

Smiley

EMPLOYMENT AGREEMENT

This Employment Agreement (this "Agreement") is entered into by and between Miami University ("Miami") and Brian Smiley ("Coach"). The effective date of this Agreement is June 28, 2023 (the "Effective Date").

WHEREAS, Miami desires to establish its right to the services of Coach as the head coach of Miami's varsity intercollegiate men's baseball team (the "Team" or "Program"); and

WHEREAS, Miami wishes to employ Coach in the aforementioned capacity upon the terms and subject to the conditions set forth in this Agreement, and Coach is willing to accept such employment on such terms and conditions.

NOW, THEREFORE, in consideration of the mutual agreements hereinafter set forth, Coach and the Employer have agreed and do hereby agree as follows:

1.0 Employment.

1.1 Subject to the terms and conditions of this Agreement, Miami hereby employs Coach as the head coach of the Team. Coach represents and warrants that Coach is fully qualified to serve, and is available for employment, in this capacity.

1.2 Coach shall be responsible, and shall report directly to Miami's Director of Intercollegiate Athletics (the "Director") and shall confer with the Director or the Director's designee on all administrative and technical matters.

1.3 The parties recognize that the Director is responsible to Miami's President for the operation, review, and periodic evaluation of the entire athletic program at Miami, including the Program. Coach recognizes and acknowledges the importance of the maintenance and observance of the principles of institutional control over every aspect of such Program. Coach agrees to recognize and respect those relationships and the organizational structure of Miami. Within that structure, the Director and Coach shall mutually cooperate to implement the purposes of this Agreement.

1.4 Coach shall manage and supervise the Team and shall perform such other duties in Miami's athletic program consistent with Coach's status as head coach, as the Director may assign.

1.5 Coach agrees to represent Miami positively in public and private forums and shall not engage in conduct that reflects adversely on Miami or its athletic programs. Coach shall perform Coach's duties and personally comport himself/herself at all times in a manner consistent with good sportsmanship and with the high moral, ethical, and academic standards of Miami and its Department of Intercollegiate Athletics.

2.0 Term.

2.1 This Agreement is for a fixed-term appointment commencing on the Effective Date, and ending on July 31, 2027 (the "Term"). Each contract year shall begin on August 1 and end on July 31; provided, however, that the first contract year shall commence on June 28, 2023 and end on July 31, 2024. If this is the Coach's initial appointment at Miami, then (1) the offer contained in this Agreement is conditional pending the results of a background verification; and (2) if the results of the background verification are unacceptable, the offer will be withdrawn (or if Coach has started employment, then this Agreement will terminate immediately). For avoidance of doubt, termination of this Agreement on the

basis of an unsatisfactory background verification shall not trigger any of the provisions in **Section 5** of this Agreement, and each party shall be relieved of all obligations under this Agreement (except for Miami's payment to Coach of Base Salary through the date of termination).

2.2 This Agreement is renewable solely upon an offer from Miami and an acceptance by Coach, both of which must be in writing and signed by the parties. This Agreement in no way grants Coach any claim to tenure or extended appointment status at Miami, nor shall Coach's service pursuant to this Agreement count in any way toward tenure or extended appointment status at Miami.

3.0 Compensation.

3.1 In consideration of Coach's services and satisfactory performance of this Agreement, Miami shall pay Coach as follows:

3.1.1 The following annual salary (the "Base Salary"), payable in monthly installments in accordance with normal Miami policies:

Period	Base Salary
June 28, 2023 – July 31, 2024	\$100,000
August 1, 2024 – July 31, 2025	\$100,000
August 1, 2025 – July 31, 2026	\$100,000
August 1, 2026 – July 31, 2027	\$100,000

3.1.2 Coach shall receive such normal employee benefits (except vacation) as Miami provides generally to unclassified administrative staff. In lieu of vacation, Coach shall be entitled to twenty-five (25) non-contract days, per contract year, and shall take these days off in consultation with and with the approval of the Director. Coach shall not be entitled to accrue or carry over unused non-contract days beyond the contract year. Coach shall not be able to cash out any unused non-contract days.

3.1.3 Coach may be required to travel on behalf of Miami. Reasonable travel and other business expenses incurred in Coach's official capacity as head coach of Miami's intercollegiate men's baseball team shall be paid for or reimbursed in accordance with Miami's travel and hosting policies.

3.2 Coach may be eligible for salary increases and discretionary bonuses, as recommended by the Director and approved by the President.

3.3 For the single year achievements listed below, Miami shall pay within sixty (60) days of each such achievement, the following sums to Coach:

Single Year Achievement	Amount
Regular Season Conference Champions	8.333% of Base Salary
Conference Coach of the Year	4.167% of Base Salary
National Coach of the Year	8.333% of Base Salary
Conference Tournament Champions or Participation in NCAA Tournament	8.333% of Base Salary
NCAA Tournament Regional Championship	8.333% of Base Salary
NCAA Tournament Super Regional Championship	8.333% of Base Salary
NCAA Tournament Champion	16.667% of Base Salary

3.4 With respect to each of Miami's academic years which Coach coaches the team as its head coach for the entire season (including tournament games) during such academic year, Coach shall earn 1.5% of Base Salary per class for achieving an annual class retention rate of 80% or higher. As used herein, the term "annual class" means the number of recruited student athletes who sign a national letter of intent to play on the Team and who actually matriculate to Miami on the first class day of fall semester in a given academic year, including transfer student athletes. As used herein, the term "annual class retention rate" is calculated by taking the number of students in the annual class who return to Miami for the subsequent academic year, having fulfilled the satisfactory progress toward degree requirements of Miami divided by the annual class. If earned, the annual class retention bonus described herein shall be paid within sixty (60) days of the commencement of each fall semester.

3.5 All salary or compensation of Coach for performance of coaching duties shall be paid only by Miami, or as expressly approved, in writing by the Director. To that end, Coach will not solicit or accept gifts of cash or of substantial value or accept hospitality, other than reasonable social hospitality, from any person, including without limitation, a person who is a "representative of the athletic interests" as that term is defined in NCAA Requirements.

3.6 As additional compensation, while Coach is employed as the head coach of the Team, Miami shall furnish Coach with a cellular telephone and a monthly automobile stipend in an amount to be decided by Miami.

3.7 As additional compensation, Miami shall reimburse Coach for the reasonable and documented moving expenses incurred as a result of packing and transporting Coach's personal and household belongings to the Oxford area from the place he is living immediately prior to beginning employment with Miami, in accordance with Miami's standard policies and procedures. In the event Coach terminates this agreement, in accordance with **Section 5.3**, within twelve (12) months of the Effective Date, Coach shall reimburse Miami for said expenses.

3.8 As additional compensation, Miami will annually, without charge, deliver to Coach twenty-five (25) tickets to each home game of the Team. Coach shall also receive, without charge, four (4) tickets to each home game of Miami's other ticketed sports. These tickets are to be used by Coach at Coach's discretion in a manner consistent with this Agreement. Coach shall comply with all Miami rules applicable to such tickets, included, but not limited to, the prohibition against re-selling tickets.

3.9 All compensation received by Coach will be subject to applicable tax laws and, if appropriate, will be treated as taxable income subject to applicable withholding and other payroll taxes.

4.0 **Coach's Specific Duties and Responsibilities.**

4.1 In consideration of the compensation specified in this Agreement, Coach shall:

4.1.1 Devote Coach's full time and best efforts to the performance of Coach's duties under this Agreement, including all duties that the Director may assign as provided in **Section 1.4** hereof, and including all duties as set forth in Coach's then current job description on file with the Department of Intercollegiate Athletics.

4.1.2 Develop and implement programs and procedures with respect to the evaluation, recruitment, training, and coaching of Team members to compete successfully while assuring their welfare.

4.1.3 Observe and uphold all academic standards, requirements and policies of Miami and encourage Team members to perform to their highest academic potential. Coach recognizes that the

primary mission of Miami is to serve as an institution of higher learning and shall fully cooperate with all academic counselors or similar persons designated by Miami to assist student-athletes and shall use Coach's personal best efforts to encourage and promote those efforts. In that respect, Coach recognizes that the goal of Miami is that every student-athlete obtain a baccalaureate degree, and agrees to support fully the attainment of this goal. It is recognized by the parties that a student-athlete may be declared ineligible for competition for academic reasons, because Miami believes the student-athlete would not be an appropriate representative of Miami under team or university policies, as a disciplinary sanction under Miami's Code of Student Conduct, or because Miami believes that the student-athlete is not eligible according to the rules for athletic competition specified by the Mid-American Conference ("MAC") or the National Collegiate Athletics Association ("NCAA") or for similar reasons. Such an action shall not be considered a breach of this Agreement.

4.1.4 Know, recognize and comply with all applicable current and future laws, as well as all applicable current and future policies, rules and regulations of Miami, the MAC (or any other league or conference in which Miami may be a member during the Term of this Agreement), the NCAA, and any other athletics governing body to which Miami may be subject (all such current or future laws, policies, rules, and regulations individually referred to as a "Requirement," and collectively referred to as the "Requirements"); and supervise and take appropriate steps to ensure that Coach's assistant coaches, and other employees for whom Coach is administratively responsible and the members of Team know, recognize and comply with all Requirements. For avoidance of doubt, the Requirements include, without limitation, Miami's current and future Title IX policies (for both employees and students); with Title IX of the Education Amendments of 1972; with the Violence Against Women Act's amendments to the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act; and any similar state or local law during the Term of this Agreement (individually and collectively, "Title IX").

4.1.5 Coach shall review and approve, in writing, all requests for expense reimbursements by Team assistant coaches and Team graduate assistants prior to submission to Miami to reasonably ensure accuracy and compliance with the Requirements, and upon such satisfactory review, shall forward the same with Coach's approval for payment.

4.2 At all times during the Term of this Agreement, Coach shall cooperate fully with the Director of Compliance. If Coach becomes aware of any fact, occurrence, circumstance, or state of affairs that would cause a reasonable person to suspect a possible violation of any Requirement, Coach shall immediately report such to the individual designated as the head of the University's athletic compliance office (the "Director of Compliance") and, if the potential violation possibly would be of a Level I or Level II nature as currently defined by the NCAA (or comparable conduct under any future NCAA violation classification system), to the Director. In addition, Coach acknowledges that for purposes of Title IX, Coach is a "responsible employee"; consequently, without limiting Coach's reporting obligations under other Requirements, if Coach shall become aware of any fact, occurrence, circumstance or state of affairs that Coach is obligated to report pursuant to Title IX, Coach shall immediately and directly report such information to Miami's Title IX Coordinator. If Coach shall become aware of any fact, occurrence, circumstance or state of affairs that would cause a reasonable person to suspect a possible violation of other Requirements, Coach shall immediately report such to the Director of Compliance and Miami's Office of General Counsel.

4.3 Coach shall furnish to Miami, upon request, any information that Miami deems necessary or reasonably useful for purposes of any investigation of any potential infraction of any Requirement. In this vein, Coach shall cooperate fully with any Miami, MAC, and/or NCAA investigation and accept responsibility for maintaining the integrity of the investigation. The provisions of this **Section 4.3** shall survive the expiration or earlier termination of this Agreement.

4.4 Coach shall not undertake any business, professional or personal activities or pursuits that would prevent Coach from devoting Coach's full time and best efforts to the performance of Coach's duties under this Agreement, that would otherwise detract from those duties in any manner, or that, in the opinion of Miami, would reflect adversely upon Miami or its athletic programs. Coach shall comply with Miami's Conflicts of Interest/Commitment policy.

4.5 Coach shall not, under any circumstances, discuss or negotiate directly or indirectly Coach's prospective employment with any other institution of higher learning or any professional athletic team without providing the Director with written notice as soon as reasonably practicable prior to engaging in any such discussions or negotiations. Coach shall not, under any circumstances, accept employment as a coach at any other institution of higher learning or with any professional athletic team, requiring performance of duties prior to the expiration of this Agreement, without the prior written approval of the Director.

4.6 Coach agrees to work with Miami in the best interests of the Team. Coach agrees to provide his services to promote the Program and other athletic programs at Miami. In particular, as requested by the Director, Coach agrees to provide, and cause Coach's assistant coaches to provide, the following additional services solely for the compensation referenced in **Section 3.1.2** above:

4.6.1 A weekly head coach's radio and/or television and/or internet broadcast show on which Coach personally appears; and such other personal appearances and speaking engagements as reasonably assigned from time to time by the Director.

4.6.2 Participation with Miami's designated sports' apparel/equipment company (currently adidas). Coach's participation may include, without limitation, wearing the apparel of the company and making public appearances. For avoidance of doubt, Miami retains sole discretion in selecting the designated sports' apparel/equipment company.

4.7 It is understood that neither Coach nor Coach's assistant coaches shall appear without the prior written approval of the Director, such approval not to be unreasonably withheld, on any regular radio or television program (including but not limited to coach's show, call-in show or interview show) or a regularly scheduled news segment, but this shall not prohibit Coach from appearing in routine news media interview for which no compensation is received. Coach agrees that he will make a reasonable effort (and will use reasonable efforts to ensure that his assistant coaches make a reasonable effort) not to appear live or on tape at the time that any of the coaches shows or games are broadcast or rebroadcast.

4.8 Coach agrees that Miami shall own all broadcasting and telecasting rights to all live and taped coach's shows, call-in programs, post-game and pre-game interviews (hereinafter called "**Broadcasting Rights**"). Miami shall be entitled, at its option, to produce and market the Broadcasting Rights or negotiate with third parties for the production and marketing of the Broadcasting Rights.

4.9 Coach agrees that Miami has the exclusive right to operate youth camps on its campus using university facilities. Miami may allow Coach the opportunity to earn supplemental compensation by assisting with a Miami camp. At least ninety (90) days before each camp, Coach shall indicate to the Miami whether or not Coach intends to accept the opportunity to earn such supplemental compensation for such year. If Coach so elects, then Coach agrees to assist in the marketing, supervision, instruction and/or general administration of the camp. Coach also agrees that Coach will perform all obligations otherwise assigned by Miami related to the youth camp(s). Coach shall propose to the Director or his designee before camp begins appropriate supplemental compensation amounts for Miami employees who work at such camp and are eligible to receive supplemental compensation. Camp income supplemental payments shall be paid after the appropriate camp documentation and payment requests have been received by Miami and after

determination and approval of such camp income supplemental payments by the Director or his designee. Unless otherwise specifically required by law, any such payment shall not be taken into account in any retirement or other benefit program for which Coach may be eligible.

4.10 Subject to the foregoing, Coach may, with the prior written approval of the Director, enter into separate arrangements for off-campus sports camps and endorsements. Coach shall not be permitted to participate in any business transactions or endorse any products or appear on any radio or television programs which may discredit or bring undue criticism to Miami or which violate any contractual obligations of Miami. Coach may not associate Miami's name, logos, trademarks, symbols, insignias, indicia, service marks or reputation in connection with any such arrangements without the prior written approval of the Director and Vice President for Finance and Business Services. In the event that the Director and Vice President for Finance and Business Services give permission to Coach to use Miami's name, logos, trademarks, symbols, insignias, indicia, service marks or reputation, such permission shall be non-exclusive and non-transferable, and such permission shall automatically expire upon Coach's resignation or termination from employment.

4.11 In accordance with NCAA rules, Coach shall obtain prior written approval from Miami's President and the Director for all athletically related income and benefits from sources outside Miami and shall report the source and amount of all such income and benefits to Miami's President whenever reasonably requested, but in no event less than annually.

4.12 Coach shall have the responsibility and the sole authority to recommend to the Director the hiring and termination of assistant coaches for the Team, but the final decision shall be made by the Director and shall, when necessary or appropriate, be subject to the approval of Miami's President.

4.13 Subject to the Requirements and the approval and consultation of the Director or Director's designees, Coach has the right to contract for and establish the schedule of the Team, and to negotiate the terms of the various game contracts for the Team, as well as accepting invitations for pre-season or post-season play. Coach shall consult with and receive approval from the Director or the Director's designee as to the identity of opponents, playing site and time of play for any games hereafter scheduled. Although Coach and the Director or the Director's designee shall meet at least annually to discuss potential opponents, Coach may suggest potential opponents or discuss scheduling concerns at any time.

4.14 Coach shall at all times take reasonable action necessary to comply with and to implement the policies of Miami relating to substance abuse and to class attendance by students subject to Coach's direct control or authority, and to exercise reasonable care that all personnel and students subject to Coach's direct control or authority comply with such policies. Coach represents and warrants that Coach has read such policies and that Coach will remain current as to the content of such policies.

5.0 **Termination.**

5.1 **Termination by Miami for Cause.**

5.1.1 Miami may terminate this Agreement at any time for cause, which, for the purposes of this Agreement, shall be limited to the occurrence of one or more of the following:

5.1.1.1 Neglect or inattention by Coach to the duties of head coach of the Team or Coach's refusal or unwillingness or inability to perform such duties in good faith after reasonably specific written notice has been given to Coach by the Director, and Coach has continued such neglect, inattention, refusal, unwillingness or inability during a subsequent period specified by Miami.

5.1.1.2 Material, significant or repetitive violation or breach by Coach of this Agreement or the Requirements or of Coach's obligations under either of the forgoing.

5.1.1.3 Serious professional or personal misconduct (including but not limited to acts of moral turpitude) or being convicted of any felony or a serious misdemeanor that may reflect adversely upon the reputation or public perception of Miami, the Program, or its other athletic programs. For the purposes of this Section, a serious misdemeanor is any misdemeanor crime of violence as defined in Ohio Revised Code § 2901.01; any drug offense, any sex offense, any motor vehicle offense involving alcohol or drugs, any robbery or burglary offense, any weapons offense, any offense against the family, or any theft or fraud offense defined as a misdemeanor under Ohio criminal law.

5.1.1.4 Fraud or dishonesty of Coach in the performance of Coach's duties or responsibilities under this Agreement.

5.1.1.5 Fraud or dishonesty of Coach in the preparation, falsification, submission or alteration of documents or records of Miami, NCAA, the MAC, or documents or records required to be prepared or maintained under the Requirements, or other documents or records pertaining to any recruit or student-athlete, including without limitation, expense reports, transcripts, eligibility forms or compliance reports, or permitting, encouraging or condoning such fraudulent or dishonest acts by any other person, provided that Coach had actual knowledge of such fraudulent or dishonest acts or reasonably should have known about such fraudulent or dishonest acts.

5.1.1.6 Failure by Coach to respond accurately and fully within a reasonable time to any reasonable request or inquiry relating to the performance of Coach's duties hereunder or the performance of Coach's duties during Coach's prior employment at any other institution of higher learning propounded by Miami, NCAA, the MAC or other governing body having supervision over the athletic programs of Miami or such other institution of higher education, or required under the Requirements.

5.1.1.7 Failure by Coach to manage the Team in a manner that reflects the academic values of Miami as set forth in this Agreement.

5.1.1.8 Counseling or instructing by Coach of any coach, student or other person to fail to respond accurately and fully within a reasonable time to any reasonable request or inquiry concerning a matter relevant to Miami's athletic programs or other institution of higher education propounded by Miami, NCAA, the MAC or other governing body having supervision over the athletic programs of Miami or such other institution of higher education or required under the Requirements.

5.1.1.9 Soliciting, placing or accepting by Coach of a bet on any intercollegiate or professional athletic contest, or permitting, condoning or encouraging by Coach of any illegal gambling, bookmaking or illegal betting involving any intercollegiate or professional athletic contest whether through a bookmaker, a parlay card, a pool or any other method of organized gambling; or furnishing by Coach of information or data relating in any manner to the Team, the Team's sport, or any other sport to any individual known by Coach to be or whom Coach should reasonably know to be a gambler, better or bookmaker, or an agent of any such person, or the consorting or associating by Coach with such persons.

5.1.1.10 Use or consumption by Coach of alcoholic beverages, drugs, controlled substances, steroids or other chemicals in such degree and for such appreciable period as to impair significantly or materially Coach's ability to perform Coach's duties hereunder; or failure by Coach to fully cooperate in the enforcement and implementation of any drug testing program established by Miami for student-athletes.

5.1.1.11 Coach's sale, use or possession or Coach's permitting, encouraging or condoning by a student-athlete, assistant coach or other athletic staff members of the sale, use or possession of any narcotics, drugs, controlled substances, steroid or other chemicals, the sale, use or possession of which by Coach or such student-athlete is prohibited by the Requirements.

5.1.1.12 Failure by Coach to report promptly to the Director or the Director's appropriate designees any violations known to Coach of the Requirements by assistant coaches, students or other persons under the direct control or supervision of Coach.

5.1.1.13 Failure by Coach to obtain prior approval for outside activities as required by **Section 4.5** of this Agreement and by NCAA rules or to report accurately all sources and amounts of all income and benefits as required by NCAA rules and **Section 4.5** of this Agreement.

5.1.1.14 Commission of or participation in by Coach of any act, situation, or occurrence which, in Miami's reasonable judgment, brings Coach into public disrepute, contempt, scandal or ridicule or failure by Coach to conform Coach's personal conduct to conventional standards of good citizenship, with such conduct offending prevailing social mores and values and/or reflecting unfavorably upon Miami's reputation and overall primary mission and objective, including but not limited to, acts of dishonesty, misrepresentation, fraud or violence that may or may not rise to a level warranting criminal prosecution by the relevant authorities.

5.1.1.15 A violation by Coach (or a violation by a Program staff member about which Coach knew or should have known and did not act reasonably to prevent, limit or mitigate) of applicable law, policy, rule or regulation of the NCAA or the MAC which leads to a "major" infraction investigation by the NCAA or the MAC and which results in a finding of lack of institutional control over the Program or which results in Miami being sanctioned by the NCAA or the MAC in one or more the following ways: (1) a reduction in the number of scholarships permitted to be allocated; (2) a limitation on recruiting activities or reduction in the number of evaluation days; (3) a reduction in the number of expense-paid, official recruiting visits; (4) placement of the Program or Miami on probation; (5) being banned from NCAA post-season play for at least one season; (6) being banned from regional or national television coverage for at least one season.

5.1.2 **Notice.** If Miami terminates this Agreement for cause under this **Section 5.1**, it shall give written notice to Coach of its intention to terminate this Agreement specifying the provision upon which Miami relies therefore and the intended effective date of termination.

5.1.3 **Termination for Cause/Loss of Compensation and Benefits.** In the event this Agreement is terminated for cause under this **Section 5.1**, (1) Coach shall not be entitled to receive any further compensation or benefits under this Agreement; and (2) Miami shall not be liable to Coach for the loss of any collateral business opportunities, or any other benefits, perquisites, income or consequential damages suffered by Coach as a result of such termination.

5.2 **Termination by Miami Other Than for Cause.** If Coach's employment hereunder is terminated by Miami other than for cause (as delineated in **Section 5.1** above) at any time during the Term of this Agreement, Miami shall pay to Coach, as liquidated damages and not as a penalty or compensation, the following amounts:

Date of Termination by Miami Other Than for Cause	Liquidated Damages Amount
June 28, 2023 – July 31, 2026	\$100,000

August 1, 2026 – July 31, 2027	Remaining Base Salary from termination date to end of the contract year.
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Each of the amounts listed above shall be prorated over the remainder of the Term of this Agreement (the “Buyout”) and made in quarterly payments. Such Buyout shall fully compensate Coach for the loss of salary, compensation, benefits, collateral business opportunities (whether media, public relations, camps, clinics, apparel or similar contracts, sponsorships or any other supplemental or collateral compensation or benefits of any kind) and Coach shall not be entitled to any further salary, compensation and benefits or monies of any kind under this Agreement. This **Section 5.2** is subject, however, to the following:

5.2.1 Coach is required to mitigate Miami’s obligations under this **Section 5.2** by making reasonable and diligent efforts to obtain employment; and

5.2.2 Upon Coach’s obtaining new employment in any capacity as a coach of college baseball, Miami’s obligation to pay Coach the Buyout shall be reduced by Coach’s total compensation received from any new employment or any other payment for services rendered by Coach. Payment shall be made in quarterly installments. The installments may not be equal if Coach is employed (thus reducing Miami’s obligation) and Miami has already paid Coach certain installments pursuant to this **Section 5.2**. Monies due from Miami as reduced by Coach’s total compensation shall be reconciled on a contract year basis.

5.2.3 If at any time during the remainder of the Term of this Agreement, Coach has obtained new employment and Coach’s total compensation equals or exceeds the Buyout in any twelve (12) month period, then Miami’s obligations under this **Section 5.2** of this Agreement shall cease.

5.3 Termination by Coach. If Coach terminates this Agreement prior to the end of the Term of this Agreement:

5.3.1 Coach shall not be entitled to receive any further compensation or benefits under this Agreement; and

5.3.2 Coach shall pay to Miami, as liquidated damages and not as a penalty, the follow amounts, which will be due and owing within ninety (90) days of the termination of this Agreement:

Date of Termination by Coach	Liquidated Damages Amount
June 28, 2023 – July 31, 2026	\$100,000
August 1, 2026 – July 31, 2027	Remaining Base Salary from termination date to end of the contract year.

5.3.3 Coach shall not, for a period of one (1) year after such termination, contact or otherwise seek to recruit any high school athlete previously contacted or recruited by Miami, unless such athlete had been recruited or contacted by any new institution employing Coach prior to the notice of termination by Coach to Miami.

5.4 Suspension or Other Disciplinary Action. If Coach is found to have violated any law or any Requirements of the NCAA, the MAC or Miami, Coach may be subject to suspension or other

disciplinary or corrective action. In lieu of termination for cause, Miami may suspend Coach for a period not to exceed ninety (90) days for any one or more of the acts or omissions representing grounds for termination for cause under **Section 5.1** of this Agreement. If a suspension is implemented pursuant to this **Section 5.4**, then the payment of Base Salary and any achievement payments earned under **Section 3.3** or **Section 3.4** shall be in the sole reasonable discretion of Miami and any unpaid period of the suspension shall not exceed 90 days. Coach acknowledges that Miami's right to implement a suspension pursuant to this section is not mutually exclusive with Miami's right to terminate this contract for cause or otherwise. Coach expressly acknowledges that Miami may terminate this Agreement for cause without suspending Coach's employment, prior to the completion of a suspension, or at the conclusion of a suspension.

5.5 Records and Information. All materials or articles of information, including, without limitation, personnel records, recruiting records, Team information, films, statistics or any other material or data, furnished to Coach by Miami or developed by Coach on behalf of Miami or at Miami's direction or for Miami's use or otherwise in connection with Coach's employment hereunder are and shall remain the sole property of Miami. Within seventy-two (72) hours of the expiration of the Term of this Agreement or its earlier termination as provided herein, Coach shall immediately cause any such materials in Coach's possession or control, including, but not limited to Coach's car, all keys (including car keys), credit cards, telephones and computers to be delivered to Miami.

5.6 Death or 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 totally or permanently disabled as defined by the applicable state retirement system or by any other applicable Miami supplemental disability program or is otherwise unable to perform the essential functions of the job.

5.7 Interference with Athletes. In the event of termination, Coach agrees that Coach will not interfere with Miami's student-athletes or otherwise obstruct Miami's ability to transact business.

6.0 Approval/Appropriations. This Agreement shall be subject to the approval of Miami's President. In conformity with Article VIII, Section 3 and Article II, Section 22 of the Ohio Constitution, nothing herein shall be construed to require any action by the Ohio General Assembly either by appropriation or otherwise. To the extent that any provision hereof would otherwise require such legislation or appropriation, such provision shall be null and void.

7.0 Waiver.

7.1 No waiver of any default in the performance of this Agreement shall be effective unless in writing and signed by the waiving party. The waiver of a particular default in the performance of this Agreement shall not constitute a waiver of any other or subsequent default. The resort to a particular remedy upon a default shall not constitute a waiver of any other available remedies.

7.2 The financial consequences of termination of this Agreement or suspension thereunder are exclusively set forth herein. Therefore, with the sole exception of payments required by this Agreement, in any instance of termination for cause or without cause or suspension effected in accordance with the procedures established in this Agreement, neither Coach nor Miami shall be entitled to receive, and each hereby waives any claim against the other and their respective officers, Board of Trustees, directors, agents, employees, successors, heirs and personal representatives, for consequential damages allegedly sustained by reason of any alleged loss of business opportunity, loss or perquisites, loss of speech, camp or other outside income, or expectation income, or damages allegedly sustained by reason of alleged humiliation, emotional distress, defamation or loss of consortium resulting from the fact of termination, the public announcement thereof or the release by Miami or Coach of information or documents which are

required to be released by law. Coach acknowledges that in the event of termination of this Agreement for cause, without cause or otherwise, or suspension hereunder, Coach shall have no right to occupy the position of head coach of the Team and that Coach's sole remedies are provided herein and shall not extend to injunctive relief.

8.0 **Promotional Use of Name, Etc.** Without limiting Miami's rights under Ohio R.C. 2741.09, Coach hereby consents, during the Term of this Agreement (and thereafter for purposes of historical references to Coach's time as Miami's head coach), to the use of Coach's name, nickname, initials, autograph, signature, voice, video or film portrayals, photograph, image or likeness, and any other means of endorsement or identification of or by Coach, including statistical, biographical, or other information or data relating to Coach, by Miami or any party under contract with Miami in the conduct and promotion of Miami and its athletics programs, including the Program, and as otherwise contemplated by this Agreement. The terms of this **Section 8** shall survive the expiration or earlier termination of this Agreement.

9.0 **Construction.** Notwithstanding any provisions in this Agreement to the contrary: (1) this Agreement is intended to comply with Section 409A of the Internal Revenue Code ("**IRC**") and the regulations and interpretive guidance thereunder ("**409A Requirements**"), to the extent the Agreement is subject to the 409A Requirements and is not otherwise exempt under one of the applicable exemptions to the 409A Requirements; (2) it is intended that any exercise of authority or discretion by Miami or Coach under this Agreement shall comply with the provisions of the 409A Requirements so as not to subject Coach to the payment of any interest or tax penalty which may be imposed under the 409A Requirements; (3) to the extent this Agreement provides for a payment to be made or a benefit to be provided upon a termination of employment, and to the extent such payment or benefit is subject to the 409A Requirements, the meaning of "termination of employment" for purposes of that payment or benefit shall mean a "separation from service" as defined in the 409A Requirements; and (4) this Agreement shall be interpreted and applied in all circumstances in a manner that is consistent with the intent of the parties that amounts earned and payable pursuant to this Agreement shall not be subject to the premature income recognition or adverse tax provisions of the 409A Requirements.

10.0 **Withholding.** Whether or not expressly stated in this Agreement, all compensation and any other benefits payable or provided pursuant to this Agreement shall be subject to withholding, payroll taxes, and such other deductions as may from time to time be required in accordance with applicable law and Miami policies generally. Coach shall comply with all applicable reporting and record-keeping requirements in regard to compensation, benefits, and reimbursed expenses.

11.0 **No Third-Party Beneficiaries.** This Agreement is not intended to benefit any third parties, nor shall any such third parties be entitled to enforce any of the rights or obligations of a party under this Agreement.

12.0 **Heading References.** Section headings in this Agreement are included for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

13.0 **Assignment.** This Agreement is personal in its nature and none of the parties hereto shall, without the consent of the others, assign, delegate, or transfer this Agreement or any rights or obligations hereunder. Any purported assignment or delegation in violation of this **Section 13** shall be null and void.

14.0 **Severability.** In the event that a court of competent jurisdiction determines that any portion of this Agreement is unenforceable or in violation of any law or public policy, only the portions of this Agreement that are unenforceable or that violate such law or public policy shall be stricken. All portions of this Agreement that are enforceable or that do not violate any law or public policy shall continue in full force and effect. Further, any court order striking any portion of this Agreement shall modify the stricken terms

as narrowly as possible to give as much effect as possible to the intentions of the parties under this Agreement.

15.0 **Offset.** To the maximum extent permitted by law, the Employer shall be entitled to offset any amounts owed by it to Coach against any payment or compensation that is owing and unpaid by Coach to the Employer, in each case whether under this Agreement, under any other agreement between the parties, or otherwise.

16.0 **Severability.** If any provision of this Agreement is determined to be invalid or unenforceable, the remainder of this Agreement shall not be affected and shall remain in effect.

17.0 **Survival.** Those sections of this Agreement that are designated to survive the expiration or earlier termination of this Agreement, as well as any other obligations arising or resulting under this Agreement during the Term, which by their context are to be performed in whole or in part subsequent to the expiration or earlier termination of this Agreement, shall survive the termination or expiration of this Agreement and, as applicable, shall be fully enforceable thereafter in accordance with the terms of this Agreement. This **Section 17** shall survive the expiration or earlier termination of this Agreement.

18.0 **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument. The exchange of copies of this Agreement and of signature pages by facsimile transmission, by electronic mail in "portable document format" (".pdf") form, or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, or by combination of such means, shall constitute effective execution and delivery of this Agreement as to the parties and may be used in lieu of the original Agreement for all purposes. Signatures of the parties transmitted by the foregoing means shall be deemed to be their original signatures for all purposes.

19.0 **Governing Law and Jurisdiction.** This Agreement shall be subject to and construed in accordance with Ohio law. Any action based in whole or in part of this Agreement must be brought in a court of competent jurisdiction in the State of Ohio.

20.0 **Entire Agreement: Amendments.** This Agreement constitutes the entire agreement of employment between the parties and supersedes all prior understandings, written or oral, with respect to the subject of employment. No amendment or modification of this Agreement shall be effective unless in writing or signed by both parties.

21.0 **Conflicts.** To the extent that any of the terms and conditions of this Agreement are in conflict with any Miami rule, regulation or policy, the terms and conditions of the Agreement will prevail.

22.0 **Notice.** Any notice provided for herein shall be in writing and shall be deemed to have been given, delivered, or served when delivered personally to the party who is to receive such notice or when mailed by U.S. registered or certified mail, postage prepaid, to such party.

Unless hereinafter changed by written notice to Coach, any notice to Miami shall be sent to:

The Director of Intercollegiate Athletics
Department of Intercollegiate Athletics
Millett Assembly Hall
Oxford, Ohio 45056

Unless hereinafter changed by written notice to Miami any notice to Coach shall be delivered or mailed to:

Brian Smiley
7 North Bishop Street
Oxford, OH 45056

[Signature Page Follows]

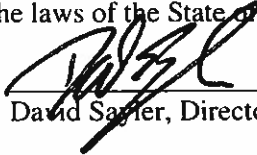
EMPLOYMENT AGREEMENT

Signature Page

IN WITNESS WHEREOF, Miami has caused this Agreement to be executed and delivered and Coach has executed and delivered this Agreement as of the respective dates set forth below, to be effective for all purposes as of the Effective Date.

MIAMI:


Miami University,
a public university established and existing
under the laws of the State of Ohio

By: 
David Sappier, Director of Intercollegiate Athletics

8/28/23
Date

By: David B Creamer
David Creamer, SVP for Finance & Business Services

8-28-23
Date

By: 
Gregory Crawford, President

8-28-23
Date

COACH:

By: Brian Smiley
Brian Smiley

8-24-2023
Date