for the selection, supervision, discipline, and termination of assistant coaches and other direct reports; (ii) provisions relating to the principles of institutional control including communications with University officials other than the Athletics Director; (iii) reasonable limitations on outside activities by Coach, including commercial endorsements; (iv) enforcement of NCAA, SEC, and other governing athletic rules, including without limitation provisions relating to Coach’s responsibility to establish an atmosphere of compliance in the football program and monitor the activities of all coaches and staff members in the football program; (v) the University’s rights to use Coach’s name, likeness, image, etc.; (vi) operation of football camps; (vii) Coach’s obligation to notify (verbally or in writing) the Athletics Director of material negotiations about employment with another college or university or with a professional football organization; (viii) limitation of remedies and waiver of claims by both parties; and (ix) restrictions on Coach’s disclosure of confidential information relating to the football program during the Term.
- (b) Coach represents that he has disclosed to the University all material information concerning previous NCAA, conference, or institutional rules violations or potential violations committed by him or any coach, staff member, or other person under his direct or indirect control at any other NCAA member institution prior to the date on which he executed this Agreement; similarly, the University represents that it has disclosed to Coach all material information it has regarding any pending and/or ongoing NCAA investigations or inquiries relating to UTK’s football program. Coach also represents that: neither he nor any person acting on his behalf knowingly misrepresented material information, knowingly withheld material information, or knowingly provided incomplete or false material information during the University’s process of interviewing and hiring Coach; he is not restricted from entering into this Agreement by any conflicting obligations to another authority, person, body, or entity; and he has never been convicted of, pled guilty to, or pled nolo contendere to a criminal act that constituted either (i) a felony or (ii) a misdemeanor involving moral turpitude (excluding minor traffic offenses). This MOU is conditioned on a satisfactory criminal background check and NCAA compliance check, to be completed within five (5) business days after the University’s execution of this MOU.
- (c) This MOU may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but all such counterparts shall together constitute one and the same MOU. This MOU shall be governed by the laws of the State of Tennessee.

- (d) Subject to the University's right to terminate this MOU, until such time that the Employment Agreement is executed, this MOU shall constitute a binding employment contract between the parties.

[signature page follows; remainder of page intentionally left blank]

The parties acknowledge their agreement by signing and dating this Memorandum of Understanding below.

THE UNIVERSITY OF TENNESSEE

By: 

John Currie
Vice Chancellor and Director of Athletics
The University of Tennessee, Knoxville

Date

Dr. Beverly Davenport
Chancellor,
The University of Tennessee, Knoxville

Date

David L. Miller
Chief Financial Officer
The University of Tennessee

Date

COACH

DocuSigned by:


ABB083328E004AU
Gregory Schiano

11/26/2017

Date

EXHIBIT A – INCENTIVE COMPENSATION

In recognition of exemplary athletic and academic performance by the football team (the “Team”) and the additional work required by Coach therewith, and as an incentive for Coach to assist the Team in achieving the goals described below, the University agrees to pay Coach, if earned, annual incentive compensation in an amount equal to the sum of the highest amounts described in the following subsections, subject to all applicable state and federal tax reporting and withholding requirements:

SEC Championship. A maximum of one (1) of the following (payment based on highest goal achieved in this subsection):

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|-----|--|-----------|
| (a) | Winning the SEC Championship Game | \$300,000 |
| (b) | Appearing in the SEC Championship Game | \$100,000 |

National Achievement. A maximum of one (1) of the following (payment based on highest goal achieved in this subsection):

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|-----|---|-----------|
| (a) | Winning the CFP National Championship Game | \$500,000 |
| (b) | Appearing in CFP National Championship Game | \$400,000 |
| (c) | Appearing in CFP Semifinal Game | \$300,000 |
| (d) | Appearing in a CFP Access Bowl Game | \$200,000 |
| (e) | Appearing in a bowl game | \$100,000 |

Final Polls. A maximum of one (1) of the following (payment based on highest goal achieved in this subsection):

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|-----|--|-----------|
| (a) | Top 5 Finish in the AP, USA Today/Coaches,
or CFP Poll | \$150,000 |
| (b) | Top 10 Finish in the AP, USA Today/Coaches,
or CFP Poll | \$100,000 |
| (c) | Top 25 Finish in the AP, USA Today/Coaches,
or CFP Poll | \$50,000 |

Coach of the Year Awards. Either or both of the following:

- | | | |
|-----|--------------------------------|-----------|
| (a) | AP National Coach of the Year* | \$100,000 |
| (b) | AP SEC Coach of the Year | \$50,000 |
- *AFCA/AP/Bobby Dodd/Paul “Bear” Bryant/Walter Camp (limited to one)

Academic Progress Rate. A maximum of one (1) of the following (payment based on highest goal achieved in this subsection):

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|-----|--|-----------|
| (a) | Single year APR or four year APR of 975 or greater | \$100,000 |
| (b) | Single year APR or four year APR of 945 or greater | \$50,000 |

The maximum amount of incentive compensation that may be earned in any Contract Year shall be One Million Two Hundred Thousand Dollars (\$1,200,000). Annual incentive compensation earned shall be paid by the University on or before March 1 following the conclusion of the football season in which the goal was achieved. Annual incentive compensation shall be earned by and payable to Coach only if Coach is employed as the Head Football Coach on the day of the event that forms the basis for the incentive compensation.