



July 27, 2007

Mr. Michael O'Brien

Dear Mr. O'Brien:

I am pleased to offer you a new contract for the position of Executive Director for Intercollegiate Athletics at The University of Toledo, effective July 27, 2007, through July 31, 2010 at an initial annual salary of \$175,000.

In addition to your base salary, the following incentive payments shall be made on an annual basis. Incentive compensation shall be based upon the following measurable and verifiable targets that shall be established on a yearly basis between yourself and the President.

- **Academic Success:** Should each of the men's and women's intercollegiate athletic teams meet the NCAA Academic Achievement Progress Rate of 925 you will be eligible on an annual basis for an incentive payment of 5% of your annual base compensation. Should some of the intercollegiate athletic teams not achieve this rate, the 5% incentive payment shall be prorated based upon the number of men's and women's intercollegiate athletic teams that have met this goal. Should the NCAA adjust this benchmark rate then the rate set forth above shall be adjusted accordingly and apply hereto.
- **Compliance:** Should the University complete a fiscal year without any major violations of NCAA or MAC Conference constitution, rules, regulations, or bylaws as defined by the University, you will be eligible on an annual basis for an incentive payment of 5% based upon your then current annual base compensation.
- **Fiscal Management:** Measures shall include targets agreed to between yourself and the President regarding balancing of the budget, reducing debt, and raising the level of donor giving. Should you meet the agreed upon targets, you will be eligible on an annual basis for an incentive payment of 5% based upon your then current annual base compensation.
- **Presidential Discretion:** Should you meet your goals, targets and objectives agreed to and those to be agreed upon, as well as provide the progress and direction expected in leading the Department of Intercollegiate Athletics, you will



be eligible on an annual basis for a bonus not to exceed 5% of your then current base compensation.

The Executive Director of Intercollegiate Athletics is the chief administrative officer for the University's Department Intercollegiate Athletics and is responsible for successful planning, organization, policy development, implementation and direction of all aspects of Intercollegiate Athletics and ensuring compliance with all applicable NCAA and MAC Conference constitutions, rules and regulations and policies governing athletics. More specifically, the Executive Director of Intercollegiate Athletics is responsible for addressing the following: developing a strategic plan for UT Athletics; expanding the successful outreach in marketing, promotions, and television; enhancing productivity in academic support and student-athlete welfare; developing a facilities master plan for athletics; achieving maximum efficiency in fundraising; developing an ongoing review of Title IX compliance; providing strong operational support to achieve proper controls on spending; communicating proactively with internal and external constituencies; building excellence in media and community relations; creating a positive work environment for all staff; and negotiating for maximum efficiency in marketing trade activities.

The position Executive Director of Intercollegiate Athletics reports directly to the President and will be subject to a yearly performance evaluation by the President.

In addition, it is agreed that at the direction of the President, you will attend appropriate senior leadership training opportunities and that the President may assign management support from within the University to assist in the development of programs such as marketing, fundraising, communication and policy development.

Further, it is agreed that you will immediately implement within your department continuous improvement processes initiated throughout Athletics. The Office of Quality and Continuous Learning, in conjunction with the College of Business, will be an immediate resource as you are expected to identify for the President two to four projects by January 1, 2008.

While your employment is governed by the terms of this contract, you serve at the pleasure of the President. If your employment is terminated for reasons other than cause after the completion of one year under this contract and prior to the expiration of this contract on July 31, 2010, the University shall pay you a lump sum payment in an amount equal to 100% of your then current salary. Any payment for less than the first full year completed under this contract shall be prorated accordingly by the number of months employed during the first year of the contract.

If terminated for cause, you will be entitled to all compensation through the date of termination, including prorated incentive payments. Termination for cause includes, but is not limited to, any misappropriation of the funds of the University by employee; any

Mr. Michael E. O'Brien
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unreasonable and persistent neglect or refusal of employee to perform the duties and responsibilities for the position; any conviction by employee of a felony or any other violation of state or federal law; any other act of dishonesty, immoral conduct, in competency, inefficiency, insubordination, neglect of duty, conduct which discredits or damages the reputation of the University or other failure of good behavior; mental or physical incapacity which makes the performance of duties impossible; or death. Termination for cause may also include major violations of NCAA or MAC Conference constitutions, rules, regulations or bylaws as defined by the University.

You will be entitled to receive all of the standard benefits extended to University administrators.

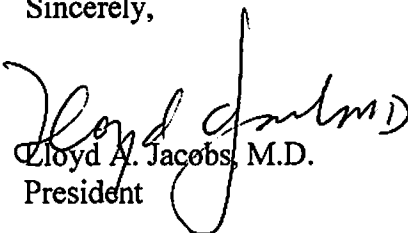
This contract shall be governed in accordance with the laws of the state of Ohio.

As this contract is subject to the approval of the Board of Trustees, I have asked that it be placed on the Trustee's Agenda at their next regularly scheduled meeting on September 17, 2007. Your appointment, pursuant to this contract, is subject to all applicable state and federal laws, and the policies, rules, regulations of the University, the NCAA, and MAC Conference.

If the terms set forth in this contract and expectations meet with your approval, I ask that you sign and date the letter as indicated below and return to me by the close of business Friday, July 27, 2007.

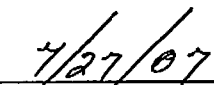
This contract shall not become effective unless it has been approved by The University of Toledo Board of Trustees.

Sincerely,


Lloyd A. Jacobs, M.D.
President

Acceptance of offer by:


Michael E. O'Brien


Date



RENEWAL AND MODIFICATION OF EMPLOYMENT AGREEMENT

THIS RENEWAL AND MODIFICATION AGREEMENT is entered in to between The University of Toledo and Michael E. O'Brien and is effective August 1, 2009.

WHEREAS, The Board of Trustees of The University of Toledo ("University") and Michael E. O'Brien ("Director of Athletics") entered into an Employment Agreement effective July 27, 2007 ("Employment Agreement"); and

WHEREAS, The Board of Trustees on November 16, 2009, approved the MC—Administrative Personnel Action Report authorizing the renewal of Director of Athletics' Employment Agreement for a period of five (5) years commencing on August 1, 2009; and

WHEREAS, the parties pursuant to Section 5, Renewal of Agreement, of the Employment Agreement, wish to renew and modify the Employment Agreement; and

WHEREAS, all terms and conditions of the Employment Agreement remain unchanged unless specifically modified herein; and

NOW, THEREFORE, the parties set forth the following modifications that are incorporated in to the Employment Agreement:

1. **Title Change.** Director of Athletics' title will change from "Executive Director for Intercollegiate Athletics" to "Vice President/Director of Athletics."
2. **Term.** Subject to the provisions herein, this Employment Agreement is for a term of five (5) years commencing August 1, 2009 and terminating on July 31, 2014.
3. **Annual Base Compensation.** Director of Athletics' annual base compensation will be \$183,855. Each year, Director of Athletics will be eligible for salary adjustments in accordance with University's salary and benefit policies.
4. **Incentive Compensation.** The following language shall be added to the Employment Agreement:

In consideration of Director of Athletics' services and satisfactory performances of the conditions of this Agreement, the University promises to provide Director of Athletics, the following described incentive compensation on a cumulative basis:

- (a) NCAA Post-Season Bowl Game. If the intercollegiate football team participates in a post-season bowl game while Director of Athletics is acting in such capacity, he will receive a bonus in the amount of 5% of his annual base compensation.
- (b) NCAA Post-Season Tournament. If the men's intercollegiate basketball team participates in the NCAA post-season tournament game in any given year while

Director of Athletics is acting in such capacity, Director of Athletics will receive a bonus of 5% of his annual base compensation.

- (c) NCAA Post-Season Tournament. If the women's intercollegiate basketball team participates in the NCAA post-season tournament game in any given year while Director of Athletics is acting in such capacity, Director of Athletics will receive a bonus of 5% of his annual base compensation.
- (d) NIT Post-Season Tournament. If the men's intercollegiate basketball team participates in the NIT post-season tournament in any given year while Director of Athletics is acting in such capacity, Director of Athletics will receive a bonus of 5% of his annual base compensation.
- (e) NIT Post-Season Tournament. If the women's intercollegiate basketball team participates in the NIT post-season tournament in any given year while Director of Athletics is acting in such capacity, Director of Athletics will receive a bonus of 5% of his annual base compensation.

5. **Termination.** The following language with respect to University's Termination for Cause will hereby supersede the last paragraph on page 2 of the Employment Agreement:

If terminated for cause, you will be entitled to all compensation through the date of termination, including prorated incentive payments. Termination for cause includes, but is not limited to, any misappropriation of the funds of the University by employee; any unreasonable and persistent neglect or refusal of employee to perform the duties and responsibilities for the position; any conviction by employee of a felony; any other act of dishonesty, immoral conduct, in competency, inefficiency, insubordination, neglect of duty, conduct which discredits or damages the reputation of the University or other failure of good behavior; mental or physical incapacity which makes the performance of duties impossible; or death.

The following language shall be added to the Termination Section of the Employment Agreement:

Termination by University Without Cause. The University may terminate this Agreement prior to its expiration without cause. Termination without cause means termination of this Agreement on any basis other than those set forth in the original Employment Agreement. Termination without cause will be effectuated by delivery by the University to Director of Athletics written notice of the University's intent to terminate this Agreement without cause, and provide at least 30 days notice before such termination becomes effective. If the University exercises its right to terminate the Agreement under this section, Director of Athletics will be entitled to damages only as provided below.

Liquidated Damages Upon Termination by University Without Cause. If the University terminates this Agreement without cause prior to its expiration, the University will pay to Director of Athletics, as liquidated damages, the following amount:

- (a) Subject to the mitigation provision below, the University will pay Director of Athletics his base compensation due under this Employment Agreement from the effective date of termination through the current term of this Employment Agreement. Further, the Director of Athletics will be entitled to all expenses

incurred in the performance of his duties as Director of Athletics but not yet reimbursed or otherwise received by the date of the termination.

- (b) The University's obligation will be paid on a monthly basis and is subject to Director of Athletics' duty to mitigate the University's obligation as set forth below. The obligation may also be paid as one lump sum if it can be negotiated within 30 days of the date of termination. The University's obligation will not include any payments for any other benefits provided herein, except that Director of Athletics may continue his health insurance plan and group life insurance at his own expense in accordance with then existing laws and regulations regarding the continuation of such benefits after termination of employment with the University.
- (c) In no case is the University liable for the loss of any incentive or bonuses in the Compensation Section or for the loss of any collateral business opportunities or any other benefits, perquisites or income resulting from University or outside activities.
- (d) 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 University without cause prior to its natural expiration may cause Director of Athletics to lose certain benefits, supplemental compensation, or outside compensation relating to his employment at the University, which damages are difficult to determine with certainty. The parties further agree that the payment of such liquidated damages by the University and acceptance thereof by Director of Athletics constitute adequate and reasonable compensation to Director of Athletics for any damages and injury he suffered because of such termination by the University. The foregoing is not, nor is construed to be, a penalty.

Mitigation of Damages by Director of Athletics if University Terminates Without Cause. Notwithstanding the provisions of the Termination by University Without Cause Section, Director of Athletics agrees to make reasonable efforts to mitigate the University's obligations to pay liquidated damages set forth above and to make reasonable and diligent efforts to obtain comparable employment, such as a Director of Athletics position at a college or university or a comparable position with a professional team (or league), after termination of this Agreement by the University without cause. After Director of Athletics obtains such new employment as specified herein above, the University's obligation to pay liquidated damages under this Agreement shall be reduced by the amount of Director of Athletics' new monthly base compensation through the current term of this Agreement.

Termination by Director of Athletics. Director of Athletics recognizes that his promise to work for the University for the entire term of this Agreement is of the essence of this Agreement to the University. Nevertheless, Director of Athletics may terminate this Agreement prior to its expiration, but only under the following terms and conditions:

- (a) Written Notice. Director of Athletics may terminate this Agreement by giving the President 14 days advance written notice of his intention to terminate.
- (b) Termination of University's Obligations Under Agreement. Upon termination of this Agreement by Director of Athletics and payment of all amounts then owing by the

University to Director of Athletics pursuant to the terms of this Agreement, all obligations owed by the University to Director of Athletics under this Agreement shall cease as of the effective date of the termination. In no case is the University to be liable for the loss of any marketing, incentive, or bonuses or for the loss of any collateral business opportunities or any other benefits, perquisites or income resulting from University or outside activities.

6. **Benefits.** Director of Athletics is entitled to the employee benefits as the University provides generally to its administrative unclassified employees in existence at the time of his initial employment or as revised and/or substituted from time to time by the University and to the additional benefits he currently receives as the Director of Athletics.

IN WITNESS WHEREOF, the parties have caused this Renewal and Modification of Employment Agreement to be signed and dated below by their authorized representatives.

THE UNIVERSITY OF TOLEDO

MICHAEL E. O'BRIEN

By: Lloyd A. Jacobs
Lloyd A. Jacobs
President

By: Michael E. O'Brien
Michael E. O'Brien

Date: 12/8/09

Date: 11/20/09

Approved by the Board of Trustees:

Date: _____

**SECOND RENEWAL AND MODIFICATION OF
EMPLOYMENT AGREEMENT**

THIS SECOND RENEWAL AND MODIFICATION AGREEMENT ("Second Amendment") is entered in to between The University of Toledo and Michael E. O'Brien and is effective December 13, 2011.

WHEREAS, The Board of Trustees of The University of Toledo ("University") and Michael E. O'Brien ("Director of Athletics") entered into an Employment Agreement effective July 27, 2007 ("Employment Agreement") that was thereafter amended effective August 1, 2009 ("First Amendment"); and

WHEREAS, The Board of Trustees on January 23, 2012, approved the MC—Administrative Personnel Action Report authorizing an extension of the Director of Athletics' Employment Agreement for a period of two (2) years effective December 13, 2011; and

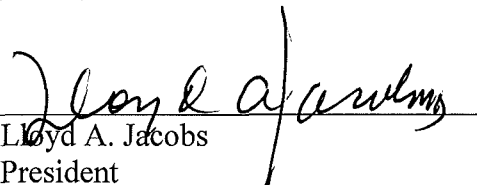
WHEREAS, the parties pursuant to Section 5, Renewal of Agreement, of the Employment Agreement, wish to renew and modify the Employment Agreement; and

NOW, THEREFORE, the parties set forth the following modifications that are incorporated in to the Employment Agreement:

1. **Term.** Subject to the provisions herein, this Employment Agreement is for a term of nine (9) years commencing July 27, 2007 and terminating on July 31, 2016.
2. **Annual Base Compensation.** Director of Athletics' annual base compensation will be \$208,855. Each year, Director of Athletics will be eligible for salary adjustments in accordance with University's salary and benefit policies.
3. All other provisions of the Employment Agreement will remain in full force and effect, it being understood that, in the event of a conflict between the terms of the First Amendment or Second Amendment and the Employment Agreement or other amendments, the terms of this Second Amendment take precedence.

IN WITNESS WHEREOF, the parties have caused this Renewal and Modification of Employment Agreement to be signed and dated below by their authorized representatives.

THE UNIVERSITY OF TOLEDO

By: 
Lloyd A. Jacobs
President

By: 
Michael E. O'Brien

Date: 1/26/12

Date: 1/26/12

Approved by the Board of Trustees:

Date: January 23, 2012