

EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT ("Agreement") is effective as of June 15, 2022 ("Effective Date") by and between Kansas Athletics, Inc. ("Athletics") and Daniel Fitzgerald ("Head Coach"), and supersedes all other agreements between the parties.

WHEREAS, Athletics operates the intercollegiate athletics programs of the University of Kansas ("KU"), subject to the direction and control of the Chancellor of the University of Kansas; and

WHEREAS, Head Coach wishes to serve, and Athletics desires that Head Coach should serve, as head coach for the KU intercollegiate men's baseball program; and

NOW, THEREFORE, in consideration of the mutual representations, agreements, and promises herein contained, the parties agree as follows:

1. Employment

Athletics hereby employs Head Coach to perform all duties and responsibilities attendant to the position of head men's baseball coach of the KU's intercollegiate men's baseball program as may be required of him.

2. Term of Agreement

This Agreement shall be for a term beginning June 15, 2022, and ending June 30, 2028, unless earlier terminated, as set forth herein. To extend or renew the Term of this Agreement, both Parties must sign a written agreement to do so. The Parties agree that oral agreements to renew or extend this Agreement are invalid and non-binding. The Parties agree that the Contract Years are defined as follows:

Contract Year One ("Year One"): Period from June 15, 2022, through June 30, 2023;

Contract Year Two ("Year Two"): Period from July 1, 2023, through June 30, 2024;

Contract Year Three ("Year Three"): Period from July 1, 2024, through June 30, 2025;

Contract Year Four ("Year Four"): Period from July 1, 2025, through June 30, 2026;

Contract Year Five ("Year Five"): Period from July 1, 2026, through June 30, 2027;

Contract Year Six ("Year Six"): Period from July 1, 2027, through June 30, 2028.

Following the completion of the Agreement's fourth Contract Year, the parties shall meet together in good faith to evaluate the KU intercollegiate baseball program's overall status, on-field and off-field progress, and whether the overall status warrants an increase Head Coach's annual compensation and/or in the length of the contract.



3. Performance

Head Coach agrees to serve for the entire term of this Agreement and to devote his full time and attention and give his best efforts and skill exclusively to the duties required of him as a head coach. During the term of this Agreement, Head Coach shall report to and be under the immediate supervision of KU's Director of Intercollegiate Athletics (the "Director of Athletics"), or their designee, and shall confer with the Director of Athletics, or their designee, on matters concerning administrative and technical decisions. Without limiting the generality of this Section 3, Head Coach's duties and responsibilities as the Head Coach shall include, but not be limited to, the following:

- A. Coaching, supervising, evaluating, administering, training, and recruiting student-athletes in the intercollegiate men's baseball program in a manner as to allow it to effectively compete in the Big 12 Conference or any successor conference (both referred to as the "Big 12") and National Collegiate Athletics Association or any applicable successor governing body (both referred to as "NCAA"); and
- B. Responsibility for directing and monitoring compliance of the intercollegiate men's baseball program with all applicable governing policies, constitutions, bylaws, rules, and regulations of Athletics, KU, the Big 12 Conference, and the NCAA; and
- C. The professional and personal comportment at all times in a manner consistent with good sportsmanship and in accordance with the high moral, ethical, and academic standards of the NCAA, the Big 12 Conference, and KU. At all times Head Coach shall exercise due care that all personnel and student-athletes under his supervision, or subject to Head Coach's control or authority, comport themselves in a similar manner; and
- D. Compliance with the academic standards and requirements of KU with respect to the recruiting and eligibility of prospective and current student-athletes for the intercollegiate men's baseball program. Head Coach shall comply with the academic policies established by KU and the NCAA, including monitoring and encouraging the regular progress toward an academic degree of those student-athletes in the intercollegiate men's baseball program. Head Coach shall cooperate with academic counselors or similar persons to assist student-athletes in connection with their academic pursuits and shall use his personal best to encourage and promote the efforts of every student-athlete to obtain a baccalaureate degree; and
- E. The undertaking of his reasonable best efforts to comply with and assure that all persons under his supervision, including assistants and student-athletes, comply with the rules and regulations of the NCAA, the Big 12 Conference, and such rules and regulations concerning intercollegiate athletics, athletics personnel, and student-athletes as may from time to time be promulgated by KU or Athletics, including, but not limited to the following:

- i. Head Coach shall observe and respect the principles of institutional control in every aspect of the intercollegiate men's baseball program;
- ii. In the event that Head Coach becomes aware, or has reasonable cause to believe, that violations concerning these rules may have taken place, he shall report the same promptly to the Director of Athletics and to the Athletics' Compliance Department; and
- iii. With respect to NCAA rule enforcement proceedings performed by the NCAA, Athletics, or their agents, Head Coach agrees to report NCAA violations in a timely manner; to share all knowledge, communications, and documents in a timely manner; to provide access to all electronic devices, e-mail accounts, electronic short message service accounts, social media and other technology; and to confidentiality.

F. The undertaking of his reasonable best efforts to competently and diligently perform all required tasks and activities of, and adherence to all standards, rules, and regulations established by applicable federal and state laws, including the Buckley Amendment, the Clery Act, Title IX, the Handbook for Faculty and Other Unclassified Staff of KU, Athletics' Policies and Procedures Manual, Athletics' policies and procedures, and KU policies and procedures, as may be amended from time to time; and

G. Head Coach hereby acknowledges that a complete copy of both KU's policies for Faculty and Other Unclassified Staff and a complete copy of Athletics' Policies and Procedures Manual are available at:

<https://documents.ku.edu/policies/provost/FacultyandUnclassifiedStaffHandbook.pdf> and https://kuathletics.com/sports/2013/6/21/GEN_0621132026.aspx?id=24 respectively. Other policies are available at <http://policy.ku.edu/> or <https://kuathletics.com/table-of-contents/> and with Athletics compliance.

- i. In case of a conflict between KU's policies for Faculty and Other Unclassified Staff and Athletics' Policies and Procedures Manual, the terms of Athletics' Policies and Procedures Manual shall control. Head Coach acknowledges and agrees that he has received information regarding access to Athletics' Policies and Procedures Manual and he is governed by its terms and bound by them; and
- ii. KU's policies for Faculty and Other Unclassified Staff and Athletics' Policies and Procedures Manual, and any future amendment, are hereby incorporated by this reference and made part of this Agreement as if they were fully set forth herein.

- H. Maintaining and enforcing conduct (both on and off the field) and disciplinary rules and sanctions fairly and uniformly for all student-athletes in the intercollegiate men's baseball program so as to ensure academic and moral integrity, together with NCAA compliance; and
- I. Uniting the men's baseball program by building a cohesive team that shares the same vision, goals, values, mission, and work ethic to enhance and champion the brand of KU and Athletics nationally. Head Coach will provide leadership to players and staff and foster a trust that allows them to approach Head Coach in ways that build strong, professional relationships. Head Coach will also invest the personal commitment, passion, and energy into Kansas athletics teams, including but not limited to attending sporting events, supporting fellow coaches and student athletes; and
- J. Performing of multimedia services, including educational, public relations, fundraising, and promotional duties as assigned and reasonably requested by the Director of Athletics.
- K. Engaging alumni, friends of Kansas athletics, and all donors who can have an impact on raising the funds necessary to improve Athletics and KU and its other affiliates, at all levels; and
- L. Head Coach shall not, without approval of Director of Athletics, accept any supplemental pay, bonus, or other form of payment from any outside source, except for income earned from the operation of Head Coach's sports camps or clinics; and
- M. Head Coach may recommend the hiring, continued employment, job titles, dismissal, and compensation of the assistant men's baseball coaches at KU with final approval by the Director of Athletics. All such recommendations are subject to standard Athletics pre-employment inquiries, including NCAA and criminal background checks. Head Coach shall make no financial or employment commitments unless specifically authorized and approved by the Director of Athletics; and
- N. Head Coach may recommend the scheduling of men's baseball games and tournaments, with the final scheduling authority to be the responsibility of the Director of Athletics.

4. Base Salary

For all services to be performed by Head Coach in his capacity as head coach of the intercollegiate men's baseball program, during Contract Year One, Athletics shall pay Head Coach a salary of Five Hundred Thousand Dollars and no Cents (\$500,000.00) per annum, payable in twelve (12) equal monthly installments on the last day of each month during the term of this Agreement.

For Contract Year Two, Athletics shall pay Head Coach a salary of Five Hundred Twenty Thousand Dollars and no Cents (\$520,000.00) per annum, payable in twelve (12) equal monthly installments on the last day of each month during the term of this Agreement.



For Contracts Year Three, and Four, Athletics shall pay Head Coach a salary of Five Hundred Thirty Thousand Dollars and no Cents (\$530,000.00) per annum, payable in twelve (12) equal monthly installments on the last day of each month during the term of this Agreement.

For Contracts Year Five and Six, Athletics shall pay Head Coach a salary of Five Hundred Forty Thousand Dollars and no Cents (\$540,000.00) per annum, payable in twelve (12) equal monthly installments on the last day of each month during the term of this Agreement

5. Incentive Payments

- A. The following incentive payments shall be paid to Head Coach in the event the baseball team achieves, and Head Coach attends and coaches in, as specified below. If Head Coach leaves and/or does not fully participate in the games listed below, he is not eligible for the incentive payment. Where eligible, Head Coach will receive the following, with the below bonus amounts being cumulative of each other:

Finish Top 5 within Big 12	Two (2) weeks' additional salary
Big 12 Regular Season Championship:	One (1) month's additional salary;
Big 12 Tournament Championship:	One (1) month's additional salary;
NCAA Tournament Participation:	One (1) month's additional salary;
NCAA Super Regionals Participation:	One (1) month's additional salary;
World Series:	One (1) month's additional salary;
Team Wins NCAA Championship:	Two (2) month's additional salary.

Such incentive payments are bonuses and do not alter Head Coach's base salary payment amounts. It is the parties' intent that the amounts listed above shall be paid out accumulatively. For example, should Head Coach still be employed and in the same season the men's baseball team wins the Big 12 Regular Season Championship and is selected to participate in the NCAA tournament, he shall receive an additional two months' and two weeks' salary (one (1) month for the Big 12 Regular Season Championship, one (1) month for the NCAA Tournament Participation, and two (2) weeks for finishing in the Top 5 within the Big 12). Any additional incentive payments shall be at the sole discretion of the Director of Athletics.

- B. In the event the baseball team achieves, and the Head Coach attends and coaches the team in the NCAA tournament during the term of this Agreement Head Coach shall earn a one-year (1) contract extension ("Incentive Year Seven"). For clarification purposes, if the baseball team reaches the NCAA Tournament during the 2024 season, one (1) additional year would be added to the term of this Agreement-thus extending the Agreement to June 30, 2029.



Such incentive does not alter Head Coach's base salary and is only available for the first time Head Coach and the Team reaches the NCAA tournament during this Agreement.

- C. In the event this Agreement is terminated for cause, Head Coach shall repay to Athletics all Incentive Payments received for any achievement by Head Coach under this Section 5 if such achievement is subsequently vacated by the NCAA, in whole or in part, because of NCAA, Big 12, or KU/Athletics rules violations committed directly by Head Coach as determined by Athletics, KU, or the NCAA. Head Coach's repayment under this section shall be due no later than six (6) months from the NCAA notice of vacated achievement, whichever comes first.

6. Outside Income

- A. In accordance with NCAA rules, Head Coach agrees that by September 1 of each year he shall provide Compliance with a detailed accounting, in writing, of all athletically related income and benefits from sources outside the institution. This report shall include the amount and source of income.
- B. Head Coach agrees that during the term of this Agreement, he will not engage in any outside activities, including but not limited to, commercial or private ventures including outside consulting agreements, using Athletics' or KU's name or likeness by any commercial, public, or private entity, television, radio, or internet, unless such activities are expressly approved in writing and in advance by the Director of Athletics and/or the Chancellor, and comply with NCAA and Big 12 bylaws, rules, and regulations, and in compliance with Athletics' Policies and Procedures Manual. Head Coach agrees that any outside activities shall not conflict with or be inconsistent with his responsibilities under this Agreement. Head Coach further agrees that he shall not create a private foundation without the prior approval of the Director of Athletics and the Chancellor.
- C. Nothing in this Agreement shall constitute permission or license of Head Coach to use or authorize third parties to use KU's trademarks in connection with outside employment. A license to use the KU's trademarks must be obtained from and approved by the Director of Athletics and Athletics Trademark and Licensing. Nothing in this Agreement shall constitute permission or license for Head Coach to change or modify any existing trademarks or to create new trademarks for KU or its intercollegiate men's baseball program without the express written permission of the Director of Athletics and the Chancellor of KU.

7. NCAA and/or Big 12 Violations

- A. If KU, Athletics, the Big 12 Conference, or the NCAA determines that Head Coach has violated NCAA or Big 12 regulations, or willfully and knowingly permitted any other person under his direct control or supervision to commit an NCAA or Big 12 violation, or if Head Coach failed to promptly report a violation or provide complete and accurate information to the Director of Athletics and the Athletics Compliance Department, in

addition to any remedies provided by this Agreement or at law, Head Coach agrees that he shall be subject to disciplinary or corrective action as set forth in the provisions of the NCAA enforcement procedures, as now existing or as amended from time to time. Such action by the NCAA or Big 12 shall not preclude or, in any manner, affect Athletics' right to take such other corrective or disciplinary action as it deems necessary or proper, including termination for cause.

- B. It shall be the responsibility of Head Coach to reasonably promote an atmosphere of compliance within the men's baseball program and to monitor the activities regarding compliance of all student-athletes, assistant coaches, and other administrators, and staff involved with the men's baseball program who report directly or indirectly to the Head Coach. In this regard, Head Coach shall take special notice of NCAA Bylaw 11.1.1.1, Head Coach Control (and any amendments made to that Bylaw during the Term of this Agreement). If, at any time during the Term of this Agreement, Coach knows, or has reasonable cause to believe that he or any student-athlete or coach of any Athletics program, any student, faculty member, other employee, or agent of the University, or any outside individual has violated, or allowed or caused to be violated, any Governing Athletics Rules or University or Athletics rules and procedures, or if Coach receives notice or information that the NCAA or the Big 12 intends to investigate or to review any alleged violations of Governing Athletics Rules or University Rules, or if Coach receives notice or information that any law is alleged to have been violated by any student-athlete, coach, or staff of any University Athletics program, including himself, he must immediately report such information, knowledge or belief to the Director of Athletics, and to the Athletics compliance staff as appropriate. If such information, knowledge, or belief includes allegations that the Director of Athletics was complicit in the alleged violation, Head Coach further agrees to report to the Chancellor.
- C. Head Coach agrees that if he is found by KU, Athletics, the Big 12 Conference, or the NCAA to be involved in significant, or repetitive or intentional violations (or a pattern of conduct which may constitute or lead to a major NCAA violation) of NCAA regulations, whether while employed at KU or during prior employment at another NCAA member institution, Head Coach may be suspended without pay for a period of time and/or the employment of Head Coach may be terminated for cause, as set forth in Section 12 below. Additionally, if Head Coach knew or should have known of a significant or repetitive or intentional violation of NCAA regulations, and he fails to promptly report it to the Director of Athletics, he agrees that he may be suspended without pay and/or terminated for cause, as defined in Section 12 below.
- D. If Head Coach is fined by the Big 12 Conference or the NCAA for any violation of the sportsmanship policy, such penalty shall be the sole responsibility of Head Coach.
- E. With respect to NCAA rule enforcement proceedings performed by the NCAA, Athletics, or their agents, Head Coach agrees to report NCAA violations in a timely manner; to share all knowledge, communications, and documents in a timely manner; to provide access to all electronic devices, e-mail accounts, electronic short message service accounts, social media and other technology; and to confidentiality. Head

Coach understands and agrees that failure to do so may result in him being suspended without pay for a period of time and/or his employment may be terminated for cause.

- F. Head Coach agrees to indemnify KU, Athletics, and the Kansas Board of Regents for 50% of the costs and expenses, including attorneys' fees, incurred by KU, the Kansas Board of Regents, and/or Athletics as a result of KU's intercollegiate men's baseball program being placed on probation due to a major, intentional, significant, or repetitive violation of NCAA rules and regulations by Head Coach directly. Said payments by Head Coach shall not exceed 20% of his total annual compensation.**

8. Apparel and Media Rights/Contracts

- A. Head Coach acknowledges that any apparel provided to or purchased by KU or Athletics by a manufacturer is subject to NCAA rules and regulations, as well as Athletics' property inventory procedures. All equipment must be sent directly to Athletics' Equipment Manager and shall be owned by Athletics. Any personal equipment or apparel that is provided to or purchased by Head Coach from an apparel dealer must be delivered to his home address and cannot be received by KU or Athletics.**
- B. Head Coach acknowledges that he has no authority to use the KU marks and/or logos (including verbiage) for merchandise incorporating any KU marks and/or logos (including verbiage), which may be sold or given away at any activities (camps, clinics, any athletic contests, etc.), and that any such use must be approved by the Director of Athletics prior to production. All merchandising incorporating any KU marks and/or logos (including verbiage), which shall be sold or given away at any activities (camps, clinics, any athletic contests, etc.) involving any KU or Athletics employees, is subject to normal licensing approval and applicable royalty fees. All such merchandise must be purchased from KU-approved, licensed manufacturers. A list of all KU-approved, licensed manufacturers (including addresses and phone numbers) shall be available from the Director of Athletics. Copies of all invoices for all merchandise incorporating any KU marks and/or logos (including verbiage) ordered for resale/give-away at any activities (camps, clinics, any athletic contests, etc.) must be forwarded to the Director of Athletics for review and approval.**
- C. Head Coach acknowledges that Athletics and KU have agreements with apparel and/or footwear manufacturers and distributors, as well as merchandise and beverage agreements, to provide footwear, apparel, equipment, and other products to Athletics for use by the men's baseball team and staff. Head Coach agrees he shall not negotiate a separate contract with any footwear, apparel, equipment, or beverage manufacturer while serving as Head Coach, and that he further agrees that he will not endorse any athletic footwear, apparel, equipment, and/or beverage products and will not participate in any messages or promotional appearances which contain a comparative or qualitative description of athletic footwear, apparel, equipment, or beverages. He further acknowledges that he shall comply with all terms of Athletics agreements with such apparel, footwear, equipment, merchandise, or beverage agreements that currently exist**

or that KU or Athletics may negotiate in the future. Further, Head Coach agrees to comply with any requirements of Athletics and KU agreements with third-parties.

- D. Head Coach further acknowledges that Athletics possesses the sole and exclusive ownership rights to all media rights in KU's men's baseball, including but not limited to coaches' shows, call-in programs, post-tournament and pre-tournament interviews, highlight shows, replay shows, and other programs (the "Programs") that may be offered currently or in the future on media outlets, including but not limited to the following: radio, all forms of television, internet, satellite, cable, streaming, broadband, high definition, high dynamic range, 4K, DVD, video cassette, wireless and video-on-demand, or any other medium whatsoever whether now existing or developed in the future. As such, Athletics shall be entitled, at its option to produce and market the Programs or negotiate with third parties for the production and marketing of the Programs. Athletics shall be entitled to retain all revenue generated by the Programs, including but not limited to, that received from Program sponsors for commercial endorsements used during the Programs. All appearances by Head Coach on any radio, television, internet, or any other Program must have the prior approval of the Director of Athletics or their designee. It shall not be unreasonable for Athletics to withhold approval, and Head Coach shall not be permitted to participate in any business transactions or endorse any products or appear on any radio, television, internet, or any other Programs, if Athletics reasonably determines that such participation may likely discredit or bring undue criticism to Athletics or KU or to infringe upon any contractual obligations of Athletics or, as determined by Athletics in its sole but reasonable discretion, are otherwise not in the best interests of Athletics or KU or which violate KU policy or local, state, or federal law. Head Coach may not associate KU's name, logos, trademarks, symbols, insignias, indicia, service marks, or reputation in connection with any such arrangements, directly or indirectly, without the prior written approval of the Director of Athletics. In the event that the Director of Athletics gives permission to Head Coach to use KU's name, logos, trademarks, symbols, insignia, indicia, service marks or reputation, such permission shall be non-exclusive and non-transferable, and may be revoked at any time by Athletics or KU for any reason. Such permission shall automatically expire upon Head Coach's resignation or termination from employment.
- E. Head Coach agrees to, and hereby does, assign to Athletics and KU, or its then current rights holder of one or more of the Programs, all right, title and interest in the Property in connection with the Programs or endorsements and in all other respects for purposes consistent with this Section 8 and elsewhere in this Agreement. The assignment includes, but is not limited to, intellectual property rights under any and all trademarks and copyrights and any applications therefor which have been obtained or filed, and may be filed in the future with respect to the Property. Head Coach further agrees to, and hereby does, assign to Athletics and KU the Property associated with all previously broadcast, record or stored Programs. Nothing contained herein shall limit Head Coach's ability to use the Property in activities not associated with the Programs, subject to the approval by the Director of Athletics or their designee.



9. Other Miscellaneous Benefits

So long as Head Coach continues his employment with the KU intercollegiate men's baseball program, Athletics agrees to provide, or pay, as the case may be, and only as elected by Head Coach, the following additional benefits:

- A. For the duration of his employment, Head Coach shall receive the use of a courtesy automobile, the model of which are the highest line of the manufacture or as otherwise agreed to in writing with the Director of Athletics, at no cost to Head Coach, subject to the use of the vehicle being consistent with Athletics' policies.
- B. **WORK SCHEDULE:** Time demands in the coaching profession are unique, largely on a seasonal basis, and require coaches to work beyond the normal 40-hour work week. Coaches are given the flexibility to establish their own work schedule reflecting seasonal demands and success goals for the program. However, coaches are expected to be reasonably available to meet with student-athletes, staff, alumni, media, and friends of Athletics and KU. For the reasons set forth in this Paragraph, Head Coach acknowledges that he will accrue annual leave for use in the event of illness or medical condition, but such leave does not have to be used for vacation. Head Coach agrees that unused annual leave is not paid out at the time the contract ends or is terminated by either party. Head Coach will have all other leave benefits normally provided to Athletics employees.
- C. Head Coach shall be entitled to operate a summer baseball camp, other camps, and baseball clinics in accordance with the policies of KU and Athletics concerning the operation of such camps and clinics. Head Coach hereby acknowledges and agrees that Athletics shall receive a payment derived from said camps and clinics as a facilities use fee. The payment will be determined on an annual basis and specific in an annual camp/clinic agreement that Head Coach and his corporate entity conducting the camp or clinic, if applicable, shall enter with Athletics.
- D. Athletics shall pay all reasonable travel and entertainment expenses not reimbursed by another source whenever Head Coach represents KU, Athletics, or the men's baseball program. Such representations are understood to include recruiting, appearances at camps or clinics, speaking engagements, and other occasions at which Head Coach represents KU and its athletics' programs.
- E. Head Coach shall be eligible to participate in all medical, dental, retirement and any other fringe benefit programs available to full-time benefits eligible employees of Athletics.
- F. Head Coach and Athletics agree that all tickets referenced within this Agreement are subject to Athletics' protocols and oversight, consistent with Athletics' ticket policies, which may be amended from time to time, and approval by the Kansas Athletics Compliance Department. Subject to those ticketing policies and approvals, Athletics shall make available to Head Coach up to eight (8) complimentary tickets for discretionary use for all home, away, and postseason baseball games. In addition, Head

Coach shall be entitled to receive five (5) tickets for all Kansas home games in sports other than baseball, said seats to be assigned by Athletics. Any other tickets requested by Head Coach shall be paid for directly by Head Coach and shall be his personal expense.

- G. Head Coach, at his request, shall be provided a membership at a Lawrence country club. Athletics agrees to pay all monthly dues and all other business-related expenses.
- H. Athletics will pay reasonable travel costs for Head Coach's spouse and minor children to travel to one away game each year and to post-season competitions.
- I. Athletics shall reimburse Head Coach for reasonable relocation fees up to \$25,000.00 and temporary housing for Head Coach and his immediate family for up to sixty (60) days, in accordance with Athletics' policies. If Athletics policies are silent, then such reimbursements will be made consistent with Kansas Board of Regents policies.

10. Taxability of Benefits

Head Coach acknowledges and agrees that some benefits described in Section 9 above may constitute taxable income according to then-current Federal, state, and local regulations, and Head Coach agrees he is responsible for payment of all appropriate taxes on such income. Head Coach also understands and agrees that Athletics will withhold taxes based on the value of the benefits described in Section 9 above, and based on the value of any other benefits or compensation provided by KU or Athletics and not otherwise listed herein.

11. Termination Without Cause

- A. Athletics shall have the right to terminate this Agreement without cause at any time upon written notice to Head Coach. In the event Athletics terminates this Agreement without cause, Athletics, in addition to all monetary amounts due and owing under this Agreement up to the date of termination, shall be liable to Head Coach for a Liquidated Damages payment equal to:
 - 1. Three years' compensation if terminated in Contract Year One;
 - 2. Two and one half years' compensation if terminated in Contract Year Two;
 - 3. Two years' compensation if terminated in Contract Year Three;
 - 4. One and one-half year's compensation if terminated in Year Four;
 - 5. One year's compensation if terminated in Year Five; or
 - 6. If terminated in Year Six or Incentive Year Seven, one-half of the remaining compensation.

Other than payments defined as Liquidated Damages, no other sums or damages of any kind whatsoever shall be paid by Athletics or KU to Head Coach.

- B. The Liquidated Damages above shall be paid to Head Coach in monthly payments for a term of twelve (12) months or the remainder of the Agreement, whichever is longer ("Payout Period").

- C. The parties agree that such Liquidated Damages are in lieu of all other compensation and benefits otherwise owed to Head Coach under any and all other provisions of this Agreement; and further such Liquidated Damages constitute reasonable compensation for losses that Head Coach will incur, and are not a penalty. Athletics shall not be liable to Head Coach for the loss of any amounts, collateral business opportunities, or any other benefits, perquisites or income resulting from activities such as, but not limited to camps, clinics, media appearances, television or radio shows, or from any other sources as a result of Athletics' termination of Head Coach's employment under this Agreement.
- D. The Parties covenant and agree that the release payments to Head Coach shall be offset and reduced on a monthly basis by the gross compensation earned by Head Coach personally or through business entities owned or controlled by Head Coach from engagement as an employee, self-employed person, independent contractor, or consultant either at a college or university, Major League Baseball (including its Player's Union and Minor League Baseball), or with a sports-related organization to include sports media organizations (collectively referred to hereafter as "Other Employment"). The duty of offset runs throughout the Payout Period. Head Coach agrees that he shall use his good faith best efforts to obtain other employment at a fair market value as soon as possible. Head Coach shall use his good faith best efforts not to structure and or defer any compensation due for services performed during the Payout Period to a time beyond the Payout Period.

For purposes of this provision, "gross compensation" shall mean, without limitation, gross income from base salary or wages, talent fees, or other types of compensation paid to Head Coach by an employer, including by a business entity owned by or controlled by Head Coach, consulting fees, honoraria, fees received by Head Coach as an independent contractor, or other income of any kind whatsoever from Other Employment. Head Coach may be required to produce evidence of all compensation, non-investment income. In the event the actual gross compensation of the Head Coach during the Payout Period is less than the market value of the position, the offset shall be based on the market value of the position instead of the actual gross compensation.

12. Termination for Cause

- A. Athletics may, for cause, terminate Head Coach's employment at any time upon written notice to Head Coach.
- B. If such termination is for cause, Athletics shall be obligated to only pay Head Coach all amounts owing up to the date of termination. All other obligations of Athletics to make further payments and/or to provide any other consideration, under this Agreement or otherwise, except to the extent already vested, shall cease immediately. Athletics shall not be liable to Head Coach for the loss of any amounts, collateral business opportunities, or any other benefits, perquisites or income resulting from activities such as, but not limited to camps, clinics, media appearances, television or radio shows, or from any other sources as a result of Athletics termination for cause of Head Coach's

employment under this Agreement. Head Coach shall not be entitled to receive any benefits or payments that become due after the date of termination. Head Coach shall be eligible to purchase continued health insurance pursuant to COBRA for the period of time specified by COBRA at the time of termination.

C. For purposes of this Agreement, "cause" shall include misconduct, including but not limited to:

- 1. the refusal, failure (other than the failure resulting from his incapacity due to physical or mental illness), fraud, or dishonesty of Head Coach in any material respect to comply with the reasonable directives of the Director of Athletics or their designee or to perform the duties set forth in Section 3 above; or**
- 2. serious criminal conduct by Head Coach, other than minor traffic infractions; or**
- 3. discreditable conduct that is inconsistent with the professional standards expected of a Head Coach of a collegiate sports team or that is seriously prejudicial to the best interests of KU or Athletics; or engaging in abusive or demeaning language or conduct to any student, including student-athletes, or employees, including employees of KU or Athletics; or be involved in conduct or activities that violate KU or Athletics' mission; or**
- 4. major violations by Head Coach of NCAA and/or Big 12 rules and regulations in current form and as may be amended; or**
- 5. failure by Head Coach to report promptly to the Director of Athletics any violations known to Head Coach of governing athletic rules, including NCAA and/or Big 12 rules, or Athletics or KU rules, regulations or policies by assistant coaches, student-athletes or other persons under the direct control or supervision of Head Coach; or**
- 6. fraud or dishonesty in preparing, falsifying, submitting, or altering documents or records of or for the NCAA, the Big 12 Conference, Athletics, or KU; or**
- 7. gross negligence or willful misconduct by Head Coach in connection with his Head Coach duties and responsibilities; or**
- 8. any material breach or non-observance of any of the material conditions or material obligations of Head Coach's employment agreement; or**
- 9. any refusal to carry out any of Head Coach's duties, any insubordination, unprofessional or insulting behavior of a material nature toward Athletics, its employees, officers, students, or supporters, or KU, its employees, officer, students, faculty or supporters; or**



10. violation of Athletics' and/or KU's policies on discrimination, harassment, or retaliation; or
 11. commission of or participation in by Head Coach of any act, situation, or occurrence, or any conduct, which in Athletics' or KU's judgment brings Head Coach and/or KU into public disrepute, embarrassment, contempt, or ridicule or any public comments that disparage KU or Athletics, its personnel, programs, policies and/or departments, or that cause damage to Athletics and/or KU's reputation; or
 12. failure by Head Coach to engage in and assure that every person under Head Coach's supervision is engaging in safe and responsible treatment of student-athletes on the team and avoiding behavior that could seriously jeopardize a student-athlete's physical or mental health, safety or welfare or that otherwise could cause harm or risk causing harm to a student-athlete.
- D. Prior to any termination for cause, Athletics shall provide written notice to Head Coach that shall specify the grounds for termination and provide Head Coach with an opportunity (not less than five (5) calendar days) to respond to any allegations against him.
- E. Athletics shall have the right to take disciplinary or corrective action, short of termination for cause, against Head Coach for violation of any provision of this Agreement or for any reason which would allow termination for cause or suspension under this Section 12. Athletics is under no obligation to use progressive discipline. Should Athletics choose, at its option, to use progressive discipline for misconduct, the use of progressive discipline shall not create any future obligation for Athletics to use progressive discipline for future misconduct.

13. Representations and Warranties Regarding Prior Conduct

- A. Head Coach hereby represents and warrants that the following statements are true and correct:
1. In the last fifteen (15) years, Head Coach has not been accused of sexual harassment, sexual assault, or other forms of sexual misconduct or discrimination.
 2. In the last fifteen (15) years, Head Coach has not retaliated or been accused of retaliation against any student, coworker, supervisor, or other person for making a complaint of sexual harassment, sexual assault, or other forms of sexual misconduct or discrimination.
 3. In the last fifteen (15) years, Head Coach has not engaged in any form of sexual harassment, sexual assault, or other forms of sexual misconduct or discrimination.

4. In the past fifteen (15) years, Head Coach has not been found guilty or otherwise responsible for sexual harassment, sexual assault, or other forms of sexual misconduct or discrimination.
5. Head Coach will fully and timely participate in all University-required training on the subjects of sexual harassment, sexual assault, or other forms of sexual misconduct or discrimination and will also require all Kansas Athletics, Inc. employees to do the same.
6. Head Coach has not entered into any type of settlement agreement related to allegations of sexual harassment, sexual assault, or other forms of sexual misconduct or discrimination against Head Coach, and Head Coach has no knowledge that any prior employer of Head Coach has entered into any type of settlement agreement relating to claims that Head Coach either engaged in sexual harassment, sexual assault, or other forms of sexual misconduct or discrimination or that Head Coach did not respond appropriately to allegations of sexual harassment, sexual assault or other forms of sexual misconduct or discrimination made against employees or student-athletes for which Head Coach had supervisory or other responsibility.
7. In the past fifteen (15) years, Head Coach has not engaged in or failed to report to appropriate institutional or regulatory officials conduct by employees or student-athletes for which Head Coach had supervisory or other responsibility that involves violations of rules or regulations related to academic integrity.
8. In the past fifteen (15) years, Head Coach has not engaged in conduct or failed to report to appropriate institutional or regulatory officials conduct by employees or student-athletes for which Head Coach had supervisory or other responsibility that would constitute a crime involving moral turpitude, violence, dishonesty or a crime of any type wherein the victim was a student, including a student-athlete.

- B. Head Coach agrees that if the statements made above are false, Athletics, in its sole discretion, may terminate this Agreement upon written notice to Head Coach pursuant to Section 12, unless the circumstances of such conduct have been disclosed to Athletics and KU, and Athletics has retained Head Coach's services after full disclosure of the prior conduct.

14. Termination for Disability or Death

- A. In the event of either Head Coach's death or disability during the Agreement's term, this Agreement shall be terminated under the following conditions:
1. Head Coach's death shall immediately terminate this Agreement and all amounts which are due and payable shall immediately vest to Head Coach's estate. All other benefits and payments pursuant to the provisions of this Agreement shall terminate upon his death.

2. If Head Coach's mental or physical incapacity precludes him from performing his head coaching duties and such condition shall continue for a period of more than 30 days, KU and Athletics acting collectively shall have the right, upon written notice to Head Coach or his legal representative, to place Head Coach on administrative leave pursuant to Athletics' administrative leave policy, to name an interim head coach for the intercollegiate men's baseball program, and to take additional steps set forth in Athletics' policies, up to and including termination.

If this Agreement is terminated due to disability of the Head Coach, neither party will owe the other further salary.

15. Termination by Head Coach

- A. Head Coach acknowledges, agrees, and affirms that he has special, exceptional, and unique knowledge, skill, and ability which, in addition to future acquisitions of baseball knowledge and experience at KU, as well as KU's special need for continuity in its intercollegiate men's baseball program, render Head Coach's services unique.
- B. Head Coach recognizes that his promise to work for Athletics for the entire term of this Agreement is an essential consideration in Athletics' decision to employ him as Head Coach of the intercollegiate men's baseball program. Head Coach also recognizes that Athletics is making a highly valuable investment in his continued employment by entering into this Agreement and its investment would be lost or diminished were he to resign or otherwise terminate his employment prior to the termination date of this Agreement.
- C. Head Coach acknowledges, agrees, and affirms that his departure from KU for another coaching position at any NCAA member institution or any other coaching or non-coaching positions, including but not limited to Major League Baseball (including its Player's Union and Minor League Baseball), that may result in termination of his employment with Athletics prior to the expiration of the term of this Agreement, Head Coach shall be responsible to pay, or have paid on his behalf, liquidated damages to Athletics in the amount of release payments equal to:
 1. Three years' compensation if terminated by Head Coach in Contract Year One;
 2. Two and one half years' compensation if terminated by Head Coach in Contract Year Two;
 3. Two years' compensation if terminated by Head Coach in Contract Year Three;
 4. One and one-half year's compensation if terminated by Head Coach in Year Four;
 5. One year's compensation if terminated by Head Coach in Year Five; or
 6. If terminated by Head Coach in Year Six or Incentive Year Seven, one-half of the annual compensation or the remaining compensation, whichever is less.



- D. The parties agree that such liquidated damages are fair and reasonable compensation for losses that Athletics will incur and are not a penalty and shall be due and payable within sixty (60) days following Head Coach's termination or resignation or by agreement acceptable to both parties. Head Coach shall not be liable to Athletics for the loss of any amounts, collateral business opportunities, or any other benefits, perquisites or income resulting from activities such as, but not limited to camps, clinics, media appearances, television or radio shows, or from any other sources as a result of his termination of Head Coach's employment under this Agreement.
- E. Further, in the event Head Coach should terminate his employment, for whatever reason, Athletics shall be obligated in that event to pay Head Coach only amounts owed to Head Coach under this Agreement up to the date of termination. Head Coach shall not be entitled to receive any other benefits or payments that become due after the date of termination except as might be expressly provided elsewhere in this Agreement.
- F. Head Coach agrees that during the term of this Agreement, he shall notify the Director of Athletics or his or her designee, and obtain permission prior to, any discussions by Head Coach, his agents or representatives, pertaining to coaching opportunities at any NCAA member institution, or any other coaching or non-coaching positions that may result in termination of his employment with Athletics. Such notice to the Director of Athletics or their designee must be provided within twenty-four (24) hours of receipt by Head Coach or his agent, whichever is first.

16. Governing Law and Venue

This Agreement shall be governed by and construed in accordance with the laws of the State of Kansas, excluding Kansas's choice of law and conflict of law rules. Jurisdiction and venue of any suit arising out of or related to this agreement shall reside exclusively in the state court located in Douglas County in the State of Kansas, and Head Coach consents to personal jurisdiction and venue in that court. The Eleventh Amendment is an inherent and incumbent protection of the State of Kansas and of Athletics as a controlled affiliate of a state agency and need not be reserved, but Athletics here reiterates that nothing in or related to this provision shall be deemed a waiver of the Eleventh Amendment.

17. Ownership of Records

All documents, records, or materials, including without limitation personnel records, recruiting records, team information, films, statistics, or any other material or data, furnished to Head Coach by Athletics or KU or developed by Head Coach on behalf of or at the expense of Athletics or KU or otherwise in connection with Head Coach's employment are and shall remain the sole and confidential property of Athletics. Notwithstanding the foregoing, Athletics at its sole discretion will permit Head Coach, at his own expense, to copy and retain practice, drill or game film and/or any practice or game scripts, schedules and/or playbooks, after the Director of Athletics, at their sole discretion, has given written approval to Head Coach to do so. Except as set forth herein, within ten (10) days of the expiration or termination of this Agreement, Head Coach shall cause any such materials in his possession or control to be delivered to Athletics. At the same

time Head Coach shall return to Athletics all credit cards or keys or other equipment (computers, tablets, key pass cards, phones etc.) issued to him by Athletics.

18. Severability and Construction

If any provision of this Agreement shall be determined to be void, invalid, unenforceable, or illegal for any reason, this Agreement shall be ineffective only to the extent of such prohibition and the validity and enforceability of all remaining provisions shall not be affected.

The parties acknowledge that they have read this Agreement and have negotiated the terms of such Agreement, have had equal opportunity to review it with an attorney of their respective choice, and have agreed to all its terms. Therefore, the parties agree that there shall not be any inference, presumption, or conclusion drawn whatsoever against either party by virtue of that party having drafted this Agreement or any portion of this Agreement.

19. Amendments, Modifications, Extensions, and Waivers

In order to be enforceable, any amendments, modifications, extensions to this Agreement, or waivers of any of the terms of this Agreement must be in writing and signed by all parties. The parties agree that oral agreements to renew or extend this Agreement are invalid and non-binding.

20. Waiver

Waiver by any party of a breach of any provision of this Agreement shall not operate as or be construed as a waiver of any subsequent breach.

21. Notice

Any notice or other communication hereunder will be in writing, sent via registered or certified mail, overnight courier, or confirmed facsimile transmission and will be deemed provided, if, (a) mailed, when deposited, postage prepaid, in the United States mail, (b) sent by overnight courier, one business day after delivery to such courier, and (c) sent by confirmed facsimile. Any notice or other communication will be addressed as set forth below, or to such other address as any party will advise the others in writing:

If to Athletics:

Director of Athletics
Kansas Athletics, Inc.
1651 Naismith Drive
Lawrence, Kansas 66045
Facsimile: (785) 864-5035

With a copy to:

Office of General Counsel
1450 Jayhawk Boulevard, Room 245



The University of Kansas
Lawrence, Kansas 66045
Facsimile: (785) 864-5035

If to Head Coach:

Daniel Fitzgerald
Kansas Athletics, Inc.
1651 Naismith Drive
Lawrence, Kansas 66045

With copy to:

Jason Charney
Charney Management Group
1157 Fulton Hall Lane
Mt. Pleasant, SC 29466

22. Entire Agreement

This Agreement embodies the complete agreement concerning the employment of Head Coach by Athletics and shall, upon the effective date, supersede any other oral and written agreements between the parties regarding Head Coach's employment. The parties agree that none of them has made any representations with respect to the subject matter of this Agreement or any representations, including the execution and delivery hereof, except as are specifically set forth herein and each of the parties acknowledges that each has relied solely on his and its own judgment in entering into this Agreement with full opportunity to seek advice of competent counsel.

23. Approval by KU and Athletics

This Agreement shall not be binding upon Athletics until it is signed by the Director of Athletics and the Chancellor of the University of Kansas and upon completion of a successful background check.

[SIGNATURE PAGE FOLLOWS]

WITNESS WHEREOF, the parties have executed this Agreement on the latest day and year indicated below.

KANSAS ATHLETICS, INCORPORATED

By: 

Title: Director Athletics

6-15-22
Date

By: 

Title: Fitzgerald
Head Men's Baseball Coach

6/15/22
Date

By: 

Title: ason Charney
Agent for Daniel Fitzgerald

6/15/22
Date

Approved By: 

THE UNIVERSITY OF KANSAS

By: 

Douglas A. Girod, M.D.

06/15/22
Date

Title: Chancellor
Chairman of Board; Kansas Athletics, Inc.