



# Board of Regents Special Meeting

April 2021

April 28, 2021

8:00 a.m.

Videoconference

## BOR - APR 28, 2021 - Special Meeting

### 1. Oath of Office: Newly Elected Regents

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### 2. Update on Implementation of M Safe Initiative

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### 3. Employment Agreement for Head Men's Basketball Coach (Twin Cities campus) - Review/Action

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# BOARD OF REGENTS DOCKET ITEM SUMMARY

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**Board of Regents**

**April 28, 2021**

**AGENDA ITEM:** Oath of Office: Newly Elected Regents

**Review**

**Review + Action**

**Action**

**Discussion**

*This is a report required by Board policy.*

**PRESENTERS:** Regent Kendall J. Powell  
Judge Tracy Smith

## **PURPOSE & KEY POINTS**

The oath of office will be administered by Judge Tracy Smith to the following Regents elected to the Board of Regents on March 15, 2021:

- James Farnsworth
- Douglas Huebsch
- Ruth Johnson
- Kodi Verhalen



# BOARD OF REGENTS DOCKET ITEM SUMMARY

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**Board of Regents**

**April 28, 2021**

**AGENDA ITEM:** Update on Implementation of M Safe Initiative

**Review**

**Review + Action**

**Action**

**Discussion**

*This is a report required by Board policy.*

**PRESENTERS:** President Joan T.A. Gabel

## **PURPOSE & KEY POINTS**

The purpose of this item is to provide an update on the implementation of [M Safe](#), the President's Campus Safety Initiative.

Last fall the University initiated work to examine its public safety and policing. Cedric Alexander's [report](#), *University of Minnesota, Twin Cities Review and Recommendations to Strengthen UMPD Alignment with Campus Community Expectations and Values*, was discussed by the Board at its February 2021 meeting. The report provided recommendations to bridge any divide between the values and practices of the University of Minnesota Police Department (UMPD) and the campus community's values and experiences. The University implemented a number of the report's recommendations, including:

- Transitioning Department of Public Safety/UMPD oversight to the Senior Vice President for Finance and Operations.
- Continuing regular meetings with the mayors of Minneapolis and St. Paul to keep communication lines open and to coordinate, as needed, on public safety issues.
- Committing to purchase and distribute the Rave Guardian™ campus safety app to all students, faculty, and staff, which is now in the testing phase.
- Committing to equip UMPD officers with body cameras, which is now in the procurement process.

The M Safe Implementation Team, as recommended in the report, will include students, faculty, and staff and will be charged with advising the President on the implementation of the report's remaining recommendations.



# BOARD OF REGENTS DOCKET ITEM SUMMARY

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**Board of Regents**

**April 28, 2021**

**AGENDA ITEM:** Employment Agreement for Head Men’s Basketball Coach (Twin Cities campus)

**Review**

**Review + Action**

**Action**

**Discussion**

*This is a report required by Board policy.*

**PRESENTERS:** President Joan T.A. Gabel  
Mark Coyle, Director of Athletics, Twin Cities campus

### **PURPOSE & KEY POINTS**

The purpose of this item is to review and act on the employment agreement for Ben Johnson as the Head Men’s Basketball Coach, Twin Cities campus. A position summary and the employment agreement are included in the docket materials.

### **BACKGROUND INFORMATION**

Approval is sought in compliance with Board of Regents Policy: *Reservation and Delegation of Authority*, Article I, Section XI, Subd. 4.

### **PRESIDENT’S RECOMMENDATION**

The president recommends approval of the employment agreement for Ben Johnson as Head Men’s Basketball Coach, Twin Cities campus.

**Board of Regents**  
**April 28, 2021**

***Employment Agreement***

The president recommends approval of the employment agreement for Ben Johnson as Head Men's Basketball Coach, University of Minnesota, Twin Cities, as summarized below.

Position Overview

The head men's basketball coach is a leadership position reporting directly to the deputy athletics director and athletics director. The head men's basketball coach must be adept at building and maintaining a men's basketball program of more than 13 students and an approximate staff of seven full-time staff that achieves at high levels academically, athletically, and socially.

It is expected the head men's basketball coach will oversee all aspects of the men's basketball program and its operations. These expectations include, but are not limited to the following:

- developing and maintaining a competitive intercollegiate men's basketball program within the NCAA and Big Ten Conference,
- instructing and teaching student-athletes in fundamentals of basketball technique and strategy,
- planning and executing practice and competition plans, including the evaluation of opponents,
- performing significant administrative responsibilities, including budget planning and management, scheduling of competitions and planning and executing team travel,
- providing opportunities for student-athletes to develop life and leadership skills,
- assisting in advancing the department's mission, vision, and strategic plan, including its commitment to equity and diversity,
- evaluating and recruiting qualified student-athletes to the University of Minnesota whose athletic skills make them highly competitive in the Big Ten Conference, whose academic abilities make them good candidates for a meaningful academic experience and graduation from the University of Minnesota and who will be good ambassadors on campus, in the Twin Cities and in the state of Minnesota,
- establishing and maintaining effective relationships within the athletics department, the campus community, metro and outstate communities as well as communities of color and various socioeconomic communities,
- establishing and maintaining positive and effective relationships with donors, booster club members, alumni, high school and club coaches, media, and the public,
- committing to and adhering to all rules and regulations of the department, the university, the Big Ten Conference, and the NCAA, and
- creating an enthusiast following and support among donors, fans, faculty/staff, and the general student body. Actively engage with external communities. Fully engage with departmental and campus fundraising activities and initiatives.

### Appointee Background and Qualifications

Ben Johnson would be joining the University of Minnesota from Xavier University March 31, 2021. A summary of Coach Ben Johnson's college coaching experience is as follows:

2005-2006 University of Dayton graduate assistant  
2006-2008 Texas Pan American University assistant coach  
2008-2012 University of Northern Iowa assistant coach  
2012-2013 University of Nebraska assistant coach  
2013-2018 University of Minnesota assistant coach  
2018-2021 Xavier University assistant coach

Ben Johnson started his college play at Northwestern University in 1999 where he played for two seasons. He then transferred to the University of Minnesota and played for the Gophers for two seasons, 2002-2004, after having sat one year in residency required per NCAA legislation. Johnson played his high school basketball at De LaSalle High School in Minneapolis, and grew up in Minneapolis, Minnesota.

### Contract Information

- Term: Commencing March 31, 2021 and ending April 30, 2026.
- Base Salary: One Million Nine Hundred Fifty Thousand dollars (\$1,950,000.00) paid annually.
- Coach Johnson shall be eligible to receive annual salary increases to be determined by, and subject to the discretion of the Director of Athletics.
  - The base salary is subject to furloughs, pay freezes, salary reductions or other adjustments to the same extent they are required of other employees of the University or Athletics Department.
- Automobile: Beginning April 1, 2021, the University will provide a car allowance in the amount of \$450.00 per month.
- Termination: The University's Right to Terminate Without Just Cause. The University may terminate this Agreement at any time without cause upon 30 days written notice to Coach. In such event, the University shall pay Coach a Termination Fee as follows:
  - If notice of termination is given during Contract Year One or Contract Year Two, the Termination fee is equal to 100% of the base salary that would have otherwise been payable to Coach for the remainder of the Term of Employment.
  - If notice of termination is given during Contract Year Three, the Termination Fee is equal to 75% of the base salary that would have otherwise been payable to Coach for the remainder of the Term of Employment.
  - If notice of termination is given during Contract Year Four, the Termination Fee is equal to 50% of the base salary that would have otherwise been payable to Coach for the remainder of the Term of Employment.
  - If notice of termination is given after Contract Year Four, the Termination Fee is 25% of the base salary that would have otherwise been payable to Coach for the remainder of the Term of Employment.

## EMPLOYMENT AGREEMENT

**THIS EMPLOYMENT AGREEMENT** is entered into as of April 14, 2021, between Regents of the University of Minnesota (the "University"), through its Department of Intercollegiate Athletics (the "Department") for its Twin Cities campus, and Ben Johnson ("Coach").

**WHEREAS**, the University desires to employ Coach as head coach of its intercollegiate men's basketball team at its Twin Cities campus (the "Team"), and Coach desires to accept such position and perform such services and duties;

**NOW, THEREFORE**, in consideration of the mutual promises and covenants contained in this Agreement, and such other good and valuable consideration the receipt and sufficiency of which the parties hereby acknowledge, the parties agree as follows:

### I. EMPLOYMENT TERM AND DUTIES

**1.1. Term.** Subject to the terms and conditions of this Agreement, the University hereby employs Coach as the head coach of the Team, and Coach agrees to be so employed by the University, for a term commencing on March 31, 2021, and ending on April 30, 2026 (the "Term of Employment"). For purposes of this Agreement, Contract Year One refers to the period from March 31, 2021, through April 30, 2022; Contract Year Two refers to the period from May 1, 2022, through April 30, 2023; and each subsequent Contract Year refers to the subsequent periods from May 1 through April 30 of the following year.

#### **1.2. Duties.**

**1.2.1.** During the Term of Employment, Coach shall diligently and conscientiously devote Coach's full business time, attention, and reasonable best efforts in performing and discharging the usual and customary duties of a head coach of an NCAA Division I men's basketball team, including, but not limited to, the following:

- a. Conducting usual and customary coaching activities;
- b. Recruiting, and managing the recruitment of, student athletes;
- c. Supervising, evaluating, training, and coaching student-athletes to compete against major college competition;
- d. Being responsible for all customary coaching decisions, including systems and strategies used (both in practice and competition), conduct of practice and training, selection of Team members,

- deployment of players, and all other matters involving Team operations;
- e. Fostering the academic progress of student athletes in the program;
  - f. Making reasonable best efforts to maintain conduct and enforce disciplinary rules and sanctions fairly and uniformly for all student-athletes on the Team in order to encourage academic and moral integrity and excellence;
  - g. Representing the Team and University, and cooperating with the Department in fulfilling contacts with or requests from the news media; and participating in a reasonable number of promotional appearances and events arranged by the Department, including appearances in person and on radio and television; but recognizing the greater importance of coaching activities. Any such appearances and events shall be scheduled at reasonable times that do not unreasonably interfere with Coach's duties and responsibilities under this Agreement.
  - h. Reasonably assisting with Departmental or University fundraising and public relations, with the understanding that such activities will not unreasonably interfere with Coach's duties and responsibilities under this Agreement or preexisting personal commitments;
  - i. Representing in a positive fashion the University and its athletic programs in private and public forums;
  - j. Consistent with University policy and the authority of the Director of Intercollegiate Athletics for the Twin Cities campus ("Director"), supervising assistant coaches and support staff for the Team ("Staff");
  - k. Preparing and administering the Team budget, subject to the authority and approval of the Director, such approval not to be unreasonably withheld; and
  - l. Performing such other duties normally associated with those of a head coach of an NCAA Division I men's basketball team, as reasonably requested by the Director or the Director's designee.

**1.2.2.** Unless otherwise expressly permitted in this Agreement, Coach shall not engage in any other business activity or be employed by any other person, firm, or entity, whether or not such activity is pursued for gain, profit, or other pecuniary benefit, without the University's prior written consent, such consent not

to be unreasonably withheld; provided, however, subject to NCAA and University rules, during each year of the Term of Employment, Coach may conduct summer basketball camps.

**1.2.3.** Coach shall not undertake commercial endorsements without the prior written consent of the University, such consent not to be unreasonably withheld. Coach shall not engage in any activity, if identified as the head coach of the Team, that directly or indirectly implies approval or endorsement of any good or service, including, but not limited to, the wearing of garments which display a manufacturer's trademark, name, or other logo, unless such activity is first approved in writing by the Director, such approval not to be unreasonably withheld. For example, Coach acknowledges that the University currently has entered into a MultiSport Agreement with Nike USA Inc., which includes the Team. Coach shall comply with the University's obligations (so long as Coach is made aware of such obligations) under the Nike Agreement, as well as any successor agreement.

**1.2.4.** Coach shall not appear on radio, television, or any other media in return for a fee, in cash or in kind, without the prior written consent of the University, such consent not to be unreasonably withheld.

**1.3. Classification.** Coach's employment is a professional appointment subject to the University of Minnesota Academic Professional and Administrative Policies and Procedures (Policies and Procedures), as they may be amended from time to time. In the event of a conflict between the terms of this Agreement and terms of University Policies and Procedures, the terms of this Agreement shall govern.

**1.4. Compliance.** Throughout the term of this Agreement, Coach shall comply with the current and hereafter enacted or promulgated laws, policies, rules, and regulations of and governing ("Applicable Rules and Regulations") the University and its employees, and the current and hereafter enacted or promulgated constitution, bylaws, and rules and regulations of the National Collegiate Athletic Association ("NCAA"), the Big Ten Conference ("Big Ten"), and any other conference or organization with which the University becomes associated or which affects intercollegiate athletics (individually or collectively, the "Governing Associations"); provided, all such Applicable Rules and Regulations shall be provided to Coach. Coach shall use Coach's reasonable best efforts to ensure that all assistant coaches of the Team, any other University employee or volunteer for whom Coach is administratively responsible, and representatives of the University's athletic interests, comply with the foregoing Applicable Rules and Regulations.

**1.5. Other Employment.** During the term of this Agreement, Coach agrees not to personally, or through any agent or other representation, seek, discuss, negotiate, or accept other full-time employment without first having notified the Director in writing

by certified mail or facsimile and receiving permission from the Director. Once such notification is received, permission to pursue other full-time employment will not be unreasonably withheld.

**1.6. Hiring Authority / Background Check.** Coach understands and acknowledges that Coach will not have authority to unilaterally make or accept offers of employment for Staff; and that ultimate authority over such hiring decisions rests with the Director. Notwithstanding the foregoing, the University shall ensure that the Director meaningfully consults with the Coach prior to any hiring of Staff, and the University agrees that the Director shall not unreasonably refuse to hire Coach's preferred candidate(s) for Staff. Coach further understands and acknowledges that all Team hires, including Coach's hire, are subject to and contingent upon a review of the applicant's background and experience, and a formal background check, including any history of NCAA violations, to be conducted by the Director and/or his designee(s). Coach agrees not to make any representation to potential hires, applicants, or anyone else that is contrary to the provisions of this paragraph.

## II. COMPENSATION

### 2.1. Base Salary.

**2.1.1.** Subject to the terms of this Agreement, for all services rendered by Coach on behalf of the University, for the Term of Employment, the University shall pay Coach an annual salary of One Million Nine Hundred Fifty Thousand dollars (\$1,950,000.00).

**2.1.2.** The base salary shall be paid in accordance with the University's regular payroll procedures for professional and administrative employees, and shall be subject to withholding for applicable federal, state and local income taxes, federal social security taxes, and other applicable taxes and deductions.

**2.1.3.** Coach shall be eligible to receive annual salary increases to be determined by, and subject to the discretion of the Director or his designee.

**2.1.4.** The base salary is subject to furloughs, pay freezes, salary reductions or other adjustments to the same extent they are required of other employees of the University or the Athletics Department

**2.2. Benefits.** Unless otherwise addressed in this Agreement, the University shall provide Coach with a benefits program as provided generally for its professional and administrative employees as described in Policies and Procedures.

**2.3. Automobile.** Starting April 1, 2021, the University will provide Coach with a car allowance in the amount of Four Hundred Fifty dollars (\$450.00) per month.

**2.4. Coach's Participation in the Intercollegiate Athletic Department Bonus Program.** Throughout the Term of Employment, Coach shall participate in the Incentive Bonus Program set forth in Exhibit A to this Agreement, and shall not participate in the Intercollegiate Athletic Department Bonus Program. The University shall make payment to Coach for competition-related bonuses within thirty (30) days of being earned, and for all other bonuses on or before August 1 of each contract year, provided that no bonus under this section will be earned or paid unless/until the University has determined that the conditions related to the payment have been met, including Coach's compliance with the material terms of this Agreement and any other conditions set forth in the Exhibit A. Further, no competition-related bonus will be earned or paid unless Coach is employed as head coach of the Team on the final day of the Team's regular season or any post-season play in which the Team participates for each season, whichever is later; and, except for the Coach of the Year bonus, no other bonus will be earned or paid unless Coach is employed on the final day of classes for the University's spring semester each academic year. Notwithstanding the foregoing, so long as Coach is employed through the final day of the Term of Employment, Coach shall be eligible to earn all Incentive Bonuses set forth hereunder even if Coach is not employed on the final day of classes for the University's spring semester for the 2025-2026 academic year.

**2.7. Post-Season Travel.** The University shall provide, upon the approval of the Director, the opportunity for the immediate family members of Coach, assistant coaches, and select Team support staff to travel with the Team to NCAA post-season events at the University's expense under University travel reimbursement policies. Travel reimbursement shall be limited to transportation and lodging expenses. It is understood that any expenses under this section must be paid out of the men's basketball service fund.

**2.8. Gopher Athletics Tickets.** The University shall provide Coach access to the following tickets to University of Minnesota Gopher athletic events: up to ten (10) season tickets to men's basketball, up to six (6) season tickets to home football games, up to four (4) season tickets to home men's hockey games, and tickets to other home athletic events according to department practices. Coach shall be entitled to up to twenty (20) tickets if/when the Team participates in post-season tournament games, including the Big Ten Tournament, NCAA Tournament games including the Final Four, and any other post-season basketball tournament games. The University shall provide to each of the three assistant coaches and the director of operations up to four (4), or a quantity to accommodate the immediate family member of the coach or director, season tickets to men's basketball; up to four (4) season tickets to home football games; and up to eight (8) tickets if/when the Team participates in post-season tournament games, including the Big Ten Tournament, NCAA Tournament games including the Final Four, and any other post-season basketball tournament games.

**2.9. Private Jet Use.** Subject to availability, the University agrees to fly Coach by private (non-commercial) aircraft when Coach is making recruiting visits and for other

mutually agreed upon University business that is located more than two hundred (200) miles from the Twin Cities campus. Coach's use of such private aircraft shall not exceed forty (40) hours (including dead-head legs) in any one fiscal year, unless fund-raised dollars (enhancement funds) ear-marked for recruiting expenses are used to cover costs of additional private flights. Any use beyond the forty (40) hour threshold is subject to approval by the Director, which can be withheld at the University's sole discretion.

**2.10. Moving Expenses.** The University will provide Coach with a one-time payment in the amount of Twelve Thousand dollars (\$12,000.00) which Coach may use to cover moving and relocation expenses. This payment represents Coach's exclusive benefit for moving and relocation expenses, and is provided in lieu of any payment or reimbursement that might otherwise be available under the Policies and Procedures. In addition to the foregoing moving expenses, the University will also fund Coach's travel expenses, including reasonable flight, hotel, meals, and local transportation, related to Coach's one-night trip to campus to interview for the position; and Coach's subsequent five-night trip that occurred for the purpose of conducting a press conference, on-site meetings, and other activities to successfully transition leadership of the Team.

**2.11. Tax Consequences for Additional Compensations.** It is understood that there may be personal tax consequences attributable to Coach as a result of the use of a vehicle, and other compensation, benefits, and amenities associated with Coach's employment as head coach of the Team, and that Coach is personally responsible for any and all such taxes.

**2.12. Exclusive Compensation.** The parties acknowledge and agree that the compensation provided to Coach under this Agreement shall constitute the total and exclusive compensation owed by the University to Coach for rendering services to the University.

### III. TERMINATION

**3.1. The University's Right to Terminate for Cause.** The University may, for just cause, terminate this Agreement, suspend payments required hereunder, or take other disciplinary action against Coach as it deems appropriate. "Just cause" as used in this Agreement shall include, but not be limited to, the following:

- a. A Level I, II, or equivalent finding of a violation of a rule of a Governing Association by or involving Coach as reasonably determined by the University, and for which the University has submitted notice to the Governing Association;
- b. A Level I, II, or equivalent finding of a violation of a rule of a Governing Association by an assistant coach of the Team or other individual related to the Team which, in the reasonable judgment of the University, Coach knew

or should have known about with reasonable diligence and oversight, and for which the University has submitted notice to the Governing Association;

- c. Multiple Level III, IV, or equivalent findings of the rules of a Governing Association that, taken together, constitute a Level I, II, or equivalent violation, as reasonably determined by the University, and for which the University reasonably determines Coach knew or should have known about with reasonable diligence and oversight;
- d. Failure to report any and all violations, regardless of Level, of the rules of a Governing Association related to the Team, when the University reasonably determines that Coach knew or should have known about such failure with reasonable diligence and oversight;
- e. A substantial failure to perform Coach's duties/responsibilities under this Agreement following written notice from the Director specifying such failure and providing, where practicable, a twenty (20) day opportunity to cure such failure, as reasonably determined by the University;
- f. Fraud or dishonesty by Coach in the hiring process (including failure to respond truthfully and completely to questions or inquiries), and/or in the performance of Coach's duties/responsibilities under this Agreement as reasonably determined by the University;
- g. Fraud or dishonesty by Coach in preparing, falsifying, submitting or altering documents or records of the University or a Governing Association, or documents or records required to be prepared or maintained by law, Governing Association rules or University rules, or other documents or records pertaining to any recruit or student-athlete; or condoning such fraudulent or dishonest acts by any other person, as reasonably determined by the University;
- h. Repeated failure by Coach to respond accurately and fully (within reason), to the best of Coach's ability and within a reasonable time, to any request or inquiry relating to the performance of Coach's duties/responsibilities hereunder or the performance of Coach's duties/responsibilities during Coach's prior employment at any other institution, propounded by the University, a Governing Association, or any other body having oversight of the athletic programs of the University or other University functions, or required by law, Governing Association rules or University rules, as reasonably determined by the University; provided, however, that University shall have first given Coach notice of such failure and provided, where practicable, a twenty (20) day opportunity to cure such failure;

- i. Coach's instruction to any coach, student, or other person to respond inaccurately or incompletely to any request or inquiry concerning a matter relevant to the University's athletic programs or other University functions, propounded by the University, a Governing Association, or any other body having oversight of the athletic programs of the University or other University functions, or required by law, Governing Association rules or University rules, as reasonably determined by the University;
- j. Failure by Coach to manage the Team in a manner that reflects the academic values of the University
- k. Coach's soliciting, placing or accepting a bet on any intercollegiate or professional athletic contest; Coach's permitting, condoning or encouraging any illegal gambling, bookmaking or illegal betting involving any intercollegiate or professional athletic contest; or Coach's furnishing information or data relating in any manner to the Team or any other sport to any individual known by Coach or whom Coach should reasonably know to be involved in gambling, betting or bookmaking; or Coach's consorting or associating with such persons;
- l. Sale, use or possession by Coach of any narcotics, drugs, controlled substances, steroids or other chemicals, each in violation of law, Governing Association rules or University rules, or Coach's encouraging or condoning such sale, use or possession by a University student-athlete, assistant coach, or other athletic staff member, as reasonably determined by the University;
- m. Use or consumption by Coach of alcoholic beverages, drugs, controlled substances, or other chemicals in a manner that impairs Coach's ability to perform Coach's duties/responsibilities hereunder;
- n. Failure by Coach to fully cooperate in the enforcement of any drug testing program established by the University for student-athletes;
- o. Failure to honor the authority of team doctors, athletic trainers, and other sports medicine staff to make decisions regarding student athlete health and well-being, including decisions regarding fitness to practice, train, or compete; or encouraging or pressuring student athletes to ignore or deviate from medical advice or directives from team doctors, athletic trainers, and other sports medicine staff; or condoning or directing others to encourage or pressure student athletes to ignore or deviate from medical advice or directives from team doctors, athletic trainers, and other sports medicine staff; or knowingly taking any action that poses a direct threat to student athlete health and well-being, each as reasonably determined by the University.

- p. Failure by Coach to obtain prior approval for outside activities as set forth in this Agreement, or to report accurately all sources and amounts of income and benefits, as required by this Agreement, NCAA rules, or University rules, as reasonably determined by the University.
- q. Coach's commission, during the Term of Employment, or knowing participation in any act, situation, or occurrence, which, in the University's reasonable judgment, brings Coach or the University into material public disrepute, embarrassment, contempt, scandal or ridicule; or failure by Coach to conform Coach's personal conduct to conventional and contemporary standards of good citizenship, in a manner that significantly offends prevailing social mores and values and reflects in a material adverse manner on the University's reputation and overall mission and objectives, as reasonably determined by the University.

**3.2. The University's Right to Terminate Without Just Cause.**

**3.2.1.** The University may terminate this Agreement at any time without cause upon thirty (30) days written notice to Coach. In such event, the University shall pay Coach a Termination Fee as follows:

a. If notice of termination is given during Contract Year One or Contract Year Two, the Termination fee is equal to 100% of the base salary that would have otherwise been payable to Coach under Section 2.1.1 for the remainder of the Term of Employment.

b. If notice of termination is given during Contract Year Three, the Termination Fee is equal to 75% of the base salary that would have otherwise been payable to Coach under Section 2.1.1 for the remainder of the Term of Employment.

c. If notice of termination is given during Contract Year Four, the Termination Fee is equal to 50% of the base salary that would have otherwise been payable to Coach under Section 2.1.1 for the remainder of the Term of Employment.

d. If notice of termination is given after Contract Year Four, the Termination Fee is 25% of the base salary that would have otherwise been payable to Coach under Section 2.1.1 for the remainder of the Term of Employment.

The Termination Fee shall be subject to withholding for all applicable taxes and deductions. The parties agree to discuss in good faith and use reasonable efforts to reach an understanding regarding a payment schedule for the Termination Fee that allows Coach and the University to fulfill applicable tax and legal obligations

without significantly increasing or accelerating the tax consequences associated with the Termination Fee. In the event those discussions do not result in an agreement, then the Termination Fee will be paid on a monthly basis according to the following schedule:

i. The first installment will be equal to the amount of the tax withholding required and payable under Section 457 of the Internal Revenue Code, and/or any other applicable federal, state, or local tax withholding provision. (The parties acknowledge that Section 457 of the Internal Revenue Code requires that withholding taxes be collected and remitted on the entire Termination Fee amount up front even though the Termination Fee will be paid over time in installments.) This installment will be made within sixty (60) days following the date of the notice of termination. The University will use this installment to make the required withholding tax payments on Coach's behalf.

b. The second and remaining installments will be paid over what would have been the remaining Term of Employment in substantially equal amounts by pay period.

Coach understands and acknowledges that the Termination Fee provisions set forth in Section 3.2 constitute Coach's exclusive remedy in the event of termination by the University without cause, and Coach waives the right to seek any additional compensation or damages from the University. Termination under this Section 3.2 shall supersede all rights Coach may have under the Policies and Procedures including but not limited to any rights to notice of termination or to participation in any layoff program. The parties acknowledge that the tax withholding and payment obligations referenced above, including the obligation under Section 457 of the Internal Revenue Code to collect and make payment in advance for the taxes due on the entire Termination Fee, could result in an overpayment of taxes (e.g., if installment payments end before the entire Termination Fee is paid because Coach finds comparable employment, etc.) If that occurs, the University is entitled to recover from Coach, and Coach is obligated to reimburse the University for any tax overpayment.

**3.2.2.** As a condition to receipt of any payment under Section 3.2, Coach is required to mitigate the University's obligations under Section 3.2 by making reasonable and diligent efforts (under the circumstances and opportunities then prevailing) to obtain a Comparable Position (as defined herein) as soon as practicable following termination of employment. Payments shall cease as of the date Coach begins employment for the Comparable Position. Payments shall also cease if Coach fails to make reasonable and diligent mitigation efforts to obtain a Comparable Position. For the purposes of this Agreement, a Comparable Position

means: head or assistant coach of a Division I NCAA basketball program, head or assistant coach of a professional basketball program, administrator or director of a Division I NCAA basketball program, or front office personnel of a professional basketball program (each, a "Comparable Position").

**3.2.3.** Coach agrees that as a condition of receiving any portion of the Termination Fee, Coach or, in the case of any amounts due after Coach's death, the person to whom those amounts are payable (collectively, the "Payee") must execute a comprehensive release (a "Release") within 15 days of the later of the date of termination or the receipt by Payee of the Release in the form, and containing the general terms and conditions typically used by the University (subject to mutual agreement by Coach). Among other things, the Release will require the Payee and Payee's personal or legal representatives, executors, administrators, successors, heirs, and assigns to release the University and its officers, employees, and representatives from all claims arising out of or related to Coach's employment with the University, including statutory and common law claims, other than any claim that the University has violated this Employment Agreement. Upon Coach's termination of employment with the University the Payee will be presented with the Release, and if the Payee fails to timely execute the Release as set forth in this Section 3.2.3, the Payee agrees to forgo any payment from the University under this Section 3.2.

**3.2.4.** For purposes of this Section 3.2, any reference to Coach's "termination of employment" by the University (or any form of the phrase "termination of employment") shall mean Coach's "separation from service" within the meaning of Section 409A of the Internal Revenue Code of 1986, as amended (the "Internal Revenue Code") and Treasury Regulation Section 1.409A-1(h).

**3.3. NCAA Enforcement Provisions.** (NCAA Bylaw 11.2.1). Notwithstanding any other provision of this Agreement to the contrary, Coach and the University stipulate that if Coach is found, after all applicable appeals, to be in violation of any NCAA rule or regulation, Coach is subject to disciplinary or corrective actions as set forth in the provisions of the NCAA enforcement procedures.

**3.4. Procedure.** In the event of any proposed disciplinary action, the Director shall give Coach, orally or in writing, notice of the allegations and an opportunity to present, in person or virtually, information relating to the allegations, and Coach shall be given all applicable appeal opportunities (if relevant) under the Policies and Procedures. If the Director then determines that discipline is appropriate, Director shall, in writing, notify Coach of the discipline and the reasons therefore.

**3.5. Limited Liability.** Subject to the terms of this Agreement, in no event shall the University be liable for the loss by Coach of any bonuses, benefits, perquisites, or

income, including, but not limited to, those arising out of or relating to consulting relationships, camps, clinics, media appearances, or from any other sources whatsoever, that may ensue as a result of the University's breach or termination of this Agreement, unless otherwise expressly stated herein. The terms of this Section 3.5 shall not release the University from its obligations to Coach under this Agreement.

**3.6. Coach's Right to Terminate Without Just Cause.** In the event Coach terminates this Agreement during the Term of Employment without just cause in order to accept employment for a Comparable Position, then Coach shall pay the University a termination fee as follows:

a. If notice of termination is given during Contract Year One or Contract Year Two, the Termination Fee is 100% of the base salary that would have otherwise been payable to Coach under Section 2.1.1 for the remainder of the Term of Employment.

b. If notice of termination is given during Contract Year Three, the Termination Fee is 75% of the base salary that would have otherwise been payable to Coach under Section 2.1.1 for the remainder of the Term of Employment.

c. If notice of termination is given during Contract Year Four, the Termination Fee is 50% of the base salary that would have otherwise been payable to Coach under Section 2.1.1 for the remainder of the Term of Employment.

d. If notice of termination is given after Contract Year Four, the Termination Fee is 25% of the base salary that would have otherwise been payable to Coach under Section 2.1.1 for the remainder of the Term of Employment.

Coach shall make the payment described in this Section 3.6. within sixty (60) days of the date when Coach gives notice of termination. The payment shall be in addition to any other payments required by Coach under this Agreement.

#### IV. PROVISIONS OF GENERAL APPLICATION

**4.1. Agreement Renewal.** Prior to the end of the term of this Agreement, Coach will be given notice of the renewal or non-renewal of this Agreement and the terms of the renewal. If the Agreement is not renewed, Coach shall be given thirty (30) days' notice of non-renewal and if such notice is not given thirty (30) days before the end of the Term of Employment, the Agreement shall be extended to cover the notice period. This provision shall supersede all rights under University Policies and Procedures including but not limited to any notice requirements or layoff programs. Notwithstanding the foregoing, this Agreement shall only be renewed upon mutual agreement of Coach and University, and Coach shall not be required to agree to any terms of renewal of this Agreement.

**4.2. Report of Athletically Related Income.** The University and Coach hereby stipulate that Coach shall annually provide to the Director a written detailed account of all athletically related income and benefits from sources outside the University including, but not limited to, the following:

- a. Annuity income related in any way to Coach's coaching, recruiting, or educational duties at the University;
- b. Sports camps;
- c. Housing benefits (including preferential housing arrangements);
- d. Country club memberships;
- e. Complimentary ticket sales;
- f. Television and radio programs; or
- g. Endorsement or consultation contracts with athletic shoe, apparel or equipment manufacturers.

In addition, Coach shall comply with University of Minnesota policy and procedures regarding "Outside Consulting and Commitments by Intercollegiate Athletic Staff." The policies and procedures include, but are not limited to, receiving prior approval (such approval not to be unreasonably withheld) of any endorsement of a product or service, use of University trademarks and outside consulting commitments.

**4.3. Notices/Administration.** All notices, requests, and other communications from one of the parties to the other shall be in writing and shall be delivered personally, or by facsimile or electronic mail (provided such delivery is confirmed), or by overnight courier service or by United States mail, first-class, certified or registered, postage pre-paid, return receipt requested, to the respective party at their or its address set forth below or to such other address set forth below or to such other address as such party may designate by notice given pursuant to this section:

As to Coach: Ben Johnson  
Intercollegiate Athletics  
240 Bierman Field Athletic Building  
516 15th Ave SE  
Minneapolis, MN 55455

with a copy to: Brad Williams  
Wasserman Media Group, LLC  
10900 Wilshire Blvd., Suite 1200  
Los Angeles, CA 90024  
E-mail Address: bwilliams@teamwass.com

As to the University: University of Minnesota  
Department Intercollegiate Athletics  
Attention: Director  
290 Bierman Field Athletic Building  
516 15<sup>th</sup> Avenue SE  
Minneapolis, MN 55455

with a copy to: University of Minnesota  
Office of the General Counsel  
Attention: General Counsel  
360 McNamara Alumni Center  
200 Oak Street SE  
Minneapolis, MN 55455-2006  
Facsimile No. 612-626-9624  
E-mail Address: contracts@mail.ogc.umn.edu

**4.4. Amendment.** Any amendment to this Agreement shall be in a writing executed and delivered by the parties.

**4.5. Parties In Interest/Assignment.** This Agreement shall be binding upon, and the benefits and obligations provided for herein shall inure to the parties hereto and their respective heirs, legal representatives, successors, assigns, transferees or donees, as the case may be. No portion of this Agreement shall be assignable without the prior written consent of the other party.

**4.6. Effect of Prior Agreements.** This Agreement is intended by the parties as the final and binding expression of their contract and agreement and as the complete and exclusive statement of the terms thereof. This Agreement supersedes and revokes all prior negotiations, representations, and agreements, whether oral or written, relating to the subject matter hereof.

**4.7. Enforceability.** If any provision contained herein shall be deemed or declared unenforceable, invalid, or void, the same shall not impair any of the other provisions contained herein, which shall be enforced in accordance with their respective terms.

**4.8. Construction.** The headings preceding and labeling the sections of this Agreement are for the purpose of identification only and shall not in any event be employed or used for the purpose of construction or interpretation of any portion of this Agreement. No waiver by any party of any default or nonperformance hereunder shall be deemed a waiver of any subsequent default or nonperformance. As used herein and where necessary, the singular shall include the plural and vice versa, and masculine, feminine and neuter expressions shall be interchangeable.

**4.9. Applicable Law.** The laws of the state of Minnesota shall govern and be applicable to this Agreement and any construction or interpretation thereof.

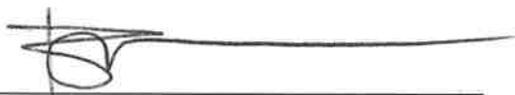
## **V. BOARD APPROVAL**

The parties acknowledge and agree that this Agreement is subject to formal approval by the University's Board of Regents (BOR), as well as the results of the background check of Coach and review of NCAA records to be completed by the University. This Agreement shall not be final or binding until the background check and review are completed, and the BOR has provided its formal approval. If the BOR does not approve the final contract, and/or if the background check or review are not acceptable to the University, then there will be no agreement between the parties, and the parties will have no further rights or obligations towards one another, under the Memorandum of Understanding they previously executed or otherwise (e.g., no right to any additional notice, no right to employment, no right to any ongoing compensation or benefits, no termination fee or payout, etc.).

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be executed as of the date first shown above.

COACH

Date: 4/26/21

By:   
Ben Johnson

REGENTS OF THE UNIVERSITY OF MINNESOTA

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Joan T.A. Gabel  
President

Recommended for Approval:

Date: 4.26.21

By:   
Mark Coyle  
Director of Athletics

Recommended as to Form and Execution:

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Douglas Peterson  
General Counsel

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be executed as of the date first shown above.

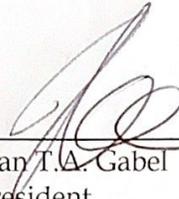
COACH

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Ben Johnson

REGENTS OF THE UNIVERSITY OF MINNESOTA

Date: 24 April, 2021

By:  \_\_\_\_\_  
Joan T.A. Gabel  
President

Recommended for Approval:

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Mark Coyle  
Director of Athletics

Recommended as to Form and Execution:

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Douglas Peterson  
General Counsel

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be executed as of the date first shown above.

**COACH**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Ben Johnson

**REGENTS OF THE UNIVERSITY OF MINNESOTA**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Joan T.A. Gabel  
President

Recommended for Approval:

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Mark Coyle  
Director of Athletics

Recommended as to Form and Execution:

Date: April 26, 2021

By:  \_\_\_\_\_  
Douglas Peterson  
General Counsel

## EXHIBIT A

### SCHEDULE OF INCENTIVES

In lieu of any other performance based bonus plan the University may adopt for sports coaches or other University employees, the University shall pay Coach the following incentive bonuses, consistent with the requirements of all other terms of this Agreement:

- I. **NCAA Tournament.** For each year the Team shall play in the NCAA Championship Tournament during the Term of Employment, the University shall pay Coach as follows:
  - a. Winning the National Championship - \$100,000;
  - b. Playing in the Final Four - \$50,000;
  - c. Playing in the Sweet Sixteen - \$50,000;
  - d. An invitation to play in either an opening round (including the First Four or other play-in game) or second round game in the NCAA Championship Tournament - \$50,000.

Coach shall receive each of the bonus amounts achieved under this section, i.e., bonus amounts under this section are cumulative.

- II. **Big Ten/Conference Finish.** The University shall pay Coach a bonus based upon the Team's Big Ten (or other conference if Team is no longer in the Big Ten) finish during each year of the Term of Employment, as follows:
  - a. Winning the Big Ten or other conference Regular Season Championship - \$50,000;
  - b. Winning the Big Ten or other conference Tournament Championship - \$25,000;
  - c. Achieving a winning record in the Big Ten or other conference regular season (at least one more win than loss) - \$50,000.

Coach shall receive each of the bonus amounts achieved under this section, i.e., bonus amounts under this section are cumulative.

III. **Academic Performance.** The University shall pay Coach a bonus based on the single year Annual Academic Progress Rate ("APR") for the Team, as established each year by the NCAA, as follows:

a.	APR greater than or equal to 940	\$25,000
b.	APR greater than or equal to 960	\$50,000
c.	APR greater than or equal to 980	\$75,000

Coach shall receive the highest single bonus amount achieved under this section, i.e., bonus amounts under this section are not cumulative.

IV. **Academic Performance.** The University shall pay Coach a bonus based on the graduate success rate for the Team, as determined each year by the University consistent with NCAA rules, as follows:

a.	Percentage greater than or equal to 80	\$75,000
b.	Percentage greater than or equal to 70	\$50,000

Coach shall receive the highest single bonus amount achieved under this section, i.e., bonus amounts under this section are not cumulative.

V. **Coach of the Year Honors**

a.	Big Ten (or other Conference) Coach of the Year	\$25,000
b.	National Coach of the Year	\$50,000

Coach is eligible to receive either or both amounts under this section, i.e., bonus amounts under this section are cumulative.

VI. **Annual Team Cumulative Grade Point Average ("GPA").**

a.	Cumulative Team GPA of 3.0 or above	\$25,000
b.	Cumulative Team GPA of 3.25 or above	\$50,000
c.	Cumulative Team GPA of 3.5 or above	\$75,000

Coach shall receive the highest single bonus amount achieved under this section, i.e., bonus amounts under this section are not cumulative.