

COACH'S EMPLOYMENT AGREEMENT

THIS AGREEMENT is made effective January 20, 2012, by and between TEXAS A&M UNIVERSITY ("UNIVERSITY"), and Marcel Yates ("EMPLOYEE") for and in consideration of the promises, mutual covenants and agreements of the Parties hereinafter set forth, it is agreed as follows:

1. The UNIVERSITY hereby employs and the EMPLOYEE hereby accepts employment in the capacity of Assistant Football Coach (Co-Defensive Coordinator/Secondary) with the Athletic Department of the UNIVERSITY for the period beginning January 20, 2012, and ending March 31, 2015; subject, however to prior termination as hereinafter provided.

2. The duties of the EMPLOYEE shall include those tasks which may be from time to time prescribed by immediate supervisory personnel within the Athletic Department or by the Director of Athletics of the UNIVERSITY ("Director"). The EMPLOYEE shall perform all prescribed duties subject to the provision and pursuant to the orders, advice, and direction of immediate supervisory personnel and the Director.

3. The EMPLOYEE shall at all times faithfully and to the best of the EMPLOYEE's ability, experience, and talent, perform all of the duties that may be required of or from the EMPLOYEE, pursuant to the express or implicit terms hereof, to the reasonable satisfaction of the UNIVERSITY and in such manner as to bring credit to the UNIVERSITY. The EMPLOYEE shall serve at the pleasure of immediate supervisory personnel and the Director. The EMPLOYEE shall perform the duties herein imposed in College Station, Texas, and at such other place or places as the UNIVERSITY shall in good faith require, or as the interests, needs, and opportunities of the UNIVERSITY shall require or make advisable.

4. The EMPLOYEE agrees that as a condition of employment hereunder EMPLOYEE will not:

- (a) engage in criminal or morally reprehensible conduct;
- (b) publicly endorse any political figure or cause, whether on the national, state, or local level;
- (c) engage in any business transactions or commerce, or appear on any radio or television programs, which may bring undue criticism or discredit to the UNIVERSITY, and which have not been first approved by the Director;
- (d) engage in, support, or knowingly tolerate any action violative of any governing constitution, by-law, rule, or regulation of the SEC or the National Collegiate Athletic Association (NCAA).
- (e) comply with the terms and conditions of the Texas A&M University All-Sport Agreement with adidas America dated June 2, 2007, and with any other contract entered into by the UNIVERSITY with a shoe, apparel or equipment manufacturer or seller which requires the UNIVERSITY's football team to wear its shoes, apparel or equipment during competition or requires EMPLOYEE to wear, promote, endorse or consult with the manufacturer or seller concerning the design and/or marketing of such shoes, apparel or equipment

5. In accordance with the UNIVERSITY policies and procedures and pursuant to NCAA regulation, should EMPLOYEE be found to be involved in significant or repetitive violations, EMPLOYEE may be suspended, with or without pay or may be terminated from employment.

6. The UNIVERSITY agrees to pay, and the EMPLOYEE agrees to accept from the UNIVERSITY, in full payment for the services herein prescribed, compensation at the rate of \$300,000 annually through March 31, 2015, payable in monthly installments beginning with the Effective Date. In addition to the foregoing compensation, the UNIVERSITY agrees that the EMPLOYEE shall be

entitled to all benefits, including vacation time, disability insurance, worker's compensation, sick leave, and like privileges, excluding tenure, which are customarily afforded to employees of the **UNIVERSITY** of commensurate rank and length of service, and of like term of appointment. **EMPLOYEE's** compensation may be adjusted upwards at the discretion of the Director.

7. The **EMPLOYEE** agrees to accept responsibility for the below enumerated benefits, and in so doing, agrees to abide by **UNIVERSITY** policies regarding such benefits.

- (a) The use of a departmental trustee car or a car allowance through the car program of the Athletic Department.
- (b) Participation in the cell phone allowance program.
- (c) A club membership at one country club located in Brazos County, Texas.

8. The **EMPLOYEE** may receive incentive payments as follows:

- (a) Four percent of Annual Salary (\$12,000) if the football team plays in the SEC Championship Football Game.
- (b) Eight percent of Annual Salary (\$24,000) if the football team plays in a post-season bowl game, **OR** twelve percent of Annual Salary (\$36,000) if the football team plays in the Cotton, Chick-Fil-A, Outback, or Capital One Bowls or their equivalent, **OR** sixteen percent of Annual Salary (\$48,000) if the football team plays in a BCS bowl or equivalent.

9. The **UNIVERSITY** shall have the right and option to either suspend **EMPLOYEE** for a period of time without pay or terminate this Agreement before the expiration of its stated term, or any extension thereof, if:

- (a) the **EMPLOYEE** shall fail to fulfill any duty herein prescribed to the reasonable satisfaction of the Director;
- (b) the **EMPLOYEE** shall breach any covenant, term, or condition imposed under the terms of this Agreement; or
- (c) the **EMPLOYEE** shall become permanently disabled because of sickness, physical or mental disability, disease, or any other reason which may reasonably appear to render the **EMPLOYEE** unable to complete the **EMPLOYEE's** duties and obligations under this Agreement.
- (d) the **EMPLOYEE** is unable or unavailable to perform any duty of his/her employment as a result of accepting other employment prior to the end of the term of this Agreement.

If the **UNIVERSITY** shall terminate this Agreement in accordance with the above, it shall not thereafter be liable for the payment of any salary or other additional compensation following the end of the month of such termination.

10. The **UNIVERSITY** shall have the right to terminate this Agreement before the expiration of the Term or any extension thereof, without cause. Termination without cause shall mean termination of this Agreement on any basis other than those set forth in Paragraph 9 above. Termination without cause shall be effected by delivering to **EMPLOYEE** written notice of the **UNIVERSITY's** intent to terminate this Agreement without cause effective on a date set forth in such notice, such date shall not be earlier than forty-five (45) days from the posted date of such written notice or from the date of delivery to **EMPLOYEE** if the **UNIVERSITY** personally delivers such notice. If the **UNIVERSITY** exercises its right under this section to terminate without cause, **EMPLOYEE** shall be entitled to damages as provided for in Paragraph 10(a) below.

(a) If the **UNIVERSITY** terminates this Agreement without cause prior to its expiration, or any extension thereof, in accordance with Paragraph 10 above, the **UNIVERSITY** shall pay to **EMPLOYEE**, and **EMPLOYEE** agrees to accept as liquidated damages an amount per month equal to his monthly salary in the contractual year **EMPLOYEE** is terminated, for each month or portion thereof (pro-rata) from the effective date of termination until the expiration of the Term. The liquidated damages amount shall be paid monthly commencing on the first day of the month in which the termination date occurs and continuing on the first day of each succeeding month until the date the Term would have ended as specified in Paragraph 1 above. The **UNIVERSITY**'s obligation to pay such liquidated damages shall be subject to **EMPLOYEE**'s duty to mitigate the **UNIVERSITY**'s obligation as specified in Paragraph 10(a) hereof. **EMPLOYEE** will be entitled to continue such insurance benefits at **EMPLOYEE**'s own expense as required or permitted by law, but **EMPLOYEE** will not otherwise be entitled to any employment or other benefit described in Paragraphs 6,7 and 8 hereof.

(i) While the **UNIVERSITY**'s obligation to pay liquidated damages remains in effect, **EMPLOYEE** agrees to mitigate the **UNIVERSITY**'s obligation to pay liquidated damages under Paragraph 10(a) hereof and to make reasonable and diligent efforts to obtain employment as soon as possible after termination of this Agreement by the **UNIVERSITY** pursuant to Paragraph 10(a)(i) hereof. Employment will mean, without limitation, working as an employee for another employer, as a consultant, as a self-employed person, or as an independent contractor. It is agreed that the liquidated damages paid by the **UNIVERSITY** pursuant to Paragraph 10(a) hereof shall be offset or reduced on a quarterly basis by the compensation earned by **EMPLOYEE**, either directly or through business entities owned or controlled by **EMPLOYEE**, from such employment. For purposes of this subsection, compensation shall mean, without limitation, gross income from base salary or wages paid by an employer, consulting fees, honoraria, or fees received as an independent contractor. While the **UNIVERSITY**'s obligation to pay liquidated damages remains in effect, within fourteen (14) calendar days after accepting any employment, or receiving any increases in compensation from existing employment, **EMPLOYEE** shall provide the **UNIVERSITY** with complete details of **EMPLOYEE**'s compensation package. Should **EMPLOYEE** fail or refuse to notify the **UNIVERSITY** of **EMPLOYEE**'s employment and the details of **EMPLOYEE**'s compensation, then after giving **EMPLOYEE** fourteen (14) calendar days written notice, the **UNIVERSITY**'s obligation to continue paying liquidated damages to **EMPLOYEE** shall cease.

11. **EMPLOYEE** recognizes that his promise to work for the **UNIVERSITY** for the entire term of this Agreement or as it may be extended is of the essence of this Agreement to the **UNIVERSITY**. **EMPLOYEE** also recognizes that the **UNIVERSITY** is making a valuable investment in his continued employment by entering into this employment Agreement and that its investment would be lost were **EMPLOYEE** to resign or otherwise terminate his employment with the **UNIVERSITY** prior to the expiration of the Term of this Agreement. While recognizing these agreements and this entire Agreement, the parties agree that **EMPLOYEE** may nevertheless, terminate this Agreement prior to its normal expiration but only upon the following terms and conditions:

- (a) **EMPLOYEE** may terminate this Agreement during its Term by giving the **UNIVERSITY** forty-five (45) days advance written notice of the termination of his employment with the **UNIVERSITY**.
- (b) Should **EMPLOYEE** terminate this Agreement without cause prior to the end of the Term in accordance with Paragraph 11, **EMPLOYEE** agrees to pay to

UNIVERSITY, and **UNIVERSITY** agrees to accept as liquidated damages, \$150,000.

- (c) In the event **EMPLOYEE** terminates this Agreement to accept a Division I, Head Football Coach or Coordinator position, **UNIVERSITY** shall waive its liquidated damages under this Paragraph 11.

12. **UNIVERSITY** agrees to pay for or to reimburse **EMPLOYEE** for actual and reasonable household relocation costs incurred and documented by actual receipts, not to exceed \$25,000, in moving household goods and personal effects from his current residence to either permanent housing or storage in the College Station area, including temporary storage not to exceed three (3) months. **EMPLOYEE** shall repay all such household relocation costs if **EMPLOYEE** leaves **UNIVERSITY** employment within one year of the Effective Date. **UNIVERSITY** also agrees to pay for, or to reimburse **EMPLOYEE** for actual and reasonable temporary housing not to exceed three (3) months.

13. This Agreement constitutes the entire and only agreement between the Parties and supersedes any prior understanding or written or oral agreements between the Parties or any policy manuals or guidelines of the **UNIVERSITY** regarding the subject matter hereof, the **EMPLOYEE** expressly waiving and relinquishing all rights, privileges and entitlements thereunder. This Agreement may be altered only by a subsequent written agreement signed by both Parties. No waiver by the Parties of any default or breach of any covenant, term, or condition of this Agreement shall be deemed to be a waiver of any other breach of the same or any other covenant, term or condition contained herein. Nothing in this Agreement shall be construed as waiver or relinquishment by the **UNIVERSITY** of its right to claim such privileges and immunities as may be provided by law. The rights of employment granted herein constitute all terms of employment and rights to such employment.

14. The **EMPLOYEE** shall devote the **EMPLOYEE**'s entire productive time, ability, and attention to the business of the **UNIVERSITY** during the term of this Agreement. The **EMPLOYEE** shall not directly or indirectly render any services or work of a business, commercial, or professional nature to any other person or organization whether for compensation or otherwise, without prior written consent of the Director.

15. In the event of a breach of this Agreement by the **EMPLOYEE** resulting in damages to the **UNIVERSITY**, the **UNIVERSITY** may recover from the **EMPLOYEE** all damages and costs that may be sustained, including reasonable attorney's fees.

16. In case any one or more of the provisions contained in this Agreement shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal, and unenforceable provision has never been contained herein.

17. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas.

18. **EMPLOYEE** shall abide by all institutional and system requirements concerning prior approval for income from a source other than the institution and shall annually report, as required by NCAA regulations, all athletically related income from sources outside the institution (including, but not limited to, income from annuities; sports camps; housing benefits; complimentary ticket sales; television and radio programs; and endorsement or consultant contracts with athletics shoes, apparel or equipment manufacturers) through the Director to the President.

19. **EMPLOYEE** may not be compensated by an individual or commercial business outside of the University for employment or assistance in the production, distribution or sale of items, including but not limited to, calendars, pictures, posters, advertisements, cards, etc. bearing the names or pictures of student-athletes.


20. **EMPLOYEE** shall not accept, prior to receiving approval from the Director, compensation or gratuities (excluding institutionally administered funds) from an athletics shoe, apparel or equipment manufacturer in exchange for the use of such merchandise during practice or competition by the University's student-athletes.

21. **EMPLOYEE** shall not accept compensation or gratuities for scheduling athletic contests or individual meet participation with another institution or a sponsor of athletic competition. This specifically precludes the acceptance of compensation or gratuities from other institutions, schedule brokers or agents, and television networks or syndications.

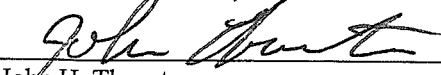
22. **EMPLOYEE** shall not accept compensation or gratuities for representing a professional sports organization as a coach or scout, in the negotiation of a contract, or for the performance of other services that invoke the observation of or contact with athletic talent.

IN WITNESS WHEREOF, the Parties have hereunto affixed their signatures.

REVIEWED AND RECOMMENDED:

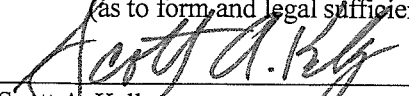


Kevin Sumlin
Head Football Coach
Date: 6-1-12




John H. Thornton
Interim Director of Athletics
Date: 6/14/12

REVIEWED AND RECOMMENDED:
(as to form and legal sufficiency)



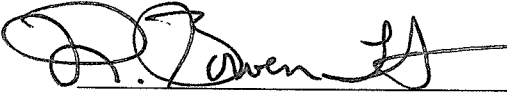
Scott A. Kelly
Deputy General Counsel
Date: 6/22/12

AGREED AND ACCEPTED:



Marcel Yates
Assistant Football Coach
Date: 5/15/12

APPROVED:



R. Bowen Loftin
President
Date: 10 July 2012