

**ASSISTANT COACH EMPLOYMENT CONTRACT  
REFERENCE PAGE**

The Board of Trustees of the University of Alabama, a public corporation and constitutional instrumentality of the State of Alabama, for and on behalf of its member institution, The University of Alabama ("University") and the following identified Employee, enter into this Assistant Coach Employment Contract ("Contract"). This reference page defines certain terms and provisions used throughout the Contract:

Employee:	Kirby Paul Smart
Address for Notice:	Box 870323, Tuscaloosa, Alabama 35487-0323
Initial Position:	Assistant Coach
Initial Term of Contract:	2 years
Beginning Date of Initial Term:	January 6, 2007
End Date of Initial Term:	February 28, 2009
Annual Base Salary:	
Partial Contract Year 1/6/07 to 2/28/07:	Prorated
March 1, 2007 to February 29, 2008:	\$275,000
March 1, 2008 to February 28, 2009:	\$275,000
Effective Date:	January 6, 2007

Special provisions:

1. Section 3.02 shall have no effect until after February 28, 2009, the End Date of the Initial Term. This does not constitute a promise or guarantee of future employment beyond February 28, 2009, or of renewal of the Contract beyond the Initial Term.

2. Employee will not owe liquidated damages pursuant to subsection 5.01(e)(2), in the event Employee departs the University to accept a position as a coordinator or head football coach at another University.

By signing below, the University and Employee agree to the terms of this Contract, including specifically the "General Terms and Conditions" attached hereto and incorporated herein. IN WITNESS WHEREOF, the parties hereto have executed this Contract, or caused this Contract to be executed, on the dates shown below.

THE BOARD OF TRUSTEES OF THE  
UNIVERSITY OF ALABAMA

By Robert E. Witt  
Robert E. Witt, President  
The University of Alabama

Date \_\_\_\_\_

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

Kirby Paul Smart  
Kirby Paul Smart  
Date 8/21

APPROVED:

Mark M. Mason  
Director of Athletics

**GENERAL TERMS AND CONDITIONS**  
**(FOOTBALL AND RELATED STAFF, JUNE 2007)**

The following general terms and conditions, as supplemented by the Reference Page(s) and Job Descriptions made a part hereof, shall apply to the Contract entered into by and between the University and Employee.

**Article I - Definitions**

As used in this Contract (including within these paragraphs) the following terms shall have these meanings:

"Governing Athletic Rules" shall mean any and all present or future legislation, rules, regulations, directives, written policies, bylaws and constitutions, and official or authoritative interpretations thereof, and any and all amendments, supplements, or modifications thereto ~~promulgated hereafter by the NCAA or the SEC or any successor of such association or~~ conference, or by any other athletic conference or governing body hereafter having regulatory power or authority relating to the athletic program of the University. Governing Athletic Rules also shall include any acts of Congress or the State of Alabama regulating college athletics, officials, athletes, and competition.

"Head Coach" shall mean Head Coach of football.

"NCAA" shall mean the National Collegiate Athletic Association, and its successors.

"SEC" shall mean the Southeastern Conference, its successor or any other athletic conference of which the University may be a member.

"University Rules" shall mean any and all present or future legislation, rules, regulations, directives, written policies, bylaws, and constitution, and official or authoritative interpretations thereof, and any and all amendments, supplements, directives, or modifications thereto promulgated hereafter by The University of Alabama, including, without limitation, its President and Athletic Director, or by The Board of Trustees of The University of Alabama.

**Article II - Position**

2.01 Employment. The University employs the Employee in the initial position described on the Reference Page ("Initial Position"). Employee accepts the employment and agrees to act at all times in a manner consistent with good sportsmanship and with the high moral, ethical, and academic standards of the University. Employee shall exercise due care that all personnel and students under Employee's supervision or subject to Employee's control or authority shall comport themselves in like manner.

2.02 Duties and Responsibilities.

(a) Employee agrees to be a loyal employee of the University. Pursuant to the terms and conditions contained herein, Employee agrees to devote Employee's best efforts and abilities full time to the performance of Employee's duties for the University and to give proper time and attention to furthering Employee's responsibilities to the University. Subject to the provisions of Article V herein, poor performance of Employee's duties or responsibilities or misconduct of any kind will result in appropriate disciplinary or corrective action. Employee agrees not to usurp any corporate opportunities of the University. Employee is responsible for using his best efforts to maintain good public relations with the public news media and sound alumni relations.

(b) Employee agrees to abide by and comply with NCAA and other Governing Athletic Rules and University Rules relating to the conduct and administration of the football program and to work cooperatively with the University's Faculty Athletics

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Representative and compliance personnel on compliance matters and NCAA rules education. In particular, Employee recognizes an obligation personally to comply with, and to exercise due care that all personnel and students subject to Employee's control or authority comply with, Governing Athletic Rules relating to recruiting and furnishing unauthorized extra benefits to recruits and student-athletes, including, without limitation, purchase or sale of game tickets and furnishing unauthorized transportation, housing, and meals, and with laws and Governing Athletic Rules relating to sports agents, gambling, betting, and bookmaking, and the illegal sale, use, or possession of controlled substances, narcotics, or other chemicals or steroids. In the event Employee has knowledge of, or has reasonable cause to believe, that violations of Governing Athletic Rules, University Rules, or law may have taken place, Employee shall report the same immediately to the Head Coach of Football, University's Director of Athletics and Associate Athletic Director for Compliance. Employee agrees to abide by the academic standards and requirements of the University in regard to recruiting and eligibility of prospective and current student-athletes. Employee recognizes that the primary mission of the University is that of an institution of higher education, and Employee shall fully cooperate with the faculty and administrators of the University in connection with the academic pursuits of student-athletes and promote those efforts. Employee, in cooperation with the University's administration, shall monitor the academic progress of the student-athletes who participate in football. Employee recognizes that the goal of the University is for every student-athlete to obtain an undergraduate degree, and Employee agrees to support

fully the attainment of that goal. To that end Employee shall use his best efforts to foster awareness by student-athletes in the football program of the availability of University resources dealing with student financial aid, academic counseling and advisement, life-skills programs, and other University resources that are available to the general University student population.

(c) Employee shall perform to the reasonable satisfaction of the Head Coach the duties and responsibilities ordinarily associated with and performed by a person occupying the same or similar position at a major university that participates at the NCAA Division I-Football Bowl Subdivision level, including, without limitation, those duties set out on the job description attached as Exhibit "A" hereto, and incorporated herein. Employee shall understand and comply with NCAA and other Governing Athletic Rules, applicable law, University Rules, and all University academic standards for student-athletes. ~~Employee also shall perform to the best of Employee's ability~~ matters assigned by Employee's supervisor and the Head Coach of Football that are germane to Employee's position and the University's mission.

(d) If Employee is found to be in violation of Governing Athletic Rules while employed by the University, Employee shall be subject to disciplinary or corrective action as set forth in the provisions of the NCAA enforcement procedures.

(e) Employee shall not violate Governing Athletic Rules or law by permitting, encouraging, or condoning the solicitation or acceptance by himself or by any other athletics staff member, including without limitation, assistant football coaches, football strength coaches, Director of Football Operations, Director of Player Personnel, Directors of Player Development, other football staff members, or student-athlete of gifts of cash or of substantial value or accepting hospitality other than reasonable social hospitality from any person, including without limitation, a person who is a "representative of the institution's athletic interests" as that term is defined in Governing Athletic Rules.

(f) Employee will exercise due care to avoid inappropriate involvement by himself and by other athletics staff members, including without limitation, assistant football coaches, football strength coaches, Director of Football Operations, Director of Player Personnel, Director(s) of Player Development, other football staff members, student-athletes, and other Athletic Department employees with non-employee "representatives of the institution's athletic interests," as that term is defined in the

Governing Athletic Rules, during games, practices, team travel, in the locker room, or as part of recruiting activities.

(g) Employee recognizes that the Head Coach is responsible to the Director of Athletics who in turn is responsible to the President and then to the University's Board of Trustees for the operation, review, and periodic evaluation of the entire intercollegiate athletics program, including the football program. Employee further recognizes and acknowledges the importance of the maintenance and observance of the principles of institutional control as contemplated by Governing Athletic Rules over every aspect of the operation of University athletics, including football. Employee agrees to recognize and respect those relationships and the organizational structure of the University.

(h) Employee agrees to promptly report to the Director of Athletics, Associate Athletic Director for Compliance, and Head Coach of Football, all conduct of others of which the Employee has knowledge which may constitute a violation of Governing Athletic Rules.

2.03 Reporting Relationship. Employee shall report directly to the Head Coach or to such other person as may be designated from time to time by the head Coach as Employee's reporting superior. Employee's job duties and responsibilities may be reviewed, revised, and reassigned from time to time by Employee's supervisor, the Head Coach of Football, or in the absence of the Head Coach by the Director of Athletics.

### Article III - Term of Employment

3.01 The term of this Contract shall be for the Initial Term, commencing with the Beginning Date of Initial Term, and ending with the End Date of Initial Term, all as set out on the Reference Page, subject to earlier termination in accordance with the provisions of Article V hereof. To extend or renew the Contract term, both parties must sign a written agreement to do so. Employee agrees that oral agreements to renew or extend this Contract are invalid and non-binding. For the purposes of this Contract, a "Contract Year" shall mean a twelve-month period beginning March 1 of one year and ending on the last day of February of the immediately succeeding year (unless specifically stated otherwise on Employee's individual Reference Page).

3.02. Notwithstanding anything to the contrary in Section 3.01 above, should the Contract be extended in writing beyond the End Date of the Initial Term as set out on the Reference Page, and in the event thereafter, the Head Coach of Football either resigns from his University employment, relinquishes voluntarily the head football coach position, dies, or is terminated by the University, with or without cause, then the term of this Contract shall terminate

on the earliest to occur of either the date Employee accepts a coaching or administrative position at a college or university or with a professional sports team, the date that is six (6) months from the date the Head Coach of Football is no longer in the position of head coach, or the expiration date of this Contract as specified in Section 3.01 above, or the date at which this Contract is terminated by the University for cause.

#### Article IV - Compensation

In consideration for the promises Employee has made in entering into this Contract, Employee shall be entitled to an annual base salary payment and employment benefits and may possibly receive salary perquisites, incentives, and outside activity income. To the extent required or permitted by law or University Rules, the salary payments, talent fee payments, other forms of compensation, and employment benefits described in this Article IV are subject to deductions for local, state, and federal taxes, for state retirement, and for any voluntary retirement or other employment benefits which Employee elects to participate in, as well as the terms and conditions of Article V hereof concerning termination of this Contract.

4.01 Base Salary. In Employee's Initial Position, Employee shall be paid by the University an annual base salary as set out on the Reference Page. Annual base salary is payable in monthly installments by the University to Employee on the last day of each calendar month in accordance with University payroll policies.

4.02 Employment Benefits. During the term of this Contract, the University will provide the Employee with the employment benefits described in this Section 4.02 and no others. Employee shall be entitled to the standard University employment benefits, subject to any eligibility requirements, normally provided by the University to its exempt, regular full-time employees, which may include (among other things) group life insurance, long term disability benefits, vacation with pay, individual medical coverage, state teachers' retirement contributions, and TIAA/CREF contributions (if Employee elects to participate therein), all of which are described in greater detail in the University's Staff Handbook, a copy of which is available on the University's website at <http://hr.ua.edu>. In the event of a conflict between the terms and provisions of this Contract and those of the University's Staff Handbook, the terms and provisions of this Contract shall control and take precedence. If any employment benefit is based in whole or in part upon salary paid to Employee, any income paid or received by Employee from any outside activities or supplemental compensation shall be included in the computation of that employment benefit only to the extent permitted or required by University Rules or by law.

4.03 Perquisites/Incentives. While Employee is serving in his Initial Position, the University will provide or arrange for the following perquisites and performance incentives and no others, unless otherwise specified on the Reference Page:

(a) Automobile. The University annually shall provide or make arrangements for Employee to have on a loan basis one (1) automobile for business and personal use by Employee and members of Employee's immediate family. Said automobile may be provided through the Athletic Department's loaned vehicle program. The University agrees to provide liability insurance coverage for those vehicle operators deemed insurable at regular rates based upon good driving record standards by the University's insurance carrier and collision and comprehensive automobile insurance coverage on the loaned vehicle. Employee and members of Employee's immediate family agree to comply with all reasonable requirements that the University's insurance carrier may impose or require as a condition of coverage. In the event the University's fleet vehicle insurance policy does not cover the loaned vehicle, then the University shall either purchase replacement coverage provided the vehicle operators are deemed insurable at regular rates based upon good driving record standards by the insurance carrier or reimburse Employee for the cost of obtaining similar insurance coverage at regular rates. Employee shall pay all vehicle operating expenses and shall be responsible for paying for any uninsured loss, damage, or repairs to the loaned vehicle.

(b) Incentives.

(1) Athletics. In recognition of exemplary performance and the additional work that is required for post-season games and events and as an incentive for Employee to achieve the goals described below, the University agrees within thirty (30) days after the conclusion of the relevant game to pay to Employee the percentage of Employee's then current annual base salary described in the following subsections (i) and (ii):

(i) SEC Championship Game. 4% - for playing in the SEC Championship football game.

(ii) Post-Season Bowl Game. 8% - for playing in any post-season bowl game; or 12% for playing in the Chick-fil-A, Cotton, Outback, or Capital One bowls, or their successors; or 16% for playing in a Bowl Championship Series (BCS) post-season game. It is understood that in no event shall Employee receive more than one incentive payment under this subsection 4.03(b)(1)(ii).

(2) Performance. Employee may receive performance bonus(es) in accordance with Board Rule 302 and departmental policy, subject to the required approval of the Head Coach of Football, Athletic Director, and President.

(c) Athletically-Related Income. Employee shall not seek to earn income from or participate in athletically-related activities, except as permitted herein.

(1) The following general terms and conditions shall apply to each case in which Employee seeks to or makes arrangements either to participate in or to earn athletically-related income as a result of Employee being in Employee's Initial Position.

(i) In no event shall Employee accept or receive, directly or indirectly, any monies, benefit or any other gratuity whatsoever from any person, corporation, representative of the institution's athletic interests, university booster club or alumni association, or other benefactor if such action would violate Governing Athletic Rules or the law.

(ii) Employee shall obtain the advance written approval of Employee's supervisor, the Head Coach of Football, and the President before entering into agreements to earn income from athletically-related or non-University activities, which approval shall not be unreasonably withheld. The University's refusal to approve any such request shall not constitute a breach of this Contract.

(iii) Employee agrees that the University shall have no responsibility or liability for any claims arising from Employee's non-athletically-related and non-University activities.

(2) Personal Business/Public Speeches. Subject to the provisions of this Contract and the prior written approval of the Employee's supervisor, Head Coach of Football, and President, Employee may participate in non-University, non-athletically related outside business activities conducted off campus as an individual or through business enterprises owned by Employee, provided the same comply with the Governing Athletic Rules. When making public appearances and speaking before public gatherings or University-related groups for non-commercial purposes, Employee shall use his best efforts to perform such appearances and speaking activities in a professional way and manner. Employee's non-University, non-athletically related business activities shall not reflect adversely upon the University or interfere with Employee's performance

of the duties of Employee at the University. Employee may retain any compensation received by Employee for such non-commercial speeches and appearances in the form of honoraria and the like.

(3) Athletically-Related Outside Activities. Athletically-related outside activities include Employee's performance, participation, or appearance, or use of Employee's name and likeness, in promotions, sponsorships, or broadcasts, including, without limitation, commercial endorsements; endorsement or consultation contracts with athletic shoe, apparel, or equipment manufacturers or sellers; radio and television programs; media events; public appearances; Internet websites; commercial advertisements; films; authoring or co-authoring books or publications that relate to the University of Alabama or its athletic programs or teams; Internet web sites; films, audiotapes, or videotapes; and any and all other similar activities or enterprises in any and all media as well as speaking engagements, private sports camps, and personal service contracts (such athletically-related outside activities being collectively referred to as "Commercial Activities").

(d) Use of University Trademarks. Employee may not utilize or authorize third parties to utilize the University's trademarks or logos in connection with any outside activities permitted by this Contract without the express written permission of the Director of Athletics and the University's Licensing Director. A third party desiring to use the University's trademarks must obtain a license from the University's Licensing Program. In the event Employee, or any entity owned in whole or in part by Employee, receives permission to use the University's trademarks, such permission shall be non-exclusive and non-transferable, and such permission shall expire automatically upon Employee's resignation or termination of this Contract. Employee shall use the University's trademarks and logos only in a manner that will not cause ridicule or embarrassment to the University or be offensive to standards of good taste as reasonably determined by the University. Employee agrees that all logos, slogans, trademarks, or other indicia, including all copyright and other intellectual property rights therein, which relate to the University, including any of its athletics programs, or which would compete with the University's registered trademarks that are developed or created by Employee or by others at Employee's direction shall be owned by the University. Employee agrees to execute and deliver to the University such instruments as the University may reasonably

request in connection therewith. Employee shall be governed by the patent policy set forth in University regulation and policies.

(e) Athletically-Related Income Reporting.

(1) On or before February 1st of each year or by such other date established by the President, Employee shall submit to the President for approval through the Director of Athletics a written request to receive during the calendar year athletically-related income and benefits from sources outside the University which lists the sources and estimated income amounts and shall prepare and deliver an accurate, detailed written statement of all athletically-related income and benefits received by Employee from sources outside the University during the prior calendar year. Such request may be amended from time to time subsequent to February 1<sup>st</sup> if additional information becomes known.

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(2) For the purposes of this subsection (e), sources of outside income and benefits include, without limitation, income from any approved Commercial Activities, housing benefits, country club memberships, and complimentary ticket sales. Employee agrees that the University shall have reasonable access, upon advance written notice and at a mutually agreed upon time, to such records of Employee and his businesses as are necessary to verify such report. Nothing in this subsection (e) shall allow Employee to receive income otherwise prohibited by the Contract or otherwise the property of the University.

(f) Athletic Apparel. From time to time the University may, but shall not be required to, provide to Employee for personal use athletic shoes and apparel in such amounts as may be determined by the Athletic Director.

(g) Moving Expenses. To the extent not previously reimbursed, the University agrees to pay for or to reimburse Employee for the actual and necessary moving expenses incurred by Employee in moving Employee's household goods and individual personal effects, but excluding the cost of moving or transporting pets or animals, from Employee's current residence to the Tuscaloosa area. Unless expressly authorized by the Director of Athletics, the University will not pay or reimburse Employee for the costs of storing Employee's household goods and individual personal effects in excess of fourteen (14) days. Unless otherwise agreed, Employee shall use the University's designated moving company.

## Article V - Termination

5.01 (a) Termination for Death or Disability. This Contract shall terminate automatically upon the death of Employee. If this Contract terminates because of Employee's death, Employee's annual base salary and all other forms of compensation, perquisites, and benefits shall terminate as of the calendar month in which death occurs, except that Employee's personal representative or other designated beneficiary shall be paid all such death benefits, if any, as may be contained in any benefit plan now in force, or hereafter adopted by the University and due to Employee thereunder.

If Employee becomes sick or injured so he is limited from performing the essential and substantial duties of his then current Position, then Employee may become entitled to long term disability benefits under the University's long term disability benefit program. ~~Upon the date of Employee's approval for long term disability payments as provided for in the University's long term disability benefit program, this Contract shall terminate and all compensation, perquisites, and benefits provided by the University under this Contract, including Article IV hereof, shall cease, except for payment of such long term disability benefits which Employee is entitled to receive pursuant to the University's long term disability benefit program.~~

If Employee becomes sick or injured so he is limited from performing the essential and substantial duties of his then current Position, but Employee is denied long term disability insurance benefits under the University's long term disability benefit program, then in such event this Contract shall terminate on the date such long term disability benefits are denied and all compensation, perquisites, and benefits provided for in Article IV and other provisions of the Contract shall cease; but Employee shall receive from the University monthly disability payments in an amount equal to one-twelfth (1/12) of sixty-six and two-thirds (66 2/3%) percent of Employee's current annual base salary which shall be paid on the last day of each month for a period of one (1) year from the Contract termination date, at the end of which time such disability payments shall cease.

(b) Termination for Cause. The University shall have the right to terminate this Contract for cause prior to its expiration, and such right of termination shall exist notwithstanding any rights available to University under Section 5.01(d) hereof, and in addition to the examples listed in the University's Staff Handbook, the term "for cause" shall include, without limitation, any one or more of the following:

(1) Neglect or inattention by Employee of the standards, duties, or responsibilities expected of University employees, including those assigned to or required of Employee by Article II of this Contract, after written notice thereof has been given to Employee either by Employee's supervisor, the Head Coach of Football, or by the Director of Athletics, and Employee has continued such neglect or inattention during a subsequent period of not less than thirty (30) days; or

(2) Material, intentional, reckless, or repetitive breach or violation by Employee of this Contract, including without limitation, Article II hereof or Governing Athletic Rules or University Rules; or

(3) Conviction of Employee of any criminal violation (excluding minor traffic offenses or non-criminal offenses); or

~~(4) Fraud or dishonesty of Employee in the performance of Employee's duties or responsibilities hereunder; or~~

(5) (a) Repeated failure by Employee, following a specific request, to respond promptly, accurately, and fully to any reasonable request or inquiry by the University relating to Employee's performance of Employee's duties and responsibilities hereunder; or (b) Failure by Employee, following a specific request, to respond promptly, accurately, and fully to any reasonable request or inquiry concerning compliance with Governing Athletic Rules, University Rules, or law; or

(6) Actively engaging in any conduct or committing any act that brings Employee and/or the University into public disrepute, contempt, embarrassment, scandal, or ridicule and that negatively impacts the reputation or the high moral or ethical standards of the University of Alabama; or

(7) (a) Conduct of Employee constituting a major violation, or a pattern of conduct which may constitute or lead to a major violation, of any NCAA or other Governing Athletic Rule or University interpretation thereof, which may, in the reasonable and good faith judgment of the University negatively and significantly impact and reflect adversely upon the University or its athletics program, including any violation which results or could result in the University being placed on probation by the NCAA or SEC; or (b) conduct by others under Employee's supervision or subject to his control or authority, constituting a major violation, or a pattern of conduct which may constitute or

lead to a major violation, of any NCAA or other Governing Athletic Rule or University interpretation thereof of which Employee had knowledge and failed to act reasonably to prevent, limit or mitigate, which may, in the reasonable and good faith judgment of the University negatively and significantly impact and reflect adversely upon the University or its athletics program, including any violation which results or could result in the University being placed on probation by the NCAA or SEC; or

(8) Subject to any right of administrative appeal permitted or granted to Employee by such entities, the making or rendition of a finding or determination by the NCAA or SEC, or any commission, council, panel, or tribunal of the same or a successor, that conduct by Employee or members of Employee's staff or others under his supervision or subject to his control or authority, constitutes a major violation, or a pattern of conduct which may

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constitute or lead to a major violation, of any Governing Athletic Rules. It is recognized that this subsection encompasses findings or determinations of violations of Governing Athletic Rules during employment of Employee at the University or at any other institution of higher education; or

(9) Failure by Employee to report immediately to his supervisor, the Head Coach of Football, Director of Athletics and Associate Athletic Director for Compliance any violations of NCAA or other Governing Athletic Rules or University Rules by Employee or by members of Employee's coaching, athletic, or football staff, student-athletes, or other persons under Employee's control or authority that become known to Employee; or

(10) Conduct of Employee seriously prejudicial to the best interests of the University or its athletics program or which violates the University's mission; or

(11) Non-incident fraud or dishonesty of Employee in the preparation of, falsification of, or alteration of documents or records of the University, NCAA, or SEC, or documents or records required to be prepared, kept, or maintained by the University Rules, Governing Athletic Rules, or law, 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 athletic staff, football coach or staff, student-athletes, or other persons under Employee's control or authority; or

(12) Counseling or instructing by Employee of any coach, football staff member, athletic staff member, student-athlete, student, or other person under Employee's control or authority to fail or refuse to respond accurately and fully within a reasonable time to any reasonable inquiry or request concerning a matter relevant to the athletics programs of the University or of another institution of higher education which shall be propounded by the NCAA, SEC, the University, or other governing body having supervision over the athletic programs of the University or other institution of higher education, or which shall be required by law, Governing Athletic Rules, or University Rules; or

(13) Soliciting, placing, or accepting by Employee of a bet or wager on any intercollegiate or professional athletic contest whether through a bookmaker, a pool, or any other person, means, or method, or permitting, encouraging, or condoning such acts by any member of Employee's coaching staff, athletic staff, any student-athlete, or any other person; or

(14) Furnishing by Employee of information or data relating in any manner to football, athletic programs, or any other sport or to any student-athlete to any individual known to Employee to be or whom Employee should reasonably know to be a gambler, bettor, or bookmaker, or an agent of any such person, or the consorting or associating by Employee with such persons; or

(15) Use or consumption by Employee of alcoholic beverages or narcotics, drugs, controlled substances, steroids, or other chemicals in such a degree and for such appreciable period as to impair significantly or materially Employee's ability to perform Employee's duties and responsibilities hereunder; or

(16) (a) Sale, use, or possession by Employee of any narcotics, drugs, or controlled substances, steroids, or other chemicals, the sale, use, or possession of which by a person is prohibited by law, University Rules or Governing Athletic Rules; or

(b) Permitting, encouraging, or condoning, either through intentional, reckless, wanton, or negligent action, by Employee of the sale, use, or possession by any coach, athletic staff, or student-athlete of any narcotics, drugs, controlled substances, steroids, or other chemicals, the sale, use, or

possession of which by a person is prohibited by law, by University Rules, or by Governing Athletic Rules.

In the event this Contract is terminated for cause in accordance with the provisions of Section 5.01(b) hereof, then, effective as of the termination date, Employee shall not be entitled to receive any further payments of base salary, talent fee, longevity incentive, or any other sum, compensation, perquisite, or benefit otherwise payable under Article IV hereof, except Employee will be entitled to continue such life or health insurance benefits at Employee's own expense as required or permitted by law, and subject to any deductions permitted by Section 5.01(j), Employee will be paid any earned outstanding payments owed by the University as of the effective termination date pursuant to the terms of this Contract.

(c) Determination of Cause and Employee's Right to Hearing. Except in those extraordinary circumstances in which a pre-termination hearing would result in damage to the University, be detrimental to the University's interests or would result in injury to Employee, to another employee or student of the University, or to the general public, "for cause" sufficient to satisfy the provisions of Section 5.01(b) hereof shall be determined by the University's Director of Athletics or his/her designee at the pre-termination hearing held for such purpose after fourteen (14) days' prior written notice to Employee, which notice shall include a statement of the charges against Employee. The hearing shall consist of an explanation of the University's evidence and an opportunity for Employee to present Employee's side of the story and shall include the right to have an attorney present to advise Employee, but not to actively participate in the proceedings. The decision of the University's Director of Athletics or his/her designee at such hearing shall be final.

(d) Termination Without Cause. The University and Employee each shall have the right at any time to terminate this Contract without cause and for convenience prior to the end of its term. Termination without cause by the terminating party shall be effectuated by delivering to the non-terminating party written notice of the intent to terminate this Contract without cause, which notice shall be effective upon the earlier of the date for termination specified in the notice or fourteen (14) days after receipt of such notice by the non-terminating party.

(1) If the University terminates this Contract without cause pursuant to this Section 5.01(d), then the Employee shall be entitled to damages only as provided for in Section 5.01(e)(1) below, and Employee shall not be entitled to

receive any further payments of base salary, talent fee, or any other sum, compensation, perquisite, or benefit otherwise payable under this Contract, except Employee will be entitled to continue such life or health insurance benefits at Employee's own expense as required or permitted by law or by University Rules and subject to any deductions permitted by Section 5.01(i), Employee will be paid any earned outstanding payments owed by the University as of the effective termination date pursuant to the terms of this Contract. The parties agree that if this Contract is terminated without cause, then Employee shall not be entitled to any hearing.

(2) If Employee terminates this Contract without cause pursuant to this Section 5.01(d), then the University shall be entitled to damages only as provided for in Section 5.01(e)(2) below. All compensation, perquisites, and benefits described in Article IV hereof and all other obligations owed by the

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University to Employee under this Contract will cease as of the termination date. Employee will be entitled to continue such life or health insurance benefits at Employee's own expense as required or permitted either by law or by University Rules. The parties also agree that if Employee accepts a job with another employer while this Contract is in effect, then Employee's acceptance of such job shall constitute a termination without cause of this Contract by Employee.

(e) Liquidated Damages.

(1) If the University terminates this Contract without cause prior to the end of its term as permitted by Section 5.01(d)(1) hereof, the University shall pay, and Employee agrees to accept, as liquidated damages, an amount equal to one-twelfth (1/12) of the annual base salary being paid to Employee in the Contract Year in which the notice of termination without cause is given for each month or portion thereof (pro-rata) in the period from the first full month immediately following the effective date of termination to the end of the Contract term as specified either in Section 3.01 or Section 3.02, as applicable. The liquidated damages amount shall be paid in monthly installments commencing on the last day of the month in which the termination date occurs and continuing on the last day of each succeeding month until the date the Contract term would have ended but for the early termination. To the extent required by law, the liquidated damages amount shall be subject to deductions for state and federal taxes. The monthly liquidated damages payments by the University shall cease

as specified in Section 5.01(h) hereof. The Employee will be entitled to continue such insurance benefits at Employee's own expense as required or permitted either by law or by University Rules, but Employee will not otherwise be entitled to any additional compensation or employment or other benefit described in Article IV hereof.

(2) If Employee terminates this Contract without cause prior to the end of its term as permitted by Section 5.01(d)(2) hereof, Employee, or a third party on Employee's behalf, shall pay to the University, as liquidated damages, an amount equal to the sum of twenty per cent (20%) of the annual base salary for the Contract Year during which said termination occurs. Such liquidated damages shall be due and payable within fourteen (14) days after the effective date of the termination of the Contract. Failure to pay such liquidated damages shall constitute a breach of this Contract. The Head Football Coach may waive the liquidated damages to be paid by the Employee pursuant to this subsection 5.01(e)(2).

(3) The parties have bargained for and agreed to the foregoing liquidated damages provisions, (i) giving consideration to the fact that termination of this Contract by the University without cause prior to its expiration may cause the Employee to lose certain benefits and incentives, supplemental compensation, or other athletically-related compensation associated with Employee's employment at the University, which damages are extremely difficult to determine with certainty or fairly or adequately; and (ii) giving consideration to the fact that the University will incur administrative, recruiting, and resettlement costs in obtaining a replacement for Employee in addition to potentially increased compensation costs, loss of ticket revenues, and losses of income from the University's designated marketing contractor if Employee terminates this Contract while serving as an Employee of the University, all of which damages are extremely difficult to determine with certainty or fairly or adequately. The parties further agree that the payment of liquidated damages described above by the terminating party and acceptance thereof by the non-terminating party shall constitute adequate and reasonable compensation to the non-terminating party for the damages and injuries suffered by the non-terminating party because of such termination without cause. The foregoing shall not be, nor be construed to be, a penalty.

(f) Waiver of Claims. In any instance of suspension of Employee pursuant to Section 5.01(g) or the termination of the Contract pursuant to Sections 5.01(a), 5.01(b), 5.01(d)(1), or 5.01(i), except as provided for herein, the University shall have no liability whatsoever to Employee, nor shall Employee be entitled to receive, and Employee hereby waives any claim that Employee or Employee's personal representatives may have against the University or the University's trustees, foundations, officers, employees, or agents, for any direct or consequential damages by reason of any alleged economic loss, including, but without limitation, loss of collateral income, talent fees, earning capacity, business opportunities, incentive and supplemental income, benefits, or perquisites, including those described in Sections 4.02 and 4.03 hereof, or Commercial Activities income or fees or by reason of alleged humiliation or defamation resulting from the fact of termination or suspension, the public announcement thereof, or the University's ~~release of information or documents required by law. Employee acknowledges that in the~~ event of the termination of this Contract for cause, without cause, or otherwise, Employee shall have no right to occupy his Initial Position, or then current position, at the University, and Employee's sole remedies are provided for herein and shall not extend to injunctive relief.

(g) Suspension for Cause. In lieu of termination for cause, for any one or more of the acts or omissions representing grounds for termination for cause under Section 5.01(b), the University may suspend Employee for a period not to exceed ninety (90) days with full pay or without pay. If the matter giving rise to a suspension without pay is finally resolved completely in favor of Employee, and does not otherwise represent an independent basis for termination hereunder for cause, University shall pay to Employee the amount that otherwise would have been paid to Employee during the period of suspension. Suspension under this Section 5.01(g) shall not limit or prevent the right of the University to act pursuant to Sections 5.01(b) or 5.01(d)(1) during or subsequent to such suspension.

(h) Mitigation of Liquidated Damages. While the University's obligation to pay liquidated damages remains in effect, the Employee agrees to mitigate the University's obligation to pay liquidated damages as soon as possible after termination of this Contract by the University by promptly commencing to make reasonable, continued, and diligent efforts to obtain employment as a head or assistant coach, football or athletic staff member, or as an administrator in college, university, high school, amateur, or professional sports (collectively hereafter referred to as a "Coaching Position"). The

University's obligation to pay the liquidated damages provided for shall cease as of the date of Employee's acceptance of employment in a Coaching Position. Employee agrees to notify the University within fourteen (14) days of the date Employee accepts new employment. For purposes of this subsection (h), employment means working in a Coaching Position as an employee, an independent contractor, consultant, or self-employed person.

(i) Deduction of Amounts Owed to University. Upon the expiration or earlier termination of this Contract for any reason whatsoever, Employee agrees that the University shall be entitled and authorized to withhold and deduct from any final payment of any kind that is owed to Employee by the University the amount of any unreturned recruiting advances, or other funds previously advanced to Employee by the University or a University Supporting Foundation for Employee's business use, or the amount of any other indebtedness owed to the University by Employee.

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(j) Confidential Information. Employee acknowledges that, during the term of employment by the University, Employee will gain "Confidential Information," as defined herein, concerning the University's athletic program and that the use of this "Confidential Information" by a competitor Division I-Football Bowl Subdivision institution would place the University's athletic program at a serious competitive disadvantage. Accordingly, Employee expressly promises and agrees not to share any "Confidential Information," with any other Division I-Football Bowl Subdivision school in any capacity prior to the date on which the term of this Contract would have expired. Employee further agrees that, because Employee's services under this Contract are of a special, unique, unusual, extraordinary and intellectual character which gives those services special value, the loss to the University of which cannot be reasonably or adequately compensated in damages in a action at law, and because said breach would place the University at significant competitive disadvantage, the University shall have the right to obtain from any court such equitable, injunctive, or other relief as may be appropriate, including a decree enjoining Employee from sharing any "Confidential Information" with any Division I football bowl subdivision school. For the purposes of this clause, "Confidential Information" means information disclosed to, acquired or learned by Employee as a consequence of his employment by the University. "Confidential Information" includes, without limitation, information which is generally treated by the University as confidential; information generally treated by other Division I-Football Bowl Subdivision, competing institutions as confidential; information

generally not known by other Division I-Football Bowl Subdivision, competing programs about the business of the University or the University's football program; all information of the foregoing type relating to any recruits, players, employees, officers, or supporters, of the University; and all physical or electronic embodiments of any of the foregoing. "Confidential Information" also includes, without limitation, the whole or any part or phase of any information process, procedure, plan, equipment, mechanism, technique, method or system, if any, which is used by the University, or those of its employees to whom it has been confided, and which is believed or intended to give the University any advantage over competitors who do not know or use it.

#### Article VI - Prospective Employment

6.01 During the term hereof should Employee become interested in employment with another college or university or with a professional football organization or should another college or university or professional football organization directly or indirectly contact Employee about possible employment, then prior to Employee, either directly or indirectly through an agent or otherwise, contacting the college, university, or professional football organization, Employee must first notify Employee's supervisor, the Director of Athletics, and Head Coach of Football of such interest or contact and secure the Director of Athletics' permission which shall not be unreasonably withheld for Employee to make such a contact.

#### Article VII - Academics

7.01 It is recognized by the parties that a student-athlete may be declared ineligible for competition for academic reasons because the University believes the student-athlete would not be an appropriate representative of this University, as a disciplinary sanction under the University's student code of conduct, because the University believes that the student-athlete is ineligible according to University Rules or Governing Athletic Rules, or for similar reasons. In no event shall such an action by the University be deemed a breach of this Contract.

#### Article VIII - Miscellaneous

8.01 The parties hereby confirm their understanding that Employee's employment in the Initial Position and any subsequent positions at the University are non-tenure track positions and will not lead to tenure.

8.02 This Contract may be amended at any time only by a written instrument duly signed by the University through its designated representative and by Employee.

8.03 This Contract shall be governed by and construed in accordance with the laws of the State of Alabama, without regard to conflicts of laws principles. Any claim for damages

against the University under the terms and condition of this Contract must be pursued through the Alabama State Board of Adjustment.

8.04 Employee's rights and interests under this Contract may not be assigned, pledged, or encumbered by Employee.

8.05 This Contract constitutes the full and complete understanding and agreement of the parties with respect to the employment of Employee by the University and supersedes all prior understandings and agreements, oral or written, regarding Employee's employment by the University.

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

8.07 Employee acknowledges that Employee has read and understands the foregoing provisions of this Contract and that such provisions are reasonable and enforceable, and Employee agrees to abide by this Contract and the terms and conditions set forth herein.

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

8.09 All notices, requests, demands, and other communications hereunder may be given by telephone, unless specified otherwise, which shall be effective when received verbally or may be in writing (including, but not limited to, facsimile/teletyped communications) and shall be given by (1) personal delivery, (2) delivery via expedited delivery or mail service such as Federal Express, (3) United States mail, with first class postage prepaid, or (4) facsimile/teletyper. Notices shall be deemed to have been given either when hand delivered to the addressee or on the earlier of the day actually received or on the close of business on the 5th business day following the day when deposited in the United States mail, first class postage prepaid, addressed to the party at the address set forth after its name below or such other address as may be given by such party in writing to the other:

If to Employee:

Address on Reference Page

If to the University:

Mr. Mal Moore  
Director of Athletics  
The University of Alabama  
Box 870323  
Tuscaloosa, AL 35487-0323

8.10 All Confidential Information or any other non-confidential materials, information or data, furnished to Employee by the University or developed by the Employee at the

University's direction or for the University's use or otherwise in connection with Employee's employment hereunder are and shall remain the sole property of the University. Upon the expiration or earlier termination of this Contract, Employee shall deliver to the University any such materials as well as all loaned vehicles and all University-owned equipment, keys, credit cards, cellular telephones, pagers, laptop computers, and other property in Employee's possession or control. Employee shall further return to the University any advanced recruiting funds or other similar funds previously advanced to Employee by the University or a University Supporting Foundation for Employee's business use.

8.11 The invalidity or unenforceability of any provision of this Contract has no effect on the validity or enforceability of any other provisions. It is the desire of the parties hereto that a court judicially revise any unenforceable provisions to the extent required to make them enforceable.

~~8.12 The section and paragraph headings contained in this Contract are for reference~~  
purposes only and will not affect in any way the meaning or interpretation of this Contract.

8.13 The parties agree that the effective date of this Contract is as set out on the Reference Page, even if the Contract's execution date is subsequent thereto.

**Exhibit A**  
**Assistant Football Coach**  
**Job Specific Duties and Responsibilities**

Job specific duties and responsibilities for the position of Assistant Football Coach include, without limitation, the following:

1. Evaluating, recruiting, training, conditioning, instructing, supervising, disciplining, and coaching student-athletes to prepare them to compete successfully against major college competition in a quality football program.
  2. Such other duties as assigned by the Head Coach that are germane to the Employee's position and the University's mission.
  3. Other general duties as set out in the Employee's Contract, including duties to understand and comply with all Governing Athletic Rules and University Rules.
- 

Note: Employee's job duties and responsibilities may be reviewed, revised, and reassigned from time to time by Employee's supervisor, the Head Coach of Football, or in the absence of the Head Coach by the Director of Athletics.

**ASSISTANT COACH EMPLOYMENT CONTRACT  
AMENDMENT #1**

The Board of Trustees of the University of Alabama, a public corporation and constitutional instrumentality of the State of Alabama, for and on behalf of its member institution, The University of Alabama ("University") and Kirby Paul Smart ("Employee"), enter into this Assistant Coach Employment Contract Amendment #1:

1. The Initial Term of Employee's Contract is extended. The End Date of the Initial Term of Employee's Contract, and the dates set out in special provision #1 of the Reference Page, are amended, and shall now read "February 28, 2011."

2. Employee's Annual Base Salary is amended as follows:

March 1, 2008 to February 28, 2009:	\$325,000 (three hundred twenty-five thousand)
March 1, 2009 to February 28, 2010:	\$340,000 (three hundred forty thousand)
March 1, 2010 to February 28, 2011:	\$350,000 (three hundred fifty thousand)

2. Special provision #2 of Employee's Reference Page is stricken and replaced with the following: "Employee will not owe liquidated damages pursuant to subsection 5.01(c)(2), in the event Employee departs the University to accept a position as a head football coach at another University."

3. All other provisions of the Contract (including Employee's initial Reference Page(s), the "General Terms and Conditions" attached to the Contract, and the Job Description attached to the Contract), remain in full force and effect, except as modified specifically herein.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment #1, or caused this Amendment #1 to be executed, on the dates shown below.

THE BOARD OF TRUSTEES OF THE  
UNIVERSITY OF ALABAMA

By Robert E. Witt

Robert E. Witt, President  
The University of Alabama

Date 2-20-08

\_\_\_\_\_  
Witness

Kirby Paul Smart

Kirby Paul Smart  
Date 3/24/08

APPROVED:

\_\_\_\_\_  
Director of Athletics

**ASSISTANT COACH EMPLOYMENT CONTRACT  
AMENDMENT #2**

The Board of Trustees of the University of Alabama, a public corporation and constitutional instrumentality of the State of Alabama, for and on behalf of its member institution, The University of Alabama ("University") and Kirby Paul Smart ("Employee"), enter into this Assistant Coach Employment Contract Amendment #2:

1. The Initial Term of Employee's Contract is amended, and shall now extend to February 29, 2012.

2. Employee's Annual Base Salary is amended as follows:

March 1, 2009 to February 28, 2010:	\$360,000 (three hundred sixty thousand)
March 1, 2010 to February 28, 2011:	\$375,000 (three hundred seventy-five thousand)
March 1, 2011 to February 29, 2012	\$390,000 (three hundred ninety thousand)

3. All other provisions of the Contract (including Employee's initial Reference Page(s), the "General Terms and Conditions" attached to the Contract, and the Job Description attached to the Contract, and Amendment #1), remain in full force and effect, except as modified specifically herein.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment #2, or caused this Amendment #2 to be executed, on the dates shown below.

THE BOARD OF TRUSTEES OF THE  
UNIVERSITY OF ALABAMA

By Robert E. Witt  
Robert E. Witt, President  
The University of Alabama  
Date 5-13-09

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

Kirby Paul Smart  
Kirby Paul Smart  
Date \_\_\_\_\_

APPROVED:

Michael M...  
Director of Athletics

**ASSISTANT COACH EMPLOYMENT CONTRACT  
AMENDMENT #3**

The Board of Trustees of the University of Alabama, a public corporation and constitutional instrumentality of the State of Alabama, for and on behalf of The University of Alabama ("University") and Kirby Paul Smart ("Employee"), enter into this Assistant Coach Employment Contract Amendment #3:

1. The Initial Term of Employee's Contract is amended, and shall now extend to Feb. 28, 2013.

2. Employee's Annual Base Salary is amended as follows:

January 1, 2010 to February 28, 2011: \$750,000 (seven hundred fifty thousand)

March 1, 2011 to February 29, 2012: \$750,000 (seven hundred fifty thousand)

March 1, 2012 to February 28, 2013: \$750,000 (seven hundred fifty thousand)

3. Special provision #2 of the Employee's Reference Page, and paragraph #2 of Amendment #1 are stricken and replaced with the following: "Employee will not owe liquidated damages pursuant to subsection 5.01(e)(2) in the event Employee departs the University to accept a position as a head football coach at another university. If Employee leaves to take a coaching position other than as a head football coach at another university, Employee must pay the University, or cause to be paid to the University, \$72,000, within fourteen days of said departure from the University."

4. Employee's bonus for the University's participation in the January 7, 2010 Citi BCS National Championship Game Participating Institution Agreement shall be determined by reference to Employee's Annual Base Salary as of December 31, 2009. Provided, however, that should Employee remain employed as the defensive coordinator at University on March 1, 2010, Employee shall receive an additional bonus of thirty-four-thousand-four-hundred-dollars (\$34,400.00).

5. All other provisions of the Contract (including Employee's initial Reference Page(s), the "General Terms and Conditions" and the Job Description made a part of the Contract, Amendment #1, and Amendment #2), remain in full force and effect, except as modified specifically herein.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment #3, or caused this Amendment #3 to be executed, on the dates shown below.

THE BOARD OF TRUSTEES OF THE  
UNIVERSITY OF ALABAMA

By Robert E. Witt  
Robert E. Witt, President  
The University of Alabama

Date \_\_\_\_\_

Kirby Paul Smart  
Kirby Paul Smart  
Date \_\_\_\_\_

\_\_\_\_\_  
Witness

[Signature]  
Witness

APPROVED:

\_\_\_\_\_  
Director of Athletics

## ASSISTANT COACH EMPLOYMENT CONTRACT AMENDMENT #4

The Board of Trustees of the University of Alabama, a public corporation and constitutional instrumentality of the State of Alabama, for and on behalf of The University of Alabama ("University") and Kirby Paul Smart ("Employee"), enter into this Assistant Coach Employment Contract Amendment #4:

1. The Initial Term of Employee's Contract is amended, and shall now extend to February 28, 2014.

2. Employee's Annual Base Salary is amended as follows:

March 1, 2011 to February 29, 2012:	\$850,000 (eight hundred fifty thousand)
March 1, 2012 to February 28, 2013:	\$850,000 (eight hundred fifty thousand)
March 1, 2013 to February 28, 2014:	\$850,000 (eight hundred fifty thousand)

3. Special provision #2 of the Employee's Reference Page, paragraph #2 of Amendment #1, and paragraph #2 of Amendment #3, are stricken and replaced with the following: "Employee will not owe liquidated damages pursuant to subsection 5.01(e)(2) in the event Employee departs the University to accept a position as a head football coach at another university. If Employee leaves to take a coaching position other than as a head football coach at another university, Employee must pay the University, or cause to be paid to the University seventy-two-thousand-dollars (\$72,000), within fourteen days of said departure from the University."

4. All other provisions of the Contract (including Employee's initial Reference Page(s), the "General Terms and Conditions" and the Job Description made a part of the initial Contract, Amendment #1, Amendment #2, and Amendment #3), remain in full force and effect, except as modified specifically herein.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment #4, or caused this Amendment #4 to be executed, on the dates shown below.

THE BOARD OF TRUSTEES OF THE  
UNIVERSITY OF ALABAMA

By Robert E. Witt  
Robert E. Witt, President  
The University of Alabama

Date \_\_\_\_\_

\_\_\_\_\_  
Witness

Kirby Paul Smart  
Kirby Paul Smart  
Date 2/2/11

\_\_\_\_\_  
Witness

APPROVED:

Mal Moore  
Director of Athletics

## ASSISTANT COACH EMPLOYMENT CONTRACT AMENDMENT #5

The Board of Trustees of the University of Alabama, a public corporation and constitutional instrumentality of the State of Alabama, for and on behalf of The University of Alabama ("University") and Kirby Paul Smart ("Employee"), enter into this Assistant Coach Employment Contract Amendment #5:

1. The Initial Term of Employee's Contract is amended, and shall now extend to February 28, 2015.

2. Employee's Annual Base Salary is amended as follows:

March 1, 2012 to February 28, 2013:	\$950,000 (nine hundred fifty thousand)
March 1, 2013 to February 28, 2014:	\$950,000 (nine hundred fifty thousand)
March 1, 2014 to February 28, 2015:	\$950,000 (nine hundred fifty thousand)

3. Sections 5.01(e)(1) and 5.01(h) are deleted in their entirety and replaced with the following provisions:

### 5.01 (e) Liquidated Damages

(1) If the University terminates this Contract without cause prior to the end of its term as permitted by Section 5.01(d)(1) hereof, the University shall pay, and Employee agrees to accept, as liquidated damages, an amount equal to one-twelfth (1/12) of the annual base salary being paid to Employee in the Contract Year in which notice of termination without cause is given for each month or portion thereof (pro-rata) in the period from the first full month immediately following the effective date of termination to the end of the Contract term as specified either in Section 3.01 or Section 3.02, as applicable. The liquidated damages amount shall be paid in monthly installments commencing on the last day of the month in which the termination date occurs and continuing on the last day of each succeeding month until the date the Contract term would have ended but for the early termination. To the extent required by law, the liquidated damages amount shall be subject to deductions for state and federal taxes. The monthly liquidated damages payments by the University shall be subject to an offset and reduction on a monthly basis as specified in Section 5.01(h) hereof. The Employee will be entitled to continue such insurance benefits at Employee's own expense as required or permitted either by law or by University Rules, but Employee will not otherwise be entitled to any additional compensation or employment or other benefit described in Article IV hereof.

5.01(h) Mitigation of Liquidated Damages. While the University's obligation to pay liquidated damages remains in effect, the Employee agrees to mitigate the University's obligation to pay liquidated damages as soon as possible after termination of this Contract by promptly commencing to make reasonable, continued, and diligent efforts to obtain employment in the field of amateur, collegiate or professional sports including coaching, administration, management or broadcasting (hereinafter referred to as a "New Position"). The liquidated damages paid by the University shall be offset or reduced on a monthly basis by the

compensation paid to or controlled by Employee as a result of Employee's employment in each New Position held by Employee while the University's obligation to pay liquidated damages remains in effect. For purposes of the preceding sentence, compensation shall mean, without limitation, from Employee's New Position employer, or a related or affiliated corporation, company or other entity that supports the New Position employer, (i) base salary, wages, incentive payments, bonuses, supplemental pay, or other compensation of any kind whatsoever; (ii) honoraria; (iii) all income and fees received by Employee as an independent contractor, consultant or self-employed person; (iv) all income and fees received by Employee from Employee's participation in or performance of activities similar to the Commercial Activities specified hereunder; (v) other income arising out of, relating to, or associated with Employee's employment in a New Position; and (vi) Deferred Compensation. Deferred Compensation shall mean any and all salary, incentive payments, bonuses, supplemental pay, annuities, insurance premiums, or other compensation of any kind whatsoever that prior to the end of the End Date of Term of the Contract, or any extensions thereto, Employee's then employer, or a related or affiliated corporation, company, or other entity that supports the employer's athletics program, becomes contractually obligated to pay, agrees to pay then or in the future, or does pay. The amount of Deferred Compensation that shall be credited monthly against the monthly liquidated damages payments shall equal the total of Deferred Compensation divided by the number of months in the period between the last day of the month in which the termination date occurs and the date the Contract term would have ended as specified above, or pursuant to any amendment. Employee agrees to notify the University within fourteen (14) days of the date Employee accepts a New Position, and the complete details of the employment including all compensation associated therewith. Should Employee fail or refuse to provide such information, the University's obligation to pay liquidated damages shall cease. In addition to the foregoing, the University's obligation to pay to Employee liquidated damages shall cease and be extinguished in the event of Employee's death or disability. For purposes of this subsection, employment means working as an employee, independent contractor, consultant, or self-employed person.

4. All other provisions of the Contract (including Employee's initial Reference Page(s), the "General Terms and Conditions" and the Job Description made a part of the initial Contract, Amendment #1, Amendment #2, Amendment #3, and Amendment #4), remain in full force and effect, except as modified specifically herein.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment #5, or caused this Amendment #5 to be executed, on the dates shown below.

THE BOARD OF TRUSTEES OF THE  
UNIVERSITY OF ALABAMA

\_\_\_\_\_  
Witness

By Judy Bonner  
Judy Bonner, Interim President  
The University of Alabama

Date 6-21-12

*Lois Clements*

Witness

*Kirby Paul Smart*

Kirby Paul Smart

Date

*4/3/12*

APPROVED:

*Mal M. Moore*

Director of Athletics