

## Amendment to Employment Agreement

The following Amendments are made pursuant to Paragraph 8.09 of the Employment Agreement dated February 1, 2014, currently in place between Arkansas State University and Terry Mohajir:

4.01 is amended to reflect an effective date of February 1, 2015 and an expiration date of June 30, 2019.

5.01 is amended to reflect an annual salary of Two Hundred Ninety Thousand Dollars (\$290,000.00) per annum.

6.01(b) is amended to reflect the contract expiration date of June 30, 2019.

6.01(e) is amended to reflect the contract expiration date of June 30, 2019.

6.01(f) is amended to reflect the contract expiration date of June 30, 2019.

6.01 (f) is amended to add the following sentence:

In no event shall the University be obligated to pay liquidated damages that exceed the base salary. Any additional liquidated damages owed to Employee shall be governed by a separate agreement between Employee and independent outside sources.

Article VI is amended to include sub-section 6.02 "Termination by Employee" and shall consist of the following:

### 6.02 Termination by Employee

Liquidated Damages upon Termination by Employee. Employee shall have the right to terminate this Employment Agreement prior to its normal expiration on June 30, 2019. For the purpose of establishing the date on which liquidated damages become due and owing, "termination" by employee shall be defined as the date on which Employee delivers written notice of termination to the Chancellor or the date Employee announces his intent to terminate his employment, whichever occurs first. If Employee terminates this Agreement on or before January 31, 2016, Employee shall pay to Arkansas State University as liquidated damages the sum of Eighty Thousand Dollars (\$80,000.00) within thirty (30) calendar days of termination; if Employee terminates this Agreement on or after February 1, 2016, but before January 31, 2017, Employee shall pay to Arkansas State University as liquidated damages the sum of Forty Thousand Dollars (\$40,000.00) within thirty (30) calendar days of termination.

The parties have bargained for and agreed to the foregoing liquidated damages provision, giving consideration to the fact that termination of the Agreement by the Employee prior to its natural expiration may cause the University to lose certain benefits including reputation and good will and may cause the University to incur expenses to search for and employ another Director of Intercollegiate Athletics all of which damages are extremely difficult to determine with certainty or fairly or adequately. The parties further agree that the payment of such liquidated damages by the Employee and acceptance thereof by the University shall constitute adequate and reasonable compensation to the University for the damages and injury suffered by the University because of such termination by the Employee. The foregoing shall not be, or construed to be, a penalty. The provision of this Section 6.02 shall be without prejudice to any right the University may have under applicable law.


The remainder of the Employment Agreement shall remain unchanged.

It is so agreed this 30 day of Jan, 2015.

Employee

  
\_\_\_\_\_  
Terry Mohajir, Employee

Arkansas State University-Jonesboro

By:   
\_\_\_\_\_  
Tim Hudson, Chancellor

# ARKANSAS STATE UNIVERSITY

## EMPLOYMENT AGREEMENT

This Employment Agreement is effective this 1st day of February, 2014, between Arkansas State University-Jonesboro (the "University") and Terry Mohajir (the "Employee") and it cancels and replaces any and all prior employment agreements between these two parties including any previous letter agreements, employment agreements, or amendments to those employment agreements.

### ARTICLE I - PURPOSE

1.01. The University and the Employee have entered into this Employment Agreement because the University desires to hire the Employee with the Employee's assurance that he will serve the entire term of this Employment Agreement. The University and the Employee agree that Directors of Intercollegiate Athletics at the University conduct their professional activities under circumstances unique in the family of University employees, including evaluation and scrutiny of program performances by the public and the media and control by external rules and regulations. These circumstances justify job security and commitment by the Employee longer than one year but less than a continuous appointment. The Employee desires to obtain the opportunities of employment with the University which are set forth in this Employment Agreement. For these reasons, the University has agreed to employ the Employee and the Employee has promised to be employed by the University upon the following terms and conditions.

### ARTICLE II - CONFIDENTIALITY

2.01. It is the desire of the parties to protect the privacy interests of both the University and the Employee; therefore, the terms and conditions of this Employment Agreement shall be considered confidential. Each party agrees to keep the terms and conditions of this Employment Agreement confidential and to refrain from disclosing the terms and conditions of this Employment Agreement unless disclosure is required by law. Furthermore, it is understood and agreed that disagreements between the parties over any term or condition of this Employment Agreement shall be treated confidentially as an employee evaluation or job performance matter and that the parties and their representatives shall not publicize to any third person, other than those participating directly in negotiations over the matter, the fact of a disagreement.

### ARTICLE III - POSITION

3.01. Employment as Employee of University.

The Employee is hereby employed by the University. Throughout the term of this Employment Agreement, the Employee shall use his best full-time energies and abilities for the exclusive benefit of the University. The Employee shall serve as the Director of Intercollegiate Athletics and it is the goal of the parties that the Employee shall serve in such position throughout the term of this Employment Agreement.

3.02. Description of Employee's Responsibilities.

a. Recognition of Duties. The Employee agrees to be a loyal employee of the University. The Employee agrees to devote his best efforts full time to the performance of his duties for the University, to give proper time and attention to furthering his responsibilities to the University and to comply with all rules,

regulations, policies, and decisions established or issued by the University. The Employee recognizes that his statements about the University and its administrators are often publicized and he agrees to use his best efforts to keep positive and constructive in tone any public comments he makes about the University.

b. General Duties and Responsibilities of Employee. During the period in which the University employs the Employee as Director of Intercollegiate Athletics, the Employee agrees to undertake and perform properly, efficiently, and to the best of his ability and consonant with the standards of the University all duties and responsibilities attendant to the position including but not being limited to those set forth in Section 3.02c. The Employee further agrees to abide by and ensure university compliance with the constitution, bylaws and interpretations of the National Collegiate Athletic Association ("NCAA") and all NCAA, conference, and University rules and regulations relating to the conduct and administration of the athletic program as now constituted or as any of the same may be amended during the term hereof. In the event that the Employee becomes aware, or has reasonable cause to believe, that violations of such constitution, bylaws, interpretations, rules or regulations may have taken place, he shall report the same promptly to the Chancellor of the University.

c. Specific Duties and Responsibilities while Employed as Director of Intercollegiate Athletics. As of the beginning of this Employment Agreement, the duties and responsibilities assigned to the Employee in connection with his position as Director of Intercollegiate Athletics are as set forth below. This list of specific duties and responsibilities supplements and is not exclusive of the other general duties and responsibilities of the position.

- i. General Description: The position of Director of Intercollegiate Athletics is a specialized professional position. By holding this position, Employee is not eligible for tenure. In his position as Director of Intercollegiate Athletics, the Employee is held directly accountable for all administrative responsibilities relating to the NCAA Division I intercollegiate competition at Arkansas State University-Jonesboro including budgeting, fund raising, maintaining and improving athletic facilities, scheduling, and the hiring, supervision, evaluation and performance of the coaching staff.
- ii. Specific Responsibilities: This position has these additional specific responsibilities:
  - A. Ensure compliance by all coaches with conference and NCAA rules and regulations;
  - B. Maintain NCAA Division I status for intercollegiate competition at Arkansas State University-Jonesboro;
  - C. Ensure equity in gender and minority issues;
  - D. Contact media, alumni and civic groups;
  - E. Supervise scheduling of athletic events;
  - F. Work to integrate sports into the whole spectrum of academic life to complement the University and its mission in the community;

- G. Work within the confines of rules, regulations, guidelines and policies of the athletic department and the University;
- H. Keep public statements constructive to the athletic program and to the University;
- I. Make every effort, working in cooperation with and support of the University's faculty and administrative officials, to ensure that all student athletes' academic requirements are met.

### 3.03. Employee May Be Disciplined for Violations of NCAA Rules and Regulations.

If the Employee is found to be in violation of NCAA rules and regulations, whether while employed by the University or during prior employment at another NCAA member institution, the Employee shall be subject to disciplinary or corrective action as set forth in the NCAA enforcement procedure. The Employee may be suspended for a period of time, without pay, or the employment of the Employee may be terminated as provided in Section 6.01b hereof if the Employee is found to have been involved in serious or intentional violations of NCAA, conference, or University rules and regulations.

### 3.04. Reporting Relationship.

The Employee shall report to the Chancellor of Arkansas State University-Jonesboro. Employee shall serve as a member of the Chancellor's Executive Council and shall attend and participate in all meetings of said council.

The Employee's job duties and responsibilities shall be reviewed and revised from time to time. As of the beginning of this Employment Agreement, the job duties and responsibilities assigned to the Employee are those set forth in Section 3.02 hereof. At any time during this Agreement, Employee may be reassigned to different job duties at the discretion of the Chancellor. The Employee is expected to work closely with a variety of Athletic Department and University staff on all matters affecting the intercollegiate athletic program or otherwise connected with the discharge of his duties as an employee of the University.

## ARTICLE IV - TERM OF EMPLOYMENT

### 4.01. Term of Agreement.

The Employee's employment hereunder shall commence February 1, 2014, and shall continue until this Agreement terminates on June 30, 2016; provided that this provision is subject to the terms and conditions of Article VI hereof concerning termination.

## ARTICLE V - COMPENSATION

### 5.01. Compensation

In consideration for the promises made in entering into this Employment Agreement, the Employee shall be entitled to an annual salary of Two Hundred Ten Thousand Dollars (\$210,000.00) of which the line item maximum authorized by law for each year of employment constitutes the base salary.

Arkansas law authorizes the University to supplement the salaries of exceptionally qualified personnel

with funds contributed by outside sources. It is anticipated that the University will solicit and receive donations from outside sources to be used as determined by the institution. The University has determined to use a portion of the funds donated by outside sources, in its sole discretion as authorized by NCAA regulation 11.3.2.2, to supplement the base salary of this exceptionally qualified employee to reach the total salary of Two Hundred Ten Thousand Dollars (\$210,000.00.)

Employee shall be eligible for all fringe benefits available to university employees. All payments from the University are subject to normal deductions and withholding for state, local and federal taxes and for any retirement or other benefits to which the Employee is entitled or in which he participates, and are subject to the terms and conditions of Article VI hereof concerning termination of this Agreement.

The University will reimburse the Employee for actual expenses reasonably incurred by him for the purpose of and in connection with the performance of his duties under this Agreement. Such reimbursement shall be made in accordance with University policy and Arkansas law.

In no event shall the Employee accept or receive directly or indirectly any monies, benefit or any other gratuity whatsoever from any person, corporation, University booster club or alumni association or other benefactor if such action would violate NCAA legislation or the constitution, bylaws, rules and regulations or interpretations thereof of the NCAA or any conference in which the University may become a member as now or hereafter enacted. Changes of such legislation, constitution, bylaws, rules and regulations or interpretations thereof shall automatically apply to this Agreement without the necessity of a written modification. Employee will be eligible to receive bonuses within the guidelines of the NCAA regulations.

The Employee shall obtain the advance written approval of the University Chancellor before entering into such agreements. Employee shall provide a written detailed account annually for all athletically related income and benefits from sources outside the institution. Such outside activities and agreements are independent of the Employee's University employment, and the University shall have no responsibility or liability for any claims arising therefrom.

## ARTICLE VI - TERMINATION

### 6.01. Termination By University.

The Employee recognizes that his promise to remain as a University employee through the entire term of this Employment Agreement is of the essence of this Agreement. It is also recognized, however, that certain limited circumstances may make it appropriate for the University to terminate this Agreement prior to the completion of its entire term.

- a. Automatic Termination Upon Death or Disability of Employee. This Employment Agreement shall terminate automatically if the Employee dies, if the Employee becomes totally disabled within the meaning of the University's disability insurance for employees of the Employee's classification in excess of six (6) months so that he qualifies for salary continuation benefits or if the Employee becomes permanently disabled. "Permanently disabled" shall mean physical or mental incapacity of a nature which prevents the Employee, in the sole judgement of the University, from performing his duties under this Agreement for a period of six (6) consecutive months.

- b. Termination By University for Just Cause. The University shall have the right to terminate this Employment Agreement for just cause prior to its normal expiration on June 30, 2016. The term "just cause" shall include, in addition to and as examples of its normally understood meaning in employment contracts, any of the following:
1. Violations of the duties outlined in Section 3.02 of this Agreement or refusal or unwillingness to perform such duties in good faith and to the best of the Employee's abilities;
  2. Violations by the Employee of any of the other terms and conditions of this Agreement;
  3. A violation of any law, rule, regulation, constitutional provision, bylaw or interpretation of the University, the appropriate athletic conference or the NCAA which violation may, in the sole judgement of the University, reflect adversely upon the University or its athletic program, including any serious violation which may result in the University being placed on probation by the conference or the NCAA and including any violation which may have occurred during prior employment of the Employee at another NCAA member institution;
  4. Conduct of the Employee seriously prejudicial to the best interests of the University or its athletic program or which violates any policy or procedure of the University;
  5. Prolonged absence from duty without the consent of the Employee's reporting supervisor; or
  6. Any cause adequate to sustain the termination of any other University employee.
- c. Determination of Cause and Employee's Right to Pre-termination Hearing. Just Cause sufficient to satisfy the provision of Section 6.01b hereof shall be determined by the Chancellor of the University or the Chancellor's designee at a pre-termination hearing held for such purpose after five (5) day's prior written notice to the Employee, which notice shall include a statement of the charges against the Employee. The hearing shall consist of an explanation of the University's evidence and an opportunity for the Employee to present evidence rebutting the charges. The decision of the Chancellor or the Chancellor's designee after such hearing shall be final.
- d. University's Obligations Upon Termination for Cause. In the event this Employment Agreement is terminated for cause in accordance with the provisions of Section 6.01b hereof, all obligations of the University to make further payments and to provide any other consideration hereunder shall cease.
- e. Termination by University Without Cause. The University shall have the right to terminate this Employment Agreement prior to its normal expiration on June 30, 2016, without cause. Termination without cause shall mean termination of this Agreement on any basis other than those set forth in Section 6.01b above and under circumstances in which the University does not exercise its right under Section 3.04 of this Agreement to reassign the Employee to another position as an employee of the University. Termination by the

University without cause shall be effectuated by delivering to the Employee written notice of the University's intent to terminate this Agreement without cause. If the University exercises its right under this Section 6.01e to terminate this Agreement without cause, the Employee shall be entitled to damages only as provided for in Section 6.01f below.

- f. Liquidated Damages Upon Termination By University Without Cause. If the University terminates this Agreement without cause prior to its expiration on June 30, 2016, in accordance with the provisions of Section 6.01e hereof, the University shall pay to the Employee, as liquidated damages, an amount equal to the then current base salary of Employee.

The University's obligation shall be paid on a monthly basis pro-rated over the balance of the term of this Agreement and shall be subject to the Employee's duty to mitigate the University's obligation as set forth in Section 6.01g below. The Employee will be entitled to continue his health insurance plan and group life insurance at this own expense as provided by applicable law, but will not be entitled to any other employee benefits except as required by applicable law.

The parties have bargained for and agreed to the foregoing liquidated damages provision, giving consideration to the fact that termination of this Agreement by the University without cause prior to its natural expiration may cause the Employee to lose certain benefits which damages are extremely difficult to determine with certainty or fairly or adequately. The parties further agree that the payment of such liquidated damages by the University and acceptance thereof by the Employee shall constitute adequate and reasonable compensation to the Employee for the damages and injury suffered by the Employee because of such termination by the University. The foregoing shall not be, nor construed to be, a penalty.

- g. Mitigation of Damages By Employee If University Terminates Without Cause. Notwithstanding the provisions of Section 6.01f, the Employee agrees to mitigate the University's obligation to pay liquidated damages under Section 6.01f and to make reasonable and diligent efforts to obtain comparable employment, as soon as reasonably possible after termination of this Agreement by the University without cause. After the Employee obtains such new employment, the University's financial obligations under this Agreement, including Section 6.01f, shall cease.

## ARTICLE VII - UNIVERSITY'S EDUCATIVE PURPOSE AND SUPPORT OF PROGRAM

### 7.01. University's Educative Purpose is Primary.

The parties agree that, although this Employment Agreement is sports-related, the primary purpose of the University and, accordingly of all its legal arrangements including this Employment Agreement, is educative.

### 7.02. University's Commitment to Support Program.

The University acknowledges that the success of the Employee in meeting his contractual obligations to develop and maintain as Director of Intercollegiate Athletics all intercollegiate sports programs at Division



I level is related to the University's level of economic and other support of the athletic program. For that reason, the University agrees that during the term of this Agreement during which the Employee is Director of Intercollegiate Athletics, it will attempt to remain reasonably competitive in all relevant aspects with other similar athletic programs. Relevant aspects of the athletic program include, but are not limited to, maintenance and improvement where necessary and practicable of physical facilities such as office facilities, locker-room facilities, dining and dormitory facilities, physical training and exercise facilities; and economic and personnel support, including a budget sufficient to hire and retain necessary coaches and to cover the expenses associated with recruiting.

#### 7.03. University's Commitment to Maintain Program at a Specified Level.

Both parties have entered into this Agreement upon the condition that the University shall continue to compete in athletics at the NCAA's Division 1 level and that Employee shall be responsible for ensuring that all intercollegiate sports teams will compete at that division.

### ARTICLE VIII - MISCELLANEOUS

#### 8.01. Employee Not Entitled to Tenure.

The parties hereby confirm that the Employee's employment under this Agreement in the position of Director of Intercollegiate Athletics or any other position to which the Employee may be assigned in accordance with the terms of Section 3.04 of this Agreement is not a tenure-track position and will not lead to tenure.

#### 8.02. Coaches and Administrative Staff.

The Employee shall have the authority to recommend the hiring and termination of coaches and administrative staff members for all intercollegiate athletics programs. All coaches and administrative staff members shall be University employees. It is understood that all coaches and athletics staff members are immediately responsible to the Employee, who will assign or reassign the duties of each of the coaches and staff members, and that the Employee is responsible for the activities of such coaches and staff members as those activities relate to the educative purposes and the athletic interests of the University. It is further understood that the coaches and administrative staff are responsible to the Director of Intercollegiate Athletics for compliance with the policies of the University, including its Athletic Department, and the rules and regulations of any athletic conference in which the University may become a member and the constitution, bylaws, rules, regulations and all official interpretations thereof of the NCAA and the conference, as may be in effect from time to time.

#### 8.03. Scheduling.

The Director of Intercollegiate Athletics shall have final authority and responsibility with regard to the scheduling of all athletics program contests and shall use his best efforts to ensure that the schedules of all athletics programs of the University allow the programs to meet and maintain the University's objectives in all intercollegiate athletics.

#### 8.04. Compensation Conditional.

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 governing body and the availability of sufficient funds within the University's and Athletic Department's budget to pay such compensation.

#### 8.05. Requirement of University Signature and Approval.

It is understood and agreed that this Agreement shall not be effective until signed by the Chancellor on behalf of the University.

#### 8.06. Choice of Law.

This Agreement shall be governed by and construed in accordance with the laws of the State of Arkansas, and the laws of the State of Arkansas shall govern the validity, performance and enforcement of this Agreement.

#### 8.07. Assignment of Agreement.

The Employee's rights and interests under this Agreement may not be assigned, pledged or encumbered by the Employee.

#### 8.08. Merger Clause.

This Agreement constitutes the full and complete understanding and agreement of the parties with respect to the employment of the Employee by the University and as of its effective date supersedes all prior understandings and agreements, oral or written, including any letter agreements, regarding the Employee's employment by the University.

#### 8.09. Amendments to Agreement.

This Agreement may be amended or extended at any time only by a written instrument signed by both parties.

#### 8. 10. Severability.

If any provision or provisions hereof shall be deemed invalid or unenforceable, either in whole or in part, this Agreement shall be deemed amended to delete or modify, as necessary, the offending provision or provisions or to alter the bounds thereof in order to render it valid and enforceable.

#### 8. 11. No Waiver of Default.

No waiver by the parties hereto of any default or breach of any covenant, term, or condition of this Agreement shall be deemed to be a waiver of any other default or breach of the same or any other covenant, term, or condition contained herein.

#### 8.12. Acknowledgment.

The Employee acknowledges that he has read and understands the foregoing provisions of this Agreement and that such provisions are reasonable and enforceable and he agrees to abide by this Agreement and the term and conditions set forth herein.

#### 8.13. Indemnification of University.

The Employee agrees to hold harmless and indemnify the University from any and all suits, claims, demands, damages, liability, costs and expenses, including attorney's fees, arising out of this Agreement, except such suits, claims or demands in which the Employee seeks to compel the University to comply with its obligations hereunder or in which the Employee seeks to enforce any remedies he may have hereunder.

#### 8.14. University Retains All Materials and Records.

All materials or articles of information, including, without limitation, personnel records, recruiting records, program information, films, statistics or any other material or data furnished to the Employee by the University or developed by the Employee on behalf of the University or at the University's direction or for the University's use or otherwise in connection with the Employee's employment hereunder are and shall remain the sole and confidential property of the University. Within five (5) days of the expiration of the term of this agreement or its earlier termination as provided herein, the Employee shall immediately cause any such material in his possession or control to be delivered to the University.

#### 8.15. "Force Majeure" Clause,

Neither party shall be considered in default in the performance of its obligations under this Agreement if such performance is prevented or delayed by Force Majeure. "Force Majeure" shall be understood to be any cause which is beyond the reasonable control of the party affected, including but not being limited to war, hostilities, revolution, civil commotion, strike, lockout, epidemic, accident, fire, wind or flood or because of any law, order, proclamation, ruling, regulation or ordinance of any government or subdivision of government or because of any act of God. An act constituting Force Majeure must be immediately brought to the attention of the other party by written notice in order to excuse performance.

#### 8.16. Governmental Immunity Not Waived.

It is expressly agreed and understood between the parties that the University is an agency of the State of Arkansas and that nothing contained herein shall be construed to constitute a waiver or relinquishment by the University of its right to claim such exemptions, privileges and immunities as may be provided by law.

#### 8.17. Employee Will Not Make Investments Inconsistent With University's Objectives.

During the period of employment hereunder, the Employee shall not make or continue to hold any investment in or be associated with any enterprise which could be deemed to be inconsistent with the University's objectives and philosophies or with the University's intercollegiate athletic program.

#### 8.18. Notices.

Any notice given under this Agreement shall be in writing and shall be given by hand delivery or any form of mail requiring signed receipt. Delivery shall be complete on the day actually received if hand delivered or on the date of signature if delivered by any form of mail requiring signed receipt addressed to the party at the address set forth below or such other address as may be given by such party in writing to the other:

If to the Employee: Terry Mohajir  
2810 Nix Lake Drive  
Jonesboro, Arkansas 72404


If to the University: Office of the Chancellor  
P.O. Box 600  
State University, Arkansas 72467

IN WITNESS WHEREOF, the parties hereto have executed this Employment Agreement this 1 day of February, 2014 intending to be legally bound by its provisions.

Arkansas State University-Jonesboro

By   
Dr. Tim Hudson, Chancellor

I hereby accept the provisions of the above appointment and agree to abide by the policies, rules and regulations prescribed by the trustees and administrators of Arkansas State University.

  
Mr. Terry Mohajir, Employee