

## **AMENDMENT TO EMPLOYMENT AGREEMENT**

This is a contractual amendment to the Employment Agreement between the University of Minnesota ("University"), on behalf of its Department of Intercollegiate Athletics on the Twin Cities campus ("Department"), and Philip John Fleck ("Coach"), dated November 5, 2019 ("Employment Agreement"). The University and Coach do now mutually desire to amend certain terms of the Employment Agreement by entering into this amendment ("Amendment"), effective November 8, 2021.

**NOW, THEREFORE**, in consideration of the mutual promises and covenants contained in this Amendment, and such other good and valuable consideration the receipt and sufficiency of which the parties hereby acknowledge, the parties agree to amend their Employment Agreement as follows:

1. **Paragraph 1.1 is deleted and replaced with the following:**

**1.1 Term.** Subject to the terms and conditions of this Agreement, the University hereby employs Coach as head coach of the Team, and Coach agrees to be so employed by the University, for a term commencing on the date the University's Board of Regents ("Board") formally approves this Amendment (the "Start Date") and ending on December 31, 2028 ("Term of Employment"). For purposes of this Agreement, contract year one runs from the Start Date through December 31, 2022. All subsequent contract years run from January 1 through December 31.

2. **Paragraph 2.1.1 is deleted and replaced with the following:**

**2.1.1.** Subject to the terms of this Agreement, for all services rendered by Coach on behalf of the University, the University shall pay Coach an annualized base salary in the amount of One Million Five Hundred Thousand dollars (\$1,500,000).

3. **Paragraph 2.14 is deleted and replaced with the following:**

**2.14. Supplemental Salary Pool.** On February 1, 2022, the University agrees to make available an additional Three Hundred Fifty Thousand dollars (\$350,000) for salaries for assistant coaches and/or other staff for the Team.

4. **Paragraph 3.2 is deleted and replaced with the following:**

**3.2. The University's Right to Terminate Without Cause.**

**3.2.1.** The University may terminate this Agreement at any time without cause upon thirty (30) days written notice to Coach. In such event, the University shall pay Coach a Termination Fee equal to sixty five percent (65%) of the Base Salary per Section 2.1 and Supplemental Compensation per Section 2.2 of this Agreement that absent termination would have been paid to Coach through the remainder of the Term of Employment. The Termination Fee shall be paid in installments as follows:

a. The total Termination Fee shall be divided by the number of months remaining on the Term of Employment, not including any partial months, to determine the "Monthly Payment Amount."

b. The first installment shall be made no later than the last day of the second full month following the month in which the termination occurs and shall include the Monthly Payment Amount for those first two months.

c. Monthly payments shall continue thereafter at the Monthly Payment Amount through the end of the second calendar year following the year in which the termination occurred, or the end of the remaining Term of Employment had the contract continued, whichever is earlier.

d. If the Term of Employment had the contract continued extends beyond the end of the second calendar year following the year in which the termination occurred, then the final monthly payment at the end of the second calendar year following the year in which the termination occurred shall include the full amount remaining on the total Termination Fee, i.e., the final payment shall be a balloon payment for the full remaining amount.

All payments made under this Section 3.2 shall be subject to all applicable tax withholdings. The parties acknowledge that the Termination Fee under this Section 3.2 has been structured so as not to constitute a deferred payment plan under Section 457(f) of the Internal Revenue Code. However, the parties also acknowledge that the ultimate amount and timing of Termination Fee will depend on when a termination under this Section 3.2 occurs (e.g., time of year, time remaining on the Term of Employment, etc.). If the Termination Fee ultimately does trigger the requirements of Section 457(f) (e.g., the total Termination Fee amount is more than two times Coach's regular annual compensation, etc.), then the parties acknowledge their obligation to comply with the requirements of Section 457(f).

**3.2.2.** If the University makes full payment under this Section 3.2, Coach waives the right to seek additional compensation or damages from the University. Termination under this Section 3.2 shall supersede all rights Coach may have under the Policies and Procedures including but not limited to any rights to notice or layoff programs.



**3.2.3.** As a condition of receipt of any payment under this Section 3.2, Coach is required to mitigate the University's obligations by making reasonable and diligent efforts (under the circumstances and opportunities then prevailing) to obtain a comparable employment position (for example, but not limited to, media commentator with a national broadcast or cable company, professional football assistant or head coach, head football coach of an NCAA Division I team) as soon as practicable following termination of employment.

**3.2.4.** If Coach is employed post termination (i.e., during the Term of Employment, had this Agreement naturally expired) in a comparable position, then payments under this Section 3.2 shall cease only if Coach's monthly compensation in the comparable position, excluding reasonable and usual non-monetary fringe benefits such as health and life insurance, club memberships and use of vehicles, is equal to or greater than University's obligation to pay the Termination Fee under Section 3.2.1 prorated on a monthly basis. If Coach's monthly compensation, excluding reasonable and usual non-monetary fringe benefits, from such new employment is less than University's monthly obligation under Section 3.2.1 the amount of University's obligation to pay the Termination Fee shall be reduced by the amount of Coach's compensation, excluding reasonable and usual non-monetary fringe benefits, from such new employment.

**3.2.5.** Coach agrees that, as a condition of receiving any portion of the Termination Fee under this Section 3.2, Coach or, in the case of any amounts due after Coach's death, the person to whom those amounts are payable (collectively, the "Payee") and the University must execute a release agreement in the format attached as Exhibit B.

**3.2.6.** For purposes of this Section 3.2, any reference to Coach's "termination of employment" by the University (or any form of the phrase "termination of employment") shall mean Coach's "separation from service" within the meaning of Section 409A of the Internal Revenue Code and Treasury Regulation Section 1.409A-1(h).

**5. Paragraph 3.6 is deleted and replaced with the following:**

**3.6. Coach's Right to Terminate Without Just Cause.** In the event Coach terminates this Agreement during the Term of Employment without just cause (which is hereby permitted), Coach shall pay the University a Termination Fee as follows:

- a. \$10,000,000 if termination occurs during contract year one.
- b. \$7,000,000 if termination occurs during contract year two.
- c. \$5,000,000 if termination occurs during contract year three.
- d. \$4,000,000 if termination occurs during contract year four.

- e. \$3,000,000 if termination occurs during contract year five.
- f. \$2,000,000 if termination occurs during contract year six.
- e. \$0 if termination occurs during contract year seven.

Payment shall be made no later than sixty (60) days from the date of notice of termination. The University and Coach agree to execute a release agreement in the form attached as Exhibit C in connection with this payment.

**6. Section I of Exhibit A is deleted and replaced with the following:**

**I. Incentive compensation for achieving athletic performance goals as follows:**

- |    |   |           |
|----|---|-----------|
| a) | Winning the Big Ten Championship  | \$150,000 |
| b) | A win or tie for the Championship of a Big Ten Football Division  | \$100,000 |
| c) | Being Named National Coach of the Year by a nationally recognized organization from a list agreed upon by Coach and Director (see note below) | \$100,000 |
| d) | Being Named Conference Coach of the Year by the Big Ten Coaches Poll or the Big Ten Media Poll  | \$50,000  |
| e) | Winning eight (8) regular season games (not including any post-season, Conference Championship, or bowl games)                                | \$100,000 |
| f) | Winning nine (9) regular season games (not including any post-season, Conference Championship, or bowl games)                                 | \$100,000 |

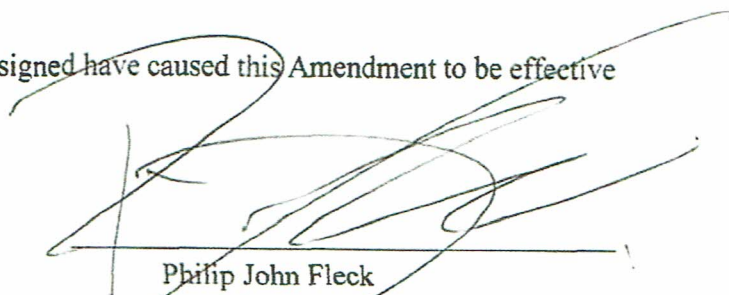
The amounts in this paragraph are cumulative.

7. Except as expressly provided in this Amendment, each and every term and condition of the Employment Agreement shall remain unchanged.

8. The parties acknowledge and agree that this Amendment is subject to formal approval by the Board and shall not be final or binding until formally approved by the Board.


**IN WITNESS WHEREOF**, the undersigned have caused this Amendment to be effective as of the date first shown above.

Date: 11.3.2021

  
Philip John Fleck  
Head Coach for Football

**REGENTS OF THE UNIVERSITY OF  
MINNESOTA**

Date: 11.3.21

By:   
Joan T. A. Gabel  
President

Recommended for Approval:

Date: 11/3/2021

By: Mark Coyle  
Mark Coyle, Director  
Intercollegiate Athletics

Approved as to Form and Execution:

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Douglas Peterson  
General Counsel



**IN WITNESS WHEREOF**, the undersigned have caused this Amendment to be effective as of the date first shown above.

Date: \_\_\_\_\_

\_\_\_\_\_  
Philip John Fleck  
Head Coach for Football

**REGENTS OF THE UNIVERSITY OF  
MINNESOTA**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Joan T. A. Gabel  
President

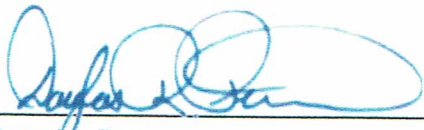
Recommended for Approval:

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Mark Coyle, Director  
Intercollegiate Athletics

Approved as to Form and Execution:

Date: November 3, 2021

By:  \_\_\_\_\_  
Douglas Peterson  
General Counsel