

NOTICE OF PUBLIC MEETING

The Executive and Audit Committee of the Board of Trustees of the University of Oregon will hold the following public meeting. The meeting will be held remotely with a teleconference option available for members of the media and the public. Teleconference information is available at: <https://trustees.uoregon.edu/meetings>. Meeting materials are available at: <https://trustees.uoregon.edu/upcoming-meetings>.

**Board of Trustees of the University of Oregon
Executive and Audit Committee | Public Meeting
2:30 p.m. | Wednesday, January 5, 2022**

Convene

- Call to order, roll call, verification of a quorum

- 1. Approval of Certain Athletic Contract (Football, Assistant Coach/Defensive Coordinator):** Rob Mullens, Director of Intercollegiate Athletics

Meeting Adjourns

BOARD OF TRUSTEES

6227 University of Oregon, Eugene OR 97403-1266 T (541) 346-3166 trustees.uoregon.edu

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Summary of Requested Action
Assistant Coach/Defensive Coordinator Coach Employment
Agreement: Tosh Lupoi

Board of Trustees approval is sought for an employment contract within the Department of Intercollegiate Athletics (Athletics). Although employment matters are delegated to the University President, the Board has retained authority over contracts and instruments with an anticipated value reasonably expected to reach or exceed \$5,000,000. Athletics has negotiated terms of employment with Tosh Lupoi (Lupoi) to be the assistant coach/defensive coordinator of the intercollegiate football team, the aggregate value of which will exceed that threshold.

While Lupoi’s hire is not official until approved by the Board of Trustees, and had not been officially announced by the university, news of the agreement in principle did become public knowledge. The Board Chair is calling an EAC meeting for approval of the agreement.

Below is a brief summary of key economic terms:

Term 3 years (January 10, 2022 thru January 31, 2025)

Base Salary

Contract Year 1:	\$1,700,000 annualized
Contract Year 2:	\$1,700,000
Contract Year 3:	\$1,700,000

Incentives (Annual)

- Win Pac-12 North Division \$10,000
- Win Pac-12 Championship Game \$15,000
- Compete in any Bowl Game (and win at least 7 regular season games) \$15,000
- Compete In CFP NY6 (Orange, Cotton, Peach, Fiesta, Rose, Sugar) Bowl Game \$15,000
- Compete In CFP NY6 Bowl Game Designated as CFP Semi-Final Game \$10,000
- Win CFP Semi-Final Game \$25,000
- Win CFP National Championship \$35,000
- Academic Progress Rate Goal \$5,000

Incentives are cumulative with a maximum total of \$130,000

**Executive and Audit Committee
Board of Trustees of the University of Oregon**

Resolution: Authorization to Execute Certain Employment Agreement (Tosh Lupoi)

Whereas, the Department of Intercollegiate Athletics (“Athletics”) has selected Tosh Lupoi (Lupoi) as assistant coach/defensive coordinator of the University of Oregon’s (University) intercollegiate football team

Whereas, Lupoi had a successful career as an intercollegiate coach prior to joining the University;

Whereas, Athletics and Lupoi have agreed to terms for his employment, effective January 10, 2022, as assistant coach/defensive coordinator of the football program; attached hereto as Exhibit A;

Whereas, ORS 352.107(c) grants the University of Oregon the authority to make any and all contracts and agreements that are appropriate;

Whereas, the Policy on the Retention and Delegation of Authority requires Board of Trustees’ approval for instruments exceeding \$5,000,000;

Whereas the Policy on Committees authorizes the Executive and Audit Committee to act on behalf of the Board of Trustees.

Now, therefore, the Executive and Audit Committee (EAC) of the Board of Trustees of the University of Oregon hereby approves the terms negotiated by the Director of Intercollegiate Athletics with Tosh Lupoi for employment as the assistant coach/defensive coordinator of the intercollegiate football team and authorizes the University to execute a contract including the terms articulated in the employment agreement attached hereto as Exhibit A.

Moved: _____ Seconded: _____

Trustee	Vote	Trustee	Vote
Aaron		Kari	
Holwerda		Lillis	
Hornecker		Ralph	

Record here if voice vote without dissent rather than roll call: _____

Dated: _____ Recorded: _____

EXHIBIT A

Employment Agreement

This Employment Agreement (Agreement) is entered into by the University of Oregon (University) and Tosh Lupoi (Coach).

1. Purpose

University and Coach have entered into this Agreement because the University desires to hire Coach, and Coach desires to work as an employee for the University. For these reasons, University has agreed to employ Coach in a salaried position, and Coach has agreed to be employed by the University upon the terms and conditions set forth herein.

2. Position

2.1 Description of Coach's Responsibilities

- a. Title. Coach is employed as assistant coach/defensive coordinator of the University's intercollegiate football team subject to the terms and conditions of this Agreement. Coach is also an exempt Officer of Administration (OA), as defined in the OA employment policy.
- b. Effort; Compliance. Coach agrees: (i) to devote his best efforts full time to the prompt and efficient performance of all duties and responsibilities of an assistant football coach/defensive coordinator and such other reasonably related duties and responsibilities (so long as they do not interfere with his duties and responsibilities as assistant football coach/defensive coordinator) as may be assigned to him from time to time; (ii) to give proper time and attention to furthering his responsibilities to the University; (iii) to comply with all rules, regulations, policies, and decisions established or issued by the University, the University Department of Intercollegiate Athletics (Department), the Pacific-12 Conference (PAC-12), and the National Collegiate Athletic Association (NCAA). Coach also agrees that notwithstanding the provisions of Section 4.5, during the Term of this Agreement he will not engage, directly or indirectly, in any business or other activity which would significantly detract from his ability to apply his best efforts to the performance of his duties and responsibilities. Coach also agrees not to usurp any business opportunities of University.
- c. General administration as assistant football coach/defensive coordinator. During the period in which University employs Coach as assistant football coach/defensive coordinator, Coach agrees to perform properly, efficiently, to the best of his ability and consistent with University standards, all duties and responsibilities of an assistant football coach/defensive coordinator in this position. Coach is responsible for assisting with the management and administration of all phases of the intercollegiate football program fully in keeping with the philosophies and objectives of the Department and the University, including compliance with NCAA, PAC-12, and University policies which can be found in the

University's Policy Library, currently at policies.uoregon.edu.

d. Day to day responsibilities as assistant football coach/defensive coordinator. As assistant football coach/defensive coordinator, Coach's specific and essential responsibilities include, but are not limited to, assisting the head football coach with: (i) Working with student-athletes involving recruitment and selection, leadership and instruction in personal and athletic development, determining eligibility and promoting academic progress; (ii) Instilling, modeling and reinforcing in student-athletes high standards for character and conduct both on and off the field; (iii) Participating in activities to generate and maximize revenue to sustain the football program and to support other activities of the Department; (iv) Arranging and conducting practices; (v) Supervising personnel, including assistant coaches, graduate assistants and others, providing orientation and training as appropriate, conducting performance evaluations at least annually as necessary; (vi) Assisting with the conditioning, training, safety and discipline of student-athletes, including the development, and effective communication and implementation of team rules; (vii) Directing the team at all football games and events; (viii) Participating in clinics, exhibitions, and camp activities as reasonably requested by the athletic director or head football coach; (ix) Participating in public relations events as reasonably requested by the athletic director or head football coach; (x) Cooperating with other Department and University personnel, including other coaches; and (xi) Performing other duties as reasonably requested by the athletic director or head football coach.

e. Ethical Responsibilities: The University has established a tradition of ethical conduct at all levels of University life. In accordance with this tradition, Coach, as a member of the Department, agrees to represent the University in an honorable and ethical manner at all times. Standards for the ethical conduct of Department staff are established and enforced by the athletic director, the University, the PAC-12 Conference and the NCAA. In addition, University Intercollegiate Athletics Policy § 8.036 reflects and specifies certain requirements regarding ethical conduct, as does University's Conflict of Interest and Conflict of Commitment policies, each of which, as amended from time to time, shall be deemed a part of this Agreement. Coach further agrees to comply with all applicable constitutions, bylaws, interpretations, laws, policies, standards, directives, rules or regulations relating to the conduct and administration of the football program. If Coach becomes aware, or has reasonable cause to believe, that violations of applicable constitutions, bylaws, interpretations, laws, policies, standards, directives, rules or regulations have taken place, he shall report them promptly (and in all cases within seven days) to the athletic director. As set forth in NCAA Bylaw 11.2.1(a) and 19.2.3, Coach has an affirmative obligation to cooperate fully in the NCAA infractions process, including the investigation and adjudication of any case involving allegations of infractions. Such cooperation includes cooperation with any internal University investigation, but also cooperation with an investigative or adjudicative body of the NCAA, in order to further the objectives of the NCAA, its infractions program, and its independent alternative resolution program. Such cooperation shall include disclosing and providing access to all electronic devices used in any way for university purposes and providing access to all social media, messaging and other applications

that are or may be relevant to an investigation. Coach will comply with the University's reporting obligations relating to prohibited discrimination, the Clery Act and the abuse of minors. Coach also agrees to adhere to, to respect and to follow the academic standards, requirements and policies of the University at all times, including with respect to the recruitment of prospective student-athletes and the eligibility of current student-athletes. Coach shall conduct all team activities in a manner that prioritizes student athletes' emotional and physical health and safety. Coach shall at all times follow the directives of trainers and medical staff regarding a student athlete's fitness for practice and competition and shall never use physical exercise as a form of punishment.

f. In addition to the duties described above, Coach is required to perform significant public and public relations functions related to football team, including, but not limited to: i) appearing in public as a representative of the team and the entire athletics program; ii) participating in media days and press availability in conjunction with contests and significant events involving the team; iii) conducting himself at all times with an understanding that his words and actions reflect directly on the character and integrity of the football team and the Department; and iv) representing the team and the Department at events, as requested by the head football coach or the athletic director, including at media events, fan events, donor meetings, tournaments and other special occasions.

2.2 Reassignment.

The University's intent is for Coach to serve as the assistant coach/defensive coordinator of the intercollegiate football team throughout the Term of this Agreement. However, Coach understands that the University retains the right to assign Coach to other positions with different duties during the Term of this Agreement (Reassignment). Should such Reassignment be under consideration, University shall consult with Coach. The University also has the right to place Coach on paid administrative leave pending the outcome of an investigation relating to an alleged violation of this Agreement, applicable University policy or state or federal law.

2.3 Reporting Relationship.

As assistant coach/defensive coordinator of the intercollegiate football team, Coach shall report to the head football coach or another member of the senior athletic administration as designated by the athletic director.

3. Term of Agreement

The term (Term) of this Agreement shall begin on January 10, 2022, and end at 11:59 pm Pacific Time on January 31, 2025, at which time this Agreement shall expire without penalty to either party. This contract does not automatically renew. Each contract year (Contract Year) is defined below.

Contract Year 1:	January 10, 2022 – January 31, 2023
Contract Year 2:	February 1, 2023 – January 31, 2024
Contract Year 3:	February 1, 2024 – January 31, 2025

4. Compensation

Coach is entitled to compensation as identified in this Agreement. Coach may earn supplemental income related to his employment as and to the extent approved by the University and consistent with NCAA and PAC-12 regulations. All payments from University are subject to applicable deductions and withholdings for tax purposes and employee benefit programs in which Coach participates. All payments are also subject to the terms and conditions in Sections 6 and 7 regarding termination of this Agreement.

4.1 Salary

University shall pay Coach a Guaranteed Salary as outlined below. Coach's Guaranteed Salary shall be paid in equal installments on the University's regular pay days.

Contract Year 1:	\$1,700,000 annualized
Contract Year 2:	\$1,700,000
Contract Year 3:	\$1,700,000

4.2 Fringe Benefits

a. Except as set forth in this Agreement, Coach shall be entitled to participate in the University fringe benefits offered to other employees that share his status as an Officer of Administration, subject to the limitations set forth in this section and section 8.8. These include (but are not limited to) group life insurance, medical, dental, and vision insurance; paid vacation and sick leave; disability insurance; participation in the Optional Retirement Plan; and opportunities to invest in tax deferred annuities and deferred compensation plans. Coach is not entitled to use negative sick leave. Coach will be provided with protected leave in compliance with state and federal law.

b. Coach is eligible to use paid vacation during his employment with the university, subject to the terms and conditions set forth in this paragraph. Coach understands that a maximum of 260 hours of vacation time may be accrued. Coach further understands and agrees that Coach will not receive payment for any unused vacation at the end of his employment with the University. Subject to any limitations imposed by state or federal law, Coach understands and agrees that Coach must notify, to the extent possible, and obtain the approval of his supervisor in advance of using vacation or sick leave. Absent extenuating circumstances, as determined by the University, failure to obtain permission prior to using vacation or sick leave will be considered an unexcused absence. Coach acknowledges that the University will record as vacation regular work days on which Coach is absent during off-season periods in the event that Coach fails to properly record such time as vacation or sick leave.

c. Coach will receive reimbursement for all business-related travel and out-of-pocket expenses, including travel expenses for his spouse/partner (whenever deemed appropriate by the athletic director), consistent with University policy.

d. University will pay the cost for Coach's spouse/partner to travel to one regular season away football contest. In the event the football team participates in a post-season bowl game, University agrees to pay the costs for Coach's spouse/partner and any dependent children living at home to travel to bowl game. Other spouse/partner or dependent travel may be approved at the athletic director's discretion. University will also provide reasonable parking accommodations for football home games at team facilities. Coach understands that these benefits may be subject to taxation.

e. University shall provide to Coach at all times during the Term of this Agreement while Coach is assistant football coach/defensive coordinator one (1) courtesy car. The Department will insure the car for official business, but Coach must provide automobile liability (no less than \$1 million limit) and collision insurance for personal use of the car. Should University be unsuccessful in obtaining the courtesy car for Coach, Coach shall receive a stipend of \$300 per month in lieu of the courtesy car.

f. During the Term of this Agreement while Coach is assistant football coach/defensive coordinator, Coach will receive, as part of the standard Athletic Department fringe benefit package and to help him fulfill his duties as assistant football coach/defensive coordinator: six (6) tickets to each of the University's football team's home games and two (2) tickets to each home game of each of the University's other varsity intercollegiate athletic teams. Coach understands that these benefits may be subject to taxation.

g. During the term of this agreement while Coach is assistant football coach/defensive coordinator, Coach will be eligible to annually receive a reasonable amount of apparel, equipment, and shoes from the University's contracted provider.

h. Coach is eligible to receive a Nike Elite allowance at the discretion of the athletic director.

i. University will pay Coach a signing bonus of \$35,000 upon signing of this Agreement. Signing bonus payment shall be in lieu of any relocation or temporary housing expenses either reimbursed to Coach or paid directly on behalf of Coach. Should Coach terminate this Agreement pursuant to section 6.3 prior to the end of Contract Year 1, Coach shall be required to pay to University 100% of signing bonus within 60 days of termination of this Agreement.

4.3 Annual Performance Incentives

Each Contract Year during the Term of this Agreement, Coach will be eligible to receive performance incentive payments as follows:

Win Pac-12 North Division	\$10,000
Win Pac-12 Championship Game	\$15,000
Compete in any Bowl Game (and win at least 7 regular season games)	\$15,000
Compete In CFP NY6 (Orange, Cotton, Peach, Fiesta, Rose, Sugar) Bowl Game	\$15,000
Compete In CFP NY6 Bowl Game Designated as CFP Semi-Final Game	\$10,000
Win CFP Semi-Final Game	\$25,000
Win CFP National Championship	\$35,000

Each of the bonus provisions listed above are cumulative. For example, if the team wins the Pac-12 North Division, wins the Pac-12 Championship Game, and competes in CFP NY6 Bowl game designated as a semi-final and loses, Coach will earn \$65,000 in Performance Incentives. Coach is eligible to earn a maximum of \$125,000 in Performance Incentives pursuant to this Section 4.3 if all Performance Incentives are met. Coach must be employed by University and serve as assistant football coach/defensive coordinator in the game to earn the applicable bonus. If earned by Coach, the incentive payments shall be made within forty-five (45) days following the season in which such incentive payments are earned.

4.4 Academic Incentives

a. Academic Progress Rate. To the extent permitted by law and in the absence of any adverse impact on any University program, Coach will be eligible to receive academic incentives payments based on the single-year Academic Progress Rate (APR) of the football team. The APR rates measured will be based on the following schedule:

<u>Contract Year</u>	<u>APR Criteria</u>	<u>Date APR Issued</u>
Year 1	2022-23 academic year APR	APR Issued June 2024
Year 2	2023-24 academic year APR	APR issued June 2025
Year 3	2024-25 academic year APR	APR issued June 2026

b. APR incentive payments will be based on the following schedule:

<u>Academic Progress Rate</u>	<u>Payment</u>
985 or greater	\$5,000

If earned by Coach, the incentive payment shall be made within forty-five (45) days of the date upon which the NCAA academic progress rate data is available to University. Coach must be employed by University as assistant football coach/defensive coordinator at the conclusion of each contract year to earn the APR bonus associated with that Contract Year.

4.5 Opportunities to Earn Outside Income.

While Coach is assistant football coach/defensive coordinator, Coach shall have the opportunity to earn income from outside the University as a result of his position under the terms and conditions set forth herein.

a. The following general terms and conditions shall apply whenever Coach wishes to earn outside income related to his expertise, experience, or occupation as an assistant football coach/defensive coordinator: (i) Any outside activities shall not interfere with the full, complete, and satisfactory performance of Coach's duties and obligations as a University employee, recognizing always that his primary obligations lie with the University; (ii) In no event shall Coach knowingly accept or receive directly or indirectly any monies, benefit, or any other gratuity whatsoever from any person, corporation, University booster club or alumni association or other benefactor if such action would violate NCAA or PAC-12 Conference legislation or the constitution, bylaws, rules and regulations, or their interpretations in effect at the time, and changes of such legislation, constitution, bylaws, rules and regulations or interpretations automatically apply to this Agreement without the necessity of written modification; (iii) Coach shall disclose to, and obtain the advance written approval of the athletic director before entering into agreements for outside income or in-kind or financial benefits. Subject to other terms of this Agreement, such approval shall not be unreasonably withheld as to arrangements not directly related to coaching responsibilities, information and activities. Except as required by the Department, Coach shall not endorse or be a spokesperson or celebrity personality for goods or services manufactured, sold or provided by persons or entities other than those with which University has contracted, without prior written approval of University. Such approval shall not be unreasonably withheld.

b. Coach may earn additional compensation as a result of his responsibilities operating University's football youth camps. Camp operation is subject to all the rules and procedures outlined in the Department's Procedural Manual and University policy. The opportunity to operate a camp on or using University facilities is exclusively available to Coach only while he is serving as assistant football coach/defensive coordinator. University shall have no responsibility or liability for loss of camp income

resulting from termination of this Agreement. University does not guarantee any minimal camp-related income. Income shall be determined consistent with Department procedures and practices.

c. Any income produced by outside activities is independent of this Agreement, and University shall have no responsibility or liability for any loss of such outside income resulting from termination of this Agreement or from the reassignment of Coach, regardless of Coach's expectations based on past history or representations and regardless of whether either party could have foreseen or contemplated such a loss upon termination or reassignment or whether such a loss resulted directly or indirectly from the termination or reassignment.

d. Coach shall not earn outside income from pre-game, post-game or coach's show, "highlights" and other television and radio show broadcasts. Except for spontaneous, live interviews consistent with any restrictions arising out of any University media rights holder agreement, Coach shall not provide any such services, commentary or performance relating to University of Oregon football except as consistent with any University media rights holder agreement unless approved by the Department.

e. The Department reserves the right to deal directly with manufacturers, importers, or distributors of athletic shoes, apparel or equipment, and to negotiate and contract for usage and endorsement of their products. Coach shall not enter into any such contracts.

f. Coach shall provide, as and when directed by the University, a detailed accounting in writing of all income and benefits from all sources outside the University.

5. Performance Evaluations

5.1 The head football coach will evaluate Coach's performance of his job duties and responsibilities annually on the same basis as performance evaluations are done for other employees of Coach's classification. These evaluations may take into account prior evaluations and the expectations and goals set for Coach in such prior evaluations.

5.2 As part of the evaluation process, win-loss record, post-season appearance performance (if any), recruiting success, compliance with University, Presidential, and NCAA policies, standards, directives, rules and regulations, student-athlete academic progress, student-athlete development, and fund-raising success shall be taken into account and evaluated against comparably situated and funded Division I intercollegiate athletics programs.

5.3 If Coach has a complaint regarding the terms and conditions of Coach's employment, Coach can report that complaint to the head football coach as appropriate. If that report relates to prohibited discrimination, Coach always retains the option make a report to the Office of Affirmative Action and Equal Opportunity or the Title IX Coordinator or to seek assistance from those offices, consistent with

UO policy relating to prohibited discrimination and state and federal law. Except as stated in this section 5, Coach has no other rights relating to performance evaluations or internal grievance or complaints processes.

6. Termination without Cause

6.1 Termination due to Death or Disability.

a. This Agreement shall terminate upon Coach's death. This Agreement shall also terminate upon Coach's total disability (within the meaning of University's disability insurance for employees of Coach's classification or within the meaning of Oregon Public Employees Retirement System (PERS) regulations or federal Social Security Administration Regulations).

b. If this Agreement is terminated pursuant to this section because of Coach's death, Coach's compensation and all other benefits shall terminate as of the calendar month in which death occurs, except that his estate or other designated beneficiary shall be paid all such death benefits, if any, as may be contained in any benefit plan now in force or hereafter adopted by University and due to Coach pursuant to that plan. Coach's dependents' continued eligibility for benefits shall be in accordance with the standard eligibility of dependents of Officers of Administration at the University. In addition, University shall pay to Coach's estate any compensation already fully earned but not yet payable under this Agreement.

c. If this Agreement is terminated because Coach becomes totally disabled, Coach shall continue to receive the Guaranteed Salary and any other standard University fringe benefits provided for under this Agreement until such time as Coach becomes eligible for (even if subsequently paid retroactively) total disability benefits from PERS, Social Security, or a private or group insurer (cumulatively disability benefits), whichever first occurs. At the time Coach becomes eligible for disability benefits, if any, all compensation and other University fringe benefits shall terminate. Coach has an obligation to make diligent efforts to apply for disability benefits. If Coach fails to make diligent efforts to apply for disability benefits, the university's obligations under this Section 6.1 shall be discharged.

6.2 Termination by University (not for cause)

a. The University shall have the right to terminate this Agreement at any time for any or no reason. Such termination shall be effectuated by delivering to Coach written notice of University's intent to terminate this Agreement without cause and shall be effective upon delivery to the Coach or upon the date stated in the letter, whichever is later (Termination Date). University shall not be obligated to state a reason for termination of Coach without cause. If University exercises its right under this Section 6.2, Coach shall only be entitled to payments, damages or compensation as provided for in Section 6.2.b below. This means that in no event will the University be obligated to pay Coach any amount in excess of

the amount provided for in Section 6.2(b).

b. Subject to Coach's obligations under Section 6.2.e, if University terminates this Agreement under this Section 6.2, University shall pay to Coach, as liquidated damages, the following:

One hundred percent (100%) of Coach's Guaranteed Salary at the time of termination multiplied by the number of years remaining in this agreement. Partial years shall be prorated by multiplying Guaranteed Salary at the time of termination by $X/365$, where X is the number of days remaining in the current contract year at the time of termination.

If head football coach voluntarily leaves his head coaching position at the University, University may terminate this agreement under 6.2. University shall then pay Coach as liquidated damages one hundred percent (100%) of Coach's current Guaranteed Salary (at the time of the termination) for a period of 12 months or the remaining term of this Agreement, whichever time period is less. All terms and conditions regarding this liquidated damages payment outlined in Section 6.2.c, 6.2.d and 6.2.e will apply.

c. University's obligation under Section 6.2.b shall not accrue interest (so long as not in arrears) and shall be paid on a monthly basis over the balance of the scheduled Term of this Agreement. University's obligations under section 6.2.b are subject to Coach's duty to mitigate, as set forth in Section 6.2.e. Failure to pay timely such liquidated damages shall constitute a breach of this Agreement and such sum shall be recoverable, in any state court of competent jurisdiction in the State of Oregon. Notwithstanding the foregoing, Coach is required to give the university reasonable notice of the breach (no less than ten days) and an opportunity to cure prior to initiating a lawsuit against the University. After the Termination Date, Coach will not be entitled to any other employee benefits except as otherwise provided in this Section 6.2 or required by applicable law. This means that Coach must return all UO property (including any assigned courtesy car) to the university by the Termination Date. In no case shall University be liable for the loss of any collateral business opportunities or any other benefits (including unemployment compensation), or perquisites, or income resulting from activities such as but not limited to, camps, clinics, media appearances, broadcast talent fees, apparel, equipment or shoe contracts, consulting relationships, or from any other (inside-the-University or outside-the-University) sources that may ensue as a result of University's termination of this Agreement under this Section 6.2.

d. Coach and University have bargained for and agreed to the foregoing liquidated damages provisions, giving consideration to the fact that termination of this Agreement by University under this Section 6.2 may precipitate or lead to Coach's loss of certain salary, benefits, supplemental compensation or other economic advantages or income related to his employment at the University, which damages are extremely difficult to determine fairly, adequately, or with certainty. The parties further agree that the payment of such liquidated damages by University shall constitute sufficient,

adequate and reasonable compensation to Coach for any loss, damages or injury Coach suffers because of such termination by University. The foregoing shall not be, nor be construed to be, a penalty. The provisions of this Section 6.2 shall be without prejudice to any other right (excluding unemployment compensation) Coach may have under applicable law. Coach acknowledges that state and federal taxes must be withheld and paid on liquidated damages as required by law.

e. If University terminates this Agreement under this Section 6.2, Coach agrees to mitigate University's obligations to pay liquidated damages under Section 6.2.b by making reasonable, good faith, and diligent efforts to obtain Comparable Employment, such as a coaching position at a college or university or with a professional team as soon as reasonably possible after termination of this Agreement. Should Coach obtain any employment, including, but not limited to, Comparable Employment, ("New Employment") University's financial obligations under this Agreement, including Section 6.2.b, shall cease if Coach's Monthly Compensation (defined as 1/12th of Coach's annual compensation, inclusive of all bonuses and any form of monetary compensation, including any payments into special programs, including special insurance vehicles or corporations or trusts, but excluding usual and customary non-monetary fringe benefits such as health and life insurance, club memberships and use of vehicles), is equal to or greater than University's obligation to pay liquidated damages under Section 6.2.b, prorated on a monthly basis. If Coach's Monthly Compensation, from New Employment is less than University's monthly obligation to pay liquidated damages under Section 6.2.b, the amount of University's obligation to pay liquidated damages shall be reduced on a monthly basis by the greater of: a) the amount of Coach's Monthly Compensation from such New Employment or, in the event University reasonably determines that the amount of such Monthly Compensation is not within an acceptable range of compensation amounts pursuant to the anticipated results of an arms-length negotiation between Coach and a new employer when then-existing and relevant marketplace factors are applied, or b) the median Monthly Compensation, as determined from publically available sources, of incumbents in equivalent coaching or athletic administrative positions in, as relevant, the NCAA Division, collegiate athletics' conference, or professional sports league in which Coach has obtained Comparable Employment or any other employment. In no event, will the University's then-current obligation to pay Coach liquidated damages increase if Coach resigns from New Employment or is otherwise terminated from New Employment. In the event Coach is separated from New Employment and the University still has obligations under Section 6.2, Coach continues to have the mitigation obligations set forth above. Coach shall promptly inform University of changes in his employment status (including monthly salary and type and value of fringe benefits that are included in the calculation of Coach's compensation) for purposes of the implementation of this Section 6.2.e. Coach agrees to provide University with a copy of any employment agreement relevant to Coach's obligations stated above, as well as other information necessary to establish compliance with this mitigation obligation including, upon request, information relating to income Coach has received in a manner that did not generate a form W-2 or 1099. Should Coach fail to produce evidence of engaging in good faith efforts to obtain employment within a reasonable time (not to exceed thirty days) following University's request for such documentation or should such documents indicate that Coach is not fulfilling Coach's mitigation obligations outlined in this section,

University's obligations to pay liquidated damages under Section 6.2.b shall cease.

6.3 Termination by Coach

a. Coach recognizes that his promise to work for the University for the entire Term of this Agreement is of essence to this Agreement. Coach also recognizes that the University is making a highly valuable investment in his continued employment by entering into this Agreement and that its investment would be lost were he to resign or otherwise terminate his employment with the University prior to the expiration of the Term of this Agreement. In recognition of these facts, the parties agree that Coach's decision to terminate this Agreement prior to its expiration will be subjected to the following terms and conditions.

b. If Coach wishes to pursue other employment opportunities, Coach is required to provide head football coach with written or verbal notice prior to meeting with representatives from another entity to discuss such employment opportunities. If Coach terminates this Agreement during its Term he must notify head football coach in writing. While Coach is assigned to the position of assistant football coach/defensive coordinator, such termination by Coach must occur at a time other than during the football competition (including post-season play in which the Oregon football team is competing), unless both parties mutually agree otherwise. However, so long as the termination occurs other than during the football season, nothing limits Coach's ability to provide notice at any time. If Coach gives notice prior to the completion of regular and, if relevant, post-season play, University may require Coach to continue his coaching and other responsibilities, or University may reassign Coach until the completion of all play. Simultaneously with such notice, Coach shall inform University in writing of his employment plans following the termination of his employment with University. Coach shall be deemed to have resigned his employment and terminated this agreement, as provided for in section 6.3, if Coach does not perform his duties for more than 30 days and such absence is unexcused, meaning that he did not obtain consent from the university prior to taking leave and the absence is not attributable to a medical emergency or other situation that prevented the Coach from informing the university of his absence. The University will determine whether a situation is one that prevents the Coach from informing it of his absence. If Coach resigns under Section 6.3, the University shall have no further financial obligation to Coach beyond the effective date of Coach's resignation.

c. Termination by Coach shall require Coach to pay, or cause to be paid, as repayment of Compensation, perquisites and benefits paid to or accrued by Coach in anticipation that Coach would fulfill the Term, a fixed sum to University, according to the following schedule:

Twenty five percent (25%) of Guaranteed Salary at the time of Termination by Coach if this Agreement is Terminated by Coach prior to February 28, 2024.

The amounts owed by Coach to University per this section 6.3c shall be waived by University in the following circumstances: (i) Coach leaves University for a position as a FBS level head football coach, NFL defensive coordinator (with full play calling responsibilities) or NFL head football coach; or (ii) Coach terminates this Agreement if, at such time of termination, Coach has been reassigned pursuant to Section 2.2.

d. Any amount owed by Coach to University as per Section 6.3(c) is payable in full within sixty (60) days of termination by Coach. The parties recognize and agree that the foregoing amounts also constitute a projection or measurement of University's damages which, in such a case, would be extremely difficult to determine, and that this provision is a sufficient and reasonable estimate of the potential injury to University and that it shall be enforceable as liquidated damages and not as a penalty. Provided, however, that if University membership in the Pac-12 Conference ends and the University does not join without a competition- season interruption, a conference of comparable stature and NCAA classification level, this subsection shall not apply and Coach shall not be obligated to pay any liquidated damages.

e. Coach and University have bargained for and agree to the foregoing liquidated damages, provisions, giving consideration to the fact that termination of the Agreement by Coach under this section 6.3 may precipitate or lead to University's loss of revenue or other economic advantages or income related to University's athletic program, which damages are extremely difficult to determine fairly, adequately or with certainty. The parties further agree that the payment of such liquidated damages by Coach shall constitute sufficient, adequate and reasonable compensation to University for any loss, damages or injury that University suffers because of such termination by Coach. The foregoing shall not be, nor be construed to be, a penalty.

7. Termination for Cause and Discipline

7.1 Coach may be disciplined as determined by the athletic director for: (i) any reason for which an Officer of Administration may be disciplined; (ii) for a material violation of any constitution, bylaw, interpretation, rule, regulation, or policy of the NCAA and PAC-12, policy, standard or directive of the University or the President; or (iii) any material violation of local, state or federal law or a material breach of this Agreement. Discipline under this provision may be in addition to discipline imposed by

the NCAA or the PAC-12 conference. Depending on the violation, the athletic director may provide an opportunity for Coach to remediate or may impose a reprimand, assess a fine (of a day's pay or more), suspend (with or without pay) or, consistent with Section 7.2, terminate Coach. Coach shall cooperate fully with any University personnel in the course of any investigation of illegal or prohibited behavior on the part of Coach, students, boosters, employees, administrators, volunteers, or agents of the University.

7.2 University shall have the right to terminate this Agreement for cause prior to its expiration. Coach waives any procedural rights he may have under UO policy or the law except those contained in this Agreement. If University is considering termination for cause, Coach shall be notified of the grounds and shall have the opportunity to present a statement of denial, explanation or excuse before such termination is finalized. Coach understands, however, that as set forth in NCAA Bylaw 11.2.1(b), if Coach is found to be in violation of any rule or regulation of the NCAA, Coach shall be subject to disciplinary or corrective actions as set forth in the provisions of the NCAA enforcement procedures. In that situation, Coach agrees that the University shall implement any such disciplinary or corrective actions imposed by the NCAA and that, notwithstanding anything else in this contract or this section, UO has the right to immediately implement the discipline (including termination) or corrective action required under the NCAA enforcement procedures; such action shall be considered cause, as set forth in Section 7.2(a).

a. "Cause" shall include in addition to its normally understood meaning in employment agreements and in University Policy: (i) A deliberate and serious violation of the duties outlined in this Agreement or refusal or unwillingness to perform such duties in good faith and to the best of coach's abilities; (ii) Conduct resulting in a conviction for violation of any criminal statute involving moral turpitude or a state or federal felony crime; (iii) A serious violation of any law, rule, regulation, constitutional provision, bylaw, or interpretation of the PAC-12 Conference or the NCAA, which may, in the sole good faith judgment of University, reflect or impact materially and adversely upon University or its athletic program or which may result in University being placed on probation by the PAC-12 Conference or the NCAA, including any violation which may have occurred during prior employment at University or another NCAA member institution, either by coach or by a member of the coaching staff or any other person coach supervises or directs; (iv) Absence from duty of 60 continuous days (except due to illness documented by a licensed physician) or 60 business days in any twelve (12) month period (except due to illness documented by a licensed physician) without the athletic director's consent (which shall not be unreasonably withheld); (v) a serious violation of any University or Presidential policy, standard or directive; (vi) Failure to prevent misconduct by student-athletes that results in harm to others in circumstances where coach could have prevented the misconduct and failed to take reasonable action to do so; (vii) any action or failure to act under circumstances reasonably calling for action, that results in significant risk of physical or emotional injury to a student-athlete, or (viii) misconduct, as that term is defined in the OA Corrective Discipline Procedure.

b. If this Agreement is terminated for cause, all obligations of University to make further payments or to provide any other consideration to Coach shall cease as of the end of the month in which such termination occurs. If the Agreement is terminated for cause, the University shall not be liable to Coach for any compensation, damages or the loss of any collateral business opportunities or any other benefits, perquisites or income whether from University or other sources.

7.3 Pay Reduction, Temporary Leave Without Pay, FTE Reduction or Lay Off. If athletic department revenues (or projected revenues) generated through ticket sales, donations and tv/multi-media rights are impaired by at least 10% for a fiscal year or over multiple fiscal years due to natural disaster, war, riot, pandemic, public health emergency, NCAA directive, government order, or other catastrophe beyond the control of the University, University may, without additional consideration, lay off, reduce FTE, implement a temporary leave without pay, or temporarily reduce Coach's Guaranteed Salary as outlined in 4.1. In the event of a prolonged leave without pay or layoff, University will work with Coach to facilitate access by Coach to any University, state or federal benefits programs for the provision of health benefits and unemployment compensation and the University's obligations under paragraphs 4, 4.1, 4.2, 4.3 and 4.4 shall otherwise be suspended during the layoff or furlough period.

8. Miscellaneous

8.1 This Agreement will be governed and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. In no event shall any part of this Agreement be construed as a waiver of sovereign and governmental immunities or limits of liability enforceable in the courts of the State of Oregon.

8.2 The captions or headings in this Agreement are for convenience only and in no way define, limit, or describe the scope or intent of any provisions of this Agreement.

8.3 The parties agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions will not be affected, and the parties agree to attempt to substitute for any illegal, invalid, or unenforceable provision a valid or enforceable one, which achieves the economic, legal and commercial objectives of the invalid or unenforceable provision to the greatest extent possible.

8.4 No waiver, consent, modification, or change of any term of this Agreement shall bind either party unless the same is in writing and signed by both parties and all necessary approvals have been obtained. Such express waiver, consent, modification, or change, if made, shall be effective only in the specific instance and for the specific purpose set forth in such signed writing. Failure of either party to enforce any provision of this Agreement shall not constitute a waiver of the right to future enforcement of that or any other provision.

8.5 This Agreement may be executed in counterparts, and via facsimile or electronically transmitted signature (i.e. emailed scanned true and correct copy of the signed Agreement), each of which will be considered an original and all of which together will constitute one and the same agreement. At the request of a party, the other party will confirm facsimile or electronically transmitted signature page by delivering an original signature page to the requesting party.

8.6 This Agreement may be publicly disclosed in its entirety.

8.7 Coach's position as assistant football coach/defensive coordinator is not tenure-related and has no academic rank.

8.8 This Agreement, together with all incorporated documents and exhibits attached hereto and referenced herein, constitutes the entire agreement between the parties with respect to the subject matter hereof and merges all prior and contemporaneous communications with respect to such subject matter. Accordingly, because this Agreement covers the terms and conditions of Coach's employment, Coach is not subject to those OA policies and procedures that cover the same subject matters covered by this agreement, including OA policies and procedures relating to time off (sick and vacation), separations, discipline or grievances. However, Coach is subject to those university policies expressly incorporated in this agreement and those university policies that concern subject matters not covered by this agreement. For example, Coach is subject to the University's policies prohibiting discrimination and requiring the reporting of prohibited discrimination, the University's policies requiring the report of fraud and abuse and the university policies covering minors on campus programs. This Agreement shall not be modified except by a signed writing dated subsequent to the date of this Agreement and signed by Coach and on behalf of University by its duly authorized representative. The parties hereby acknowledge and agree that this Agreement has been negotiated by the parties and their respective counsel and shall be interpreted fairly in accordance with its terms and without any strict construction in favor of or against either party.

8.9 All notices, claims, requests, demands and other communications hereunder shall be made in writing and shall be deemed given if delivered to the Coach or to the athletic director in-person or if delivered by either one of the following two methods: (i) mailed (registered or certified mail, postage prepaid, return receipt requested); or (ii) e-mailed to the person's official University e-mail address (read receipt requested). Generally, notices shall be delivered to the following persons simultaneously. However, if in-person delivery is used, the copy will be mailed or e-mailed within a reasonable time thereafter. Delivery is effective on: (i) the date the notice is delivered in-person; (ii) three days after notice is placed in the mail; or (iii) on the date e-mailed to the person's official UO e-mail address.

To Coach: Tosh Lupoi
 Last known address on file with Human Resources
 Official UO e-mail address

With a copy to:

To the University: Director of Athletics
 University of Oregon
 2727 Leo Harris Parkway
 Eugene, OR 97401

With a copy to: Office of the General Counsel
 University of Oregon

8.10 All compensation payable to Coach under this Agreement or sums payable to Coach for breach of this Agreement are payable only from revenues of the Department or funds made available to the Department by University's affiliated foundation. University is not obligated to use state general fund money to pay compensation payable to Coach or to pay sums payable to Coach for breach of this Agreement. Nothing in this section 8.10 shall be construed to affect University's obligation to pay compensation to Coach under this Agreement from the sources of funds identified in this Section 8.10.

The parties indicate their acceptance of and agreement to the terms and conditions of this Agreement by their signatures below. Coach can also indicate acceptance by providing coaching services to the University.

Coach

University of Oregon

Tosh Lupoi

Rob Mullens

Date

Date

University of Oregon President

Michael H. Schill

Date