

**FIRST AMENDMENT TO EMPLOYMENT AGREEMENT DATED JANUARY 3, 2017 FOR HEAD FOOTBALL
COACH LUKE FICKELL**

THIS FIRST AMENDMENT TO EMPLOYMENT AGREEMENT DATED JANUARY 3, 2017 ("First Amendment") is made this 1st day of February, 2020 by and between The University of Cincinnati (the "University") and Head Football Coach Luke Fickell ("Coach") (collectively, the "Parties") and is not final and binding until recommended by the Director of Athletics, approved by the Board of Trustees, and signed by Coach and an authorized contracting officer of the University.

RECITALS

The Parties entered into an employment agreement dated January 3, 2017 (the "Employment Agreement");

The Parties mutually desire to alter the terms of the Employment Agreement with regard to: (1) Term, as set forth in section 1; (2) Duties, as set forth in section 2(B); (3) Compensation, as set forth in sections 3(A), 3(D), 3(F), 3(G), and 3(K); (4) Assistant Coach Compensation and Benefits, as set forth in section 4; (5) Family Travel Allowance, as set forth in section 5(B); (6) Termination – Termination Without Cause, as set forth in section 7(D); and (7) Gift to Department of Athletics, as set forth in section 9.

AGREEMENT

NOW, THEREFORE, Coach and the University, in consideration of the mutual promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, agree as follows:

- I. Consideration for this First Amendment to the Employment Agreement consists of the promises and agreements herein set forth.
- II. It is expressly agreed by the Parties that this First Amendment is supplemental to the Employment Agreement, which is by this reference incorporated herein, and that all terms, conditions, and provisions thereof, unless specifically modified herein, are to apply to this First Amendment as though they were expressly re-written, incorporated, and included herein. Unless otherwise indicated, all capitalized terms contained in this First Amendment shall have the same meaning as given to them in the Employment Agreement.
- III. It is agreed the Employment Agreement is and shall be modified, altered, and changed in the following respects only:
 - A. The following shall replace section 1:
 1. **TERM.** Subject to the terms and conditions stated in this Agreement, the University will employ Coach as the head coach for the University's intercollegiate athletics football program (the "Program") for the period beginning January 3, 2017, and ending December

31, 2026 ("Term"). Coach hereby accepts such employment. Unless this Agreement is extended, amended, or earlier terminated as set forth herein, this Agreement will automatically terminate at the conclusion of the Term without further notice to Coach.

B. The following shall replace section 2(B):

2. DUTIES.

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(B) Be materially knowledgeable regarding the University's athletic and other rules, regulations, and policies, the rules, regulations and policies of the NCAA, and those of the American Athletic Conference or any other athletic conference of which the University may subsequently become a member ("Conference"), and diligently seek to promote an atmosphere of compliance within the Program with respect to such rules, regulations, and policies. Coach will fully cooperate in the NCAA infractions process, including the investigation and adjudication of a case. "Full cooperation" includes, but is not limited to: affirmatively reporting instances of noncompliance to the NCAA in a timely manner and assisting in developing full information to determine whether a possible violation has occurred and the details thereof; timely participation in interviews and providing complete and truthful responses; making a full and complete disclosure of relevant information, including timely production of materials or information requested, and in the format requested; disclosing and providing access to all electronic devices used in any way for business purposes; providing access to all social media, messaging and other applications that are or may be relevant to the investigation; and preserving the integrity of an investigation and abiding by all applicable confidentiality rules and instructions. Coach will monitor the activities regarding compliance, including, but not limited to, Title IX compliance, of all assistant coaches and other administrators involved with the Program who report directly or indirectly to Coach; supervise and take appropriate steps in an effort to diligently seek to ensure that Coach's assistant coaches, any other employees for whom Coach is administratively responsible and the members of the team know, diligently seek to recognize and comply with all such rules, regulations and policies and promptly report to the Director of Athletics and the Compliance Office in writing if any person or entity, including without limitation representatives of University's athletic interests, has violated or is likely to violate any such rules, regulations or policies. Coach shall cooperate fully with the Compliance Office at all times;

C. The following shall replace sections 3(A), 3(D), 3(F), 3(G), and 3(K):

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3. COMPENSATION AND BENEFITS.

A. Compensation. In consideration for services and satisfactory performance of the conditions of this Agreement by Coach, University promises to pay Coach annual compensation as outlined below:

February 1, 2020	\$3,400,000
January 1, 2021	\$3,400,000
January 1, 2022	\$3,400,000
January 1, 2023	\$3,400,000
January 1, 2024	\$3,400,000
January 1, 2025	\$3,400,000
January 1, 2026	\$3,400,000

The compensation shall include a base salary of \$250,000 plus additional annual supplemental compensation payments for Coach's involvement in television, radio and personal appearances, and public or private speaking engagements in which he represents University. The payments shall be paid in equal monthly installments on the monthly payroll dates established by University and applicable to University employees compensated on a monthly basis ("Payroll Date(s)").

The Parties agree that, in the event the football season is shortened, canceled, or otherwise limited, including but not limited to, a limitation or restriction on spectators from attending competition, the Coach's salary may be adjusted downward in order to be consistent with his new workload responsibilities and/or to bring Coach's salary into better alignment with the resulting financial status of the Athletics Department and/or its Football Program. The parties agree to come together as quickly as possible to negotiate in good faith a new salary consistent with this provision. The parties understand and acknowledge the importance of reaching a timely agreement on a salary adjustment to the overall success and financial viability of the Athletics Department and agree that, for purposes of this provision, time will be of the essence to reach an agreement. The effective date of the salary adjustment will be retroactively applied to the date upon which the University provides notice to Coach of the need for an adjustment.

Moreover, the Parties agree and acknowledge that a portion of Coach's salary, up to \$1,000,000 annually, is comprised of private, philanthropic funds. In the event such funds become unavailable to the University, Coach's salary will be adjusted downward accordingly to bring Coach's salary into better alignment with the resulting financial status of the Athletics Department and its Football Program, and the parties agree to come together as quickly as possible to negotiate in good faith a new salary consistent with this provision. The parties understand and acknowledge the importance of reaching a timely agreement on a salary adjustment to the overall success and financial viability of the Athletics Department and agree, that for purposes of this provision time will be of the essence to reach a new agreement. The effective date of the salary adjustment will retroactively applied to the date upon which the university provides notice to Coach of the need for an adjustment.

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In the event Coach's salary is adjusted pursuant to the terms contained herein, the University acknowledges and agrees that the Termination Amount payment referenced in Section 7(D) for a termination without cause by Coach shall be reduced

for the Contract Year applicable to such salary adjustment in a manner to accommodate for the relative disparity between the increases applicable to Coach's salary and the Coach Termination Payment, as contemplated herein. For example, if Coach's salary is reduced by \$170,000 during the Contract Year ending December 31, 2020, the Coach Termination Payment applicable for the same Contract Year shall be commensurately reduced by twice such amount (in other words, by \$340,000); or, for another example, if Coach's salary is reduced by \$340,000 during the same Contract Year, the Coach Termination Payment shall be commensurately reduced by twice such amount (in other words, by \$680,000).

- D. **Performance Bonuses.** Coach shall be paid a performance bonus ("Performance Bonus") in the amount and for the achievements described below ("Coaching Achievement(s)"), provided Coach is employed as of the date any such applicable bonus is achieved. All such bonuses shall be due and payable to Coach within sixty (60) days after the occurrence of the Coaching Achievement outlined below (but shall be deemed to have accrued on the date upon which they were achieved). The Coaching Achievements and Performance Bonus applicable to each shall be as follows:

COACHING ACHIEVEMENTS	PERFORMANCE BONUS
"New Year's Six" Bowl or "College Football Playoff" appearance	\$250,000
Other Bowl Appearance	\$75,000
Top 25 Finish (Final published College Football Playoff top 25 ranking at the end of the season)	\$50,000
Conference Regular Season Champions (Shared or outright at the end of the season)	\$50,000
Win Conference Championship Game	\$50,000
Bowl Win	\$25,000
APR > 985 in official release by NCAA	\$25,000
Conference Coach of the Year	\$25,000
10 Regular Season Wins (Cumulative)	\$30,000
11 Regular Season Wins (Cumulative)	\$40,000
12 Regular Season Wins (Cumulative)	\$50,000

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F. Working Meals Budget. The University shall provide Coach with an annual Business Entertainment Allowance and Coaches Working Meals budget of \$25,000, the expenditure and reporting of which shall be subject to University policies and procedures. Notwithstanding any University policies and procedures to the contrary, Coach may use the annual Business Entertainment Allowance and Coaches Working Meals budget for up to 15 "family meals" per year.

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G. Complimentary Tickets. During the Term of this Agreement, the University shall provide Coach with 20 complimentary season tickets and 4 Calhoun or CCM Garage parking passes (for personal use), and up to 30 complimentary suite tickets and 2 Varsity Village parking passes for Football and 8 complimentary season tickets and 2 Calhoun or CCM parking passes for Men's Basketball. In addition to such tickets (and the tickets detailed in Section 5, below), the University shall provide Coach with 14 complimentary tickets to all post-season games for Football and 8 complimentary tickets to all post-season games for Men's Basketball. The University shall exercise reasonable effort to provide Coach and his guests with the best seating available. All tickets are non-transferable.

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K. The payment of all forms of compensation set forth in this Agreement is subject to the approval of the annual operating budget by the University's Board of Trustees, the sufficiency of legislative appropriations, and availability of sufficient funds.

D. The following shall replace section 4:

4. ASSISTANT FOOTBALL COACH AND FOOTBALL SUPPORT STAFF COMPENSATION AND BENEFITS.

A. Assistant Football Coach and Football Support Staff Salary Pool. The annual salary compensation pool for the 10 assistant football and/or strength coaches and 1 head football strength coach ("Assistant Football Coach(es)"), and other employees who report directly to the Coach as agreed to by Director and as compliant with NCAA rules ("Football Support Staff"), shall not exceed \$3,850,000, unless otherwise mutually agreed upon in writing by the Director and Coach. The Assistant Football Coaches identified by Coach shall, as a condition of employment with the University, enter into an employment contract with the University on mutually acceptable terms. The allocation of this compensation pool is subject to the discretion of the Coach and the approval of the Director and must be made in accordance with all applicable laws, rules, policies, and regulations. This compensation pool does not include certified athletic trainers assigned to the football program.

B. Automobile. University shall provide each Assistant Football Coach use of a loaned automobile for business use subject to the University's Courtesy Vehicle Program Policy. The University reserves the right to modify or discontinue the

policy in its discretion. In the event the University discontinues the policy, or has an insufficient number of courtesy vehicles available for loan, then it shall establish and provide a monthly stipend in an amount reasonably calculated to compensate for the business use of a personal automobile (in an amount not less than \$500 per month). Each Assistant Football Coach shall be responsible to report to University personal mileage which shall be included as compensation to Coach and be subject to normal governmental tax withholding.

C. Fringe Benefits Available to Non-academic Unclassified Administrative Personnel. Assistant Football Coaches and Football Support Staff shall be entitled to receive the same fringe benefits and shall be eligible to participate in group insurance, retirement, voluntary payroll deduction, and other programs on the same basis, and with the same employer contributions, that apply to the University's non-academic unclassified administrative personnel in the same classification.

D. Deductions from Compensation. Payments made or benefits provided to Assistant Football Coaches and Football Support Staff by the University pursuant to the terms of this Agreement shall be subject to all applicable payroll and other taxes and deductions required by state, federal and local law or regulation. In addition, University will make such other deductions permitted by law and authorized by the Assistant Coaches in writing

E. The following shall replace section 5(B):

5. BOWL TICKETS, SPOUSES GAME, AND FAMILY TRAVEL ALLOWANCE.

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B. Family Travel Allowance. The University shall make available to Coach on an annual basis a family travel allowance in the amount of Fifty Thousand Dollars (\$50,000) to pay expenses of Coach, the Assistant Football Coaches, the Director of Football Operations, and the expenses of their spouses and legal dependents, to travel from Cincinnati, Ohio to a bowl game and/or other post-season game in which the University is participating, and to pay the travel expenses of the Assistant Football Coaches, the Director of Football Operations, and the expenses of their spouses (but not qualified dependents) to travel to regular season away game(s) designated as a "spouses game" by Coach. The allocation of the \$50,000 to any of the purposes described herein shall be at the discretion of Coach subject to the approval of the Director of Athletics, which shall not unreasonably be withheld. Any amounts paid on behalf of a University employee, and/or on behalf of the University employee's spouse or legal dependents from the travel allowance shall be included as compensation to each employee subject to normal governmental tax withholding to the extent required by law. It is understood and agreed that the \$50,000 budget is the maximum sum the University shall provide with respect to family travel and any costs or expenses incurred in excess of that amount shall be paid by Coach.

F. The following shall replace section 7(D):

7. TERMINATION.

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D. Termination Without Cause. Either party may terminate this Agreement without cause by delivering written notice to the other as provided herein and paying a termination payment ("Termination Payment") as provided below, not as damages but as the sum reasonably calculated by the parties to compensate the other for the termination of this Agreement as of the dates stated:

<u>Date of Termination (By University)</u>	<u>University Termination Payment</u>
Before January 1, 2021	\$23,800,000
Before January 1, 2022	\$20,400,000
Before January 1, 2023	\$17,000,000
Before January 1, 2024	\$13,600,000
Before January 1, 2025	\$5,100,000
Before January 1, 2026	\$3,400,000
On or After January 1, 2026	\$1,700,000

<u>Date of Termination (By Coach)</u>	<u>Coach Termination Payment</u>
Before January 1, 2021	\$4,000,000
Before January 1, 2022	\$3,500,000
Before January 1, 2023	\$3,000,000
Before January 1, 2024	\$2,500,000
Before January 1, 2025	\$2,000,000
Before January 1, 2026	\$1,500,000
On or After January 1, 2026	\$0

Coach agrees that as a condition of receiving any University Termination Payment as set forth above, Coach must execute a comprehensive release that includes a mutual non-disparagement clause and a mutual release of claims within thirty (30) days of the date of Coach's termination by University of his employment hereunder, the language for the non-disparagement and mutual release of claims in a form identical or substantially similar to that attached to the Employment Agreement as Exhibit C (Release). Coach will be presented with the release and if Coach fails to timely execute the release, Coach agrees to forego any payment from University (it being agreed that the parties will negotiate in good-faith to the extent Coach requests changes to said Release). Coach and the University each acknowledge that he/it is an experienced person/entity knowledgeable about the claims that might arise in the course of Coach's employment with University and knowingly agree that the payments upon such termination provided for in this Agreement are satisfactory consideration for the release of all possible claims described in the Release.

G. The following shall replace section 9:

9. GIFT TO DEPARTMENT OF ATHLETICS.

At the request of Coach, a grant agreement will be executed by Coach and the University's Foundation in a form acceptable to the University pursuant to which Coach agrees to provide a gift of \$5,000 per month for the exclusive benefit of student-athlete welfare. Such payments shall be deducted from coach's salary and shall terminate when the Coach's salary terminates.

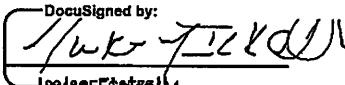
IV. In the event of any conflict, inconsistency, variance, or contradiction between the provisions of this First Amendment and any of the provisions of the Employment Agreement, the provisions of this First Amendment shall in all respects supersede, govern, and control.

THE UNIVERSITY OF CINCINNATI

By 

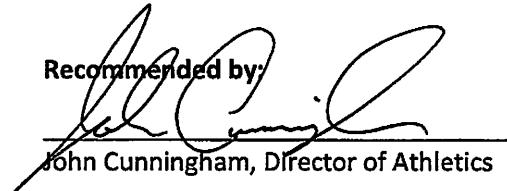
Date 8/25/2020

HEAD FOOTBALL COACH

DocuSigned by:
By 
Luke Fickel

Date 6/24/2020

Recommended by:


John Cunningham, Director of Athletics

Date: 6/28/2020