

# **NORTHERN ILLINOIS UNIVERSITY MEN'S SOCCER HEAD COACH EMPLOYMENT AGREEMENT**

## **ARTICLE I - PURPOSE**

The BOARD OF TRUSTEES OF NORTHERN ILLINOIS UNIVERSITY ("University" or "NIU") and RYAN SWAN ("Employee" or "Coach") have entered into this Men's Soccer Head Coach Employment Agreement ("Employment Agreement" or "Agreement") because the University desires to employ the Employee subject to state law and University regulations and the Employee desires to serve as Head Coach of the University's Men's Soccer Team and to serve the entire term of this Employment Agreement. Both parties acknowledge that a long-term commitment by the University and the Employee is critical to the University's desire to operate a stable athletics program. The University and the Employee agree that head coaches of intercollegiate athletic teams at the University conduct their professional activities under circumstances unique in the family of University employees, including evaluation and scrutiny of team performances and individual academic achievement by the public and the media and controlled by external rules and regulations.

Furthermore, the University is committed to the academic as well as athletic success of its student-athletes and as such requires that its Men's Soccer Team, including its coaches, are evaluated on the academic success of the student-athletes as well as the individual team success and long term impact of the program. These circumstances justify a commitment to employment by the Employee and the University for periods longer than one year but less than a continuous appointment. The Employee is committed to both the academic and intercollegiate success of the University and desires to be employed with the University, subject to the terms as they are set forth in this Employment Agreement. For these reasons, the University has agreed to employ the Employee and the Employee has agreed to be employed by the University.

## **ARTICLE II - TERM**

Subject to the terms and conditions of this Employment Agreement, the University will employ the Employee as head coach for the Men's Soccer Team for the period beginning July 1, 2020, and ending January 31, 2024 ("Term"). The Term is not subject to automatic renewal. Terms and conditions related to employment as provided within this Agreement cease upon completion of the Term. Subsequent contracts will require completion of a new written agreement executed by the parties.

The parties acknowledge that the University, as an agency of the State of Illinois, cannot legally obligate funds beyond the end of the current fiscal year. After that date, the understandings set forth in this Agreement are subject to the continuation of appropriations by the Illinois General Assembly for those operations of the University with which Employee will be involved and/or the funding available for Intercollegiate Athletics at the University.

In the event that the State of Illinois fails to make such funds available at the levels required under this Agreement, the University agrees that it shall offer Employee the option to continue as Men's

Soccer Head Coach at the salary level determined by the Associate Vice President/Director of Intercollegiate Athletics (“Adjusted Base Salary”). In the event Employee elects not to continue as the Men’s Soccer Head Coach at the Adjusted Base Salary, Employee shall be permitted to terminate this Agreement upon written notice to the University within thirty (30) days of the University’s initial notification to the Employee of the Adjusted Base Salary, and notwithstanding anything to the contrary contained herein, Employee shall not be required to pay the liquidated damages indicated in Article VII, below.

### **ARTICLE III - DUTIES AND RESPONSIBILITIES**

#### **A. General Duties.**

The Employee is hereby employed by the University as Men’s Soccer Head Coach. Throughout the term of this Employment Agreement, the Employee shall use the Employee’s best full-time energies and abilities for the exclusive benefit of the University.

In the position as Men’s Soccer Head Coach, Employee will be responsible for relevant budget, scheduling, and the recruiting, training, supervision, and evaluation of student-athletes and coaching staff. Employee duties will also include contacts with the media, alumni, and civic groups and working to integrate Men’s Soccer into the whole spectrum of academic life to complement the University and its mission in the community, the State of Illinois and throughout the Mid-American Conference (“MAC”) region (and/or subsequent conference to which the Men’s Soccer Team belongs).

During the period in which the University employs Employee as Men’s Soccer Head Coach, Employee agrees to undertake and perform all duties and responsibilities reasonably attendant to the position of a Division I Men’s Soccer Head Coach. Employee further agrees to abide by and to comply with the Constitution, Bylaws, and interpretations of the National Collegiate Athletic Association (“NCAA”) and MAC (and/or any subsequent conference to which the Men’s Soccer Team belongs), as well as all NCAA and MAC (and/or any subsequent conference to which the Men’s Soccer Team belongs) and University rules and regulations relating to the conduct and administration of the Men’s Soccer Team, including but not limited to recruiting rules, as now constituted or as any of the same may be amended during the term hereof.

In the event that Employee becomes aware that violations of any such constitution, bylaws, interpretations, rules or regulations have taken place, Employee shall report the same promptly to the Associate Vice President/Director of Intercollegiate Athletics of the University or designee, or the University’s Ethics and Compliance Officer. The Employee agrees that the Employee has an affirmative obligation to cooperate fully in the NCAA infractions process, including the investigation and adjudication of a case, and to fully cooperate with and assist the NCAA enforcement staff, the Complex Case Unit, the Committee on Infractions, the Independent Resolution Panel, and the Infractions Appeals Committee. This obligation also includes complying with the independent accountability resolution process. Full cooperation by the Employee includes, but is not limited to, (i) affirmatively reporting instances of noncompliance to the NCAA in a timely manner and assisting in developing full information to determine whether a possible violation has occurred and the details thereof; (ii) timely participating in interviews and providing complete and truthful responses; (iii)

making a full and complete disclosure of relevant information, including timely production of materials or information requested, and in the format requested; (iv) disclosing and providing access to all electronic devices used in any way for business purposes; (v) providing access to all social media, messaging and other applications that are or may be relevant to the investigation, to the extent permitted by Illinois law (820 ILCS 55/); (vi) preserving the integrity of an investigation and abiding by all applicable confidentiality rules and instructions; and (vii) instructing legal counsel and/or other representatives to also cooperate fully. (NCAA Bylaw 19.2.3)

The Employee acknowledges that the Employee is responsible for the actions of all institutional staff members who report, directly or indirectly, to the Employee. Furthermore, the Employee is expected to promote an atmosphere of compliance within the Men's Soccer Team and to monitor the activities of all institutional staff members involved with the Men's Soccer Team who report, directly or indirectly, to the Employee (NCAA Bylaw 11.1.1.1).

The Employee agrees to be a loyal employee of the University. The Employee agrees to devote the Employee's diligent efforts full time to the performance of duties for the University, to give proper time and attention to furthering the Employee's responsibilities to the University and to comply with all rules, regulations, policies, and decisions established or issued by the University. The Employee recognizes that statements about the University and its administrators are often publicized and agrees to use the Employee's best efforts to keep positive and constructive in tone and substance any public comments the Employee makes about University policies or actions taken by senior administrators.

The Employee also agrees that notwithstanding the provisions of Article V of this Agreement, during the Term, the Employee will not engage, directly or indirectly, in any business which would detract from or conflict with the Employee's ability to apply the Employee's best efforts to the performance of the Employee's duties hereunder. The Employee also agrees not to usurp any corporate opportunities of the University. The Employee agrees to adhere to, to respect and to follow the academic eligibility standards of prospective and current student-athletes for the program. All academic standards, requirements and policies of the University shall also be observed by the Employee and members of the Employee's staff, including assistant coaches, at all times, and shall not be compromised or violated at any time.

The Employee agrees to comply with all Federal and State laws such as, but not limited to, the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act ("Clery Act") and Title IX of the Education Amendments of 1972 ("Title IX"). The parties acknowledge that the Associate Vice President/Director of Intercollegiate Athletics, faculty advisors and all coaches at the University are considered as "Campus Security Authorities" and as such, the Employee shall perform duties consistent with that title, including but not limited to the prescribed training by the University and/or other entities and requirement of reporting certain crimes, including but not limited to acts of sexual misconduct involving University personnel and/or students. Failure to abide by such legally required reporting obligations may result in disciplinary action up to and including suspension without pay or termination of employment.

The Employee agrees to comply with the University's Policy on Relationships between University Employees and Students, and any other applicable University or Intercollegiate Athletics policies and guidelines pertaining to the same subject. Consensual romantic relationships are defined as "any dating, romantic, amorous and/or sexual relationships between consenting employees and adult college students currently enrolled" at the University. The University's Policy on Relationships between University Employees and Students states that "a University employee should not be romantically or sexually involved with a student whom he or she teaches, advises, coaches, or supervises in any way" (Division of Academic Affairs, Academic Policies and Procedures 2010, Section II, Item 24).

#### **B. Specific Responsibilities.**

The specific responsibilities of the Men's Soccer Head Coach include but are not limited to the following:

1. Recruit with the approval of the Associate Vice President/Director of Intercollegiate Athletics or designee and supervise assistant coaches, including ensuring compliance by such coaches with MAC (or subsequent conference to which the Men's Soccer Team belongs), NCAA, University, State and federal laws, rules, regulations and policies;
2. Participate in the instruction and coaching of student-athletes;
3. Determine recruiting schedules for all Men's Soccer prospective student-athletes;
4. Schedule and scout upcoming opponents;
5. Recruit and interview prospective student-athletes, their parents/guardians and coaches;
6. In collaboration with University Athletics administrative officials, contact and be responsive to media, alumni and civic groups and appear on regularly scheduled broadcasts in conjunction with any multi-media rights agreement applicable to the University;
7. Make reasonable effort to integrate Men's Soccer into the whole spectrum of academic life to complement the University and its mission in the community;
8. Keep public statements complimentary to the University and its athletics program;
9. Make reasonable effort, working in cooperation with the University's faculty and administrative officials, to ensure that student-athletes' academic requirements are met, in accordance with the policies and procedures of the University's Student-Athlete Academic Support Services unit;
10. Use best efforts to promote the physical, mental, and emotional health and well-being of student-athletes and staff involved with the Men's Soccer team;

11. Use best efforts to maintain and enforce good conduct by student-athletes, and to enforce disciplinary rules and sanctions fairly and uniformly for all student-athletes on the Men's Soccer Team;
12. Assist in the creation and management of the Men's Soccer operating budget;
13. Schedule contests to comply with departmental and conference scheduling regulations;
14. Assist in fund-raising efforts and events when requested by the University; and
15. Other duties as assigned by the Associate Vice President/Director of Intercollegiate Athletics or designee that are customary for the role of a Men's Soccer Head Coach at the Division I level.

**C. Reporting and Evaluation.**

Employee shall report to the Associate Vice President/Director of Intercollegiate Athletics or to such other person who might be reasonably designated by the Associate Vice President/Director of Intercollegiate Athletics or the President of the University.

Prior to June 30 of each year, the Associate Vice President/Director of Intercollegiate Athletics will evaluate Employee's performance. This evaluation will be conducted in the approximate same manner as the evaluations of other Head Coaches in the Department of Intercollegiate Athletics. This annual evaluation will take into account prior evaluations and the expectations and goals set for the Employee.

In addition, for each year Employee serves as Men's Soccer Head Coach, Employee will be responsible for the evaluation of all assistant coaches and applicable direct support staff in the program.

**D. Prohibited Activities.**

Employee may not use the name or logo of Northern Illinois University in any endorsements or activities without the express prior written permission of the University. Employee shall comply with the requirements of the State Officials and Employees Ethics Act (5 ILCS 430/).

**E. Outside Activities.**

With respect to Employee's outside activities, whether for additional compensation or not, and in accordance with applicable Board of Trustees Regulations, activities external to the Employee's primary responsibilities shall not materially interfere with Employee's full and complete performance of duties as Men's Soccer Head Coach or other duties reasonably assigned to Employee as a Division I Men's Soccer Head Coach by the Associate Vice President/Director of Intercollegiate Athletics or present a conflict of commitment. The parties acknowledge that Employee's primary obligations lie with the University and its students.

In no event shall Employee 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 federal or State law or regulation, NCAA legislation or the constitution, bylaws, rules and regulations (or interpretations thereof) of the NCAA, as now exist or as they may be amended, or University policies and procedures. All such amendments automatically apply without written notifications and are incorporated herein and made a part of this Agreement.

#### **ARTICLE IV - COMPENSATION AND BENEFITS**

##### **A. Annual Salary.**

Effective July 1, 2020, the annual salary for duties performed by Employee under this Agreement shall be \$80,004 ("Annual Salary"), payable in monthly installments of \$6,667.00 (bi-monthly at \$3,333.50). The Annual Salary may be adjusted as required by the legislature or increased as deemed appropriate by the University. All salary is subject to mandatory withholding deductions as required by applicable law. The Annual Salary shall be considered Employee's "Base Salary" for purposes of determining Employee's subsequent compensation as Men's Soccer Head Coach.

Employee will be eligible for any salary increment program or any other incremental salary increase that the Board of Trustees and/or the University may offer University employees during the Term for which the Employee is eligible. Any other salary increases shall be in the sole discretion of the Associate Vice President/Director of Intercollegiate Athletics and are contingent upon the availability of funds and the approval of the President or designee.

##### **B. Benefits.**

The Employee will be contractually classified as a "Supportive Professional Staff" ("SPS") employee in the University system for human resources administration, with appropriately related employee benefits and privileges.

Employee will be eligible to receive the customary and ordinary fringe benefits available to all SPS employees at the University and will be subject to all legal withholdings or deductions required by state or federal law or regulation. Employee shall follow Intercollegiate Athletics guidelines for requesting and documenting personal time used, such as vacation time or sick time. All vacation time used is subject to the approval of the Associate Vice President/Director of Intercollegiate Athletics, and shall be arranged with due regard for the operating schedule of the Men's Soccer Team (e.g. primarily using vacation time during the off-season).

##### **C. Performance Incentive.**

When the coaching efforts of Employee result in the Men's Soccer Team being recognized in any of the following ways, Employee will be paid a performance incentive in the amounts indicated below. Unless otherwise noted, earned performance incentives ("Performance Incentives") included within each "Group" below are not cumulative within each Group (the Employee is awarded based on the highest level achieved within each Group, if applicable) and do not affect Base Salary. The payment of all Performance Incentives shall be subject to the approval of the Associate Vice President/Director of

Intercollegiate Athletics or designee. Retirement contributions for incentive compensation will made in accordance with State of Illinois law and University regulations.

Group 1. Graduation Success Rate (“GSR”). For each full academic year the Employee is Head Coach and the Men’s Soccer Team achieves a GSR as defined by the NCAA and as outlined below, Employee will receive the corresponding additional compensation no later than June 30 of the current academic year less all mandatory payroll deductions. This performance incentive is not cumulative. Without prejudice to the foregoing, Employee must be employed by the University as Men’s Soccer Head Coach on the date the GSR score is released to the public by the NCAA to be eligible for this Group 1 Performance Incentive.

- A GSR greater than or equal to 70% \$250
- A GSR greater than or equal to 75% \$500
- A GSR greater than or equal to 80% \$750

Group 2. Academic Progress Rate (“APR”). For each full academic year the Employee is Head Coach and the Men’s Soccer Team achieves a multi-year APR as defined by the NCAA and as outlined below, Employee will receive the corresponding additional compensation no later than June 30 of the current academic year less all mandatory payroll deductions. This performance incentive is not cumulative. Without prejudice to the foregoing, Employee must be employed by the University as Men’s Soccer Head Coach on the date the APR score is released to the public by the NCAA to be eligible for this Group 2 Performance Incentive.

- An APR greater than or equal to 960 \$250
- An APR greater than or equal to 970 \$500
- An APR greater than or equal to 980 \$750

Group 3. Coach/Staff of the Year. If the Employee is voted MAC Coach of the Year by the MAC (or subsequent conference to which the Men’s Soccer Team belongs), Employee will receive additional compensation of Five Hundred Dollars (\$500) no later than June 30 of the current academic year less all mandatory payroll deductions. If the Employee is voted as a member of the National Staff of the Year for Division I Men’s Soccer by the National Soccer Coaches Association of America (“NSCAA”), Employee will receive additional compensation of One Thousand Dollars (\$1,000) no later than June 30 of the current academic year less all mandatory payroll deductions.

Group 4. MAC Regular Season Champions or Co-Champions. If the Men’s Soccer Team wins the MAC (or subsequent conference to which the Men’s Soccer Team belongs) Regular Season Championship or Co-Championship in any given year while the Employee is Head Coach, Employee will receive additional compensation of Two Thousand Five Hundred Dollars (\$2,500) for each such occurrence thereof no later than June 30 of the current academic year less all mandatory payroll deductions. Additionally, if the Men’s Soccer Team wins the MAC (or subsequent conference to which the Men’s Soccer Team belongs) Regular Season Championship or Co-Championship in any given year while Employee is Men’s Soccer Head Coach, each full-time assistant Men’s Soccer coach will receive

additional compensation of Two Thousand Five Hundred Dollars (\$2,500) for each such occurrence thereof no later than June 30 of the current academic year, less all mandatory payroll deductions.

Group 5. MAC Tournament Championship. If the Men's Soccer Team wins the MAC (or subsequent conference to which the Men's Soccer Team belongs) Tournament Championship in any given year while the Employee is Head Coach, Employee will receive additional compensation of Two Thousand Five Hundred Dollars (\$2,500) for each such occurrence thereof no later than June 30 of the current academic year less all mandatory payroll deductions. Additionally, if the Men's Soccer Team wins the MAC (or subsequent conference to which the Men's Soccer Team belongs) Tournament Championship in any given year while Employee is Head Coach, each full-time assistant Men's Soccer coach will receive additional compensation of Two Thousand Five Hundred (\$2,500) for each such occurrence thereof no later than June 30 of the current academic year, less all mandatory payroll deductions.

Group 6. NCAA Postseason Participation (Regional Championship). If the Men's Soccer Team participates in the NCAA Regional Championship while the Employee is the Head Coach, Employee will receive additional compensation of Five Thousand Dollars (\$5,000) for each such occurrence thereof no later than June 30 of the current academic year, less all mandatory payroll deductions. Additionally, if the Men's Soccer Team participates in the NCAA Regional Championship while the Employee is the Head Coach, each full-time assistant Men's Soccer coach will receive additional compensation of Two Thousand Five Hundred Dollars (\$2,500) for each such occurrence thereof no later than June 30 of the current academic year, less all mandatory payroll deductions.

Group 7. NCAA Postseason Participation (Regional Championship Seeded). If the Men's Soccer Team participates in the NCAA Regional Championship as a seeded participant while the Employee is the Head Coach, Employee will receive additional compensation of Five Thousand Dollars (\$5,000) for each such occurrence thereof no later than June 30 of the current academic year, less all mandatory payroll deductions. Additionally, if the Men's Soccer Team participates in the NCAA Regional Championship as a seeded participant while the Employee is the Head Coach, each full-time assistant Men's Soccer coach will receive additional compensation of Two Thousand Five Hundred Dollars (\$2,500) for each such occurrence thereof no later than June 30 of the current academic year, less all mandatory payroll deductions.

Group 8. NCAA Postseason Advancement. If the Men's Soccer Team advances in the NCAA Championship while the Employee is the Head Coach, Employee will receive additional compensation of Five Thousand Dollars (\$5,000) for each such occurrence thereof no later than June 30 of the current academic year, less all mandatory payroll deductions. The maximum additional compensation for the Employee under this Group 8 incentive is \$5,000 each academic year. Additionally, if the Men's Soccer Team advances in the NCAA Championship while the Employee is the Head Coach, each full-time assistant Men's Soccer coach will receive additional compensation of Two Thousand Five Hundred Dollars (\$2,500) for each such occurrence thereof no later than June 30 of the current academic year, less all mandatory payroll deductions. The maximum additional compensation under this Group 8 incentive is \$2,500 for each full-time assistant Men's Soccer coach each academic year.



Group 9. NCAA Championship. If the Men's Soccer Team wins the NCAA Championship while the Employee is the Head Coach, Employee will receive additional compensation of Ten Thousand Dollars (\$10,000) for each such occurrence thereof no later than June 30 of the current academic year, less all mandatory payroll deductions. Additionally, if the Men's Soccer Team wins the NCAA Championship while the Employee is the Head Coach, each full-time assistant Men's Soccer coach will receive additional compensation of Five Thousand Dollars (\$5,000) for each such occurrence thereof no later than June 30 of the current academic year, less all mandatory payroll deductions.

**F. Additional Compensation.**

Employee may retain all income from speeches, radio and TV shows (and other media) that are not otherwise required under the current multi-media right agreement with the University, and appearances and written materials developed by Employee. Employee is solely responsible for the proper and timely reporting of any additional income to the Internal Revenue Service, Illinois Department of Revenue or any other duly constituted taxing body.

**G. Additional Individual Benefits.**

The following additional individual benefits shall be provided to the Employee.

(1.) Travel Expenses. It is recognized that Employee will incur expenses for travel, entertainment, program development, etc., in conjunction with Employee's duties as Men's Soccer Head Coach. All expenses and their reimbursements, regardless of the source of reimbursement, shall be in accordance with University rules and procedures. Proper accounts and receipts must be furnished and all items are subject to the approval of the Associate Vice President/Director of Intercollegiate Athletics.

(2.) Tickets. Subject to the University's annual approval, Employee will be issued four (4) tickets for discretionary use by guests of Employee's choice to all home football games to aid university business promotional efforts of the Department of Intercollegiate Athletics and other institutional interests. The University and the Employee agree that the intent of the parties, with respect to the tickets detailed herein, is that they are being provided to Employee to be used in Employee's discretion, for the betterment of the athletics program (and it is not the intent of the parties that the tickets are provided as a benefit or as income, despite the fact that they are listed in this Article IV; which is done solely for the purpose of reading convenience). These tickets are to be provided on a gratuitous basis to all and are not to be sold or transferred for any remuneration. Season tickets that are issued to the Employee and are used for non-business purposes will be subject to inclusion as an employee fringe benefit and are taxable to the Employee.

**H. Summer Camps.**

Subject to applicable University policies and procedures, Employee is responsible for management and operation of Employee's Men's Soccer camps or clinics. Employee will be entitled to all net revenue generated, less standard University operating expenses. It is acknowledged that each year the various costs and expenses may be adjusted because of revenue bonding requirements connected to the facilities to be used, but the dollar amount per day for campers, coaches, conference room facilities, the Convocation Center and/or other expenses shall be charged consistent with the lowest

rate available to any other user of these facilities during the time period involved. Revenue will be used at Employee's discretion consistent with NCAA bylaws, rules and regulations. Any such net revenue earned shall be paid to Employee through the University payroll and will be subject to normal payroll deductions. Employee shall not be entitled to conduct or direct summer camps that are not sponsored by the University, unless approved in advance in writing by Associate Vice President/Director of Intercollegiate Athletics.

**I. Athletic Products Promotion and Endorsement.**

The University and/or the Employee, with the University's prior approval, may enter into agreements with various manufacturers and distributors to provide athletic equipment, supplies, and accessories ("Products") for the University's intercollegiate athletics department. For the period that Employee is Men's Soccer Head Coach, and when required by such agreements, Employee will participate in promotional activities and endorse those Products that are provided for use in the program. Employee, the assistant coaches, athletes, and other personnel for the Men's Soccer Team will be required to use the Products in practice, games, and at public appearances when reasonable and appropriate. The University shall have no legal or financial responsibility for agreements between the Employee and third parties unless the University is a signatory of and party to those agreements.

**ARTICLE V - OTHER EMPLOYMENT AND INCOME**

During the Term, Employee shall not engage in any other employment, act in a consulting capacity to any person, partnership, association, or corporation, or receive income or benefits from sources outside the institution, except as may be permitted by the Constitution and Bylaws of the NCAA, the Rules and Regulations of Northern Illinois University and with the prior written approval of the President of the University. Approval shall be required annually. Each request for approval must be in writing and shall specify the source and amount of the income or benefit to be received. The approval of all income and benefits earned from sources outside the University shall be consistent with applicable state law and University policy related to outside income and benefits applicable to all University employees. Employee is required by NCAA Bylaws and this Agreement to provide a written detailed annual report through the Associate Vice President/Director of Intercollegiate Athletics to the President of the University specifying the amount of all income and benefits from athletically related income and benefits from approved sources outside the institution. Such sources include, but are not limited to the following: (1) employment or ownership of Men's Soccer camps; (2) endorsement or consultation contracts with apparel or equipment manufacturers; (3) participation in television or radio programs; (4) honorariums for speaking engagements; (5) housing or transportation benefits; and (6) income or benefits derived from ownership, control or management of a foundation, organization or other entity. If the Employee receives athletically related income or benefits from a source outside of the institution (e.g., income from endorsement or consultation contracts with apparel companies, equipment manufacturers, television and radio programs; income from ownership, control or management of a foundation, organization or other entities; etc.), the Employee must report such earnings (other than cash or cash equivalent (as opposed to tangible items) if the total amount received is \$600 or less) to the President on an annual basis (NCAA Bylaw 11.2.2). Except when Employee is required by the University to endorse, promote, appear in advertisements of, or consult with regard to athletic equipment or accessories for the purpose of

complying with contractual obligations of the University, the name, marks, or logos of the University may not be used and Employee may not be identified as the University's Men's Soccer Head Coach (1) for purposes related to any employment, consulting, or athletically related activities of Employee, other than for the University, or (2) in connection with Employee's endorsement, support, promotion, or advertisement of any person, partnership, corporation, association, product, or service, unless approved in advance in writing by the Associate Vice President/Director of Intercollegiate Athletics.

## **ARTICLE VI - VIOLATIONS**

If the NCAA or any other appropriate entity finds (after all permitted, and timely appeals) that Employee committed a major violation or infraction of NCAA bylaws, rules or regulations, whether while the Employee is employed by the University or during prior employment at another NCAA member institution, or if the Men's Soccer Team is found by the University, NCAA or any other appropriate entity to have committed a major violation or infraction or repeated secondary violations of NCAA bylaws, rules or regulations while Employee is employed by the University and resulting from the actions of the Employee, the Employee shall be subject to disciplinary or corrective action as set forth by the University and any applicable NCAA enforcement procedures, including but not limited to termination of employment for cause. The Employee understands and agrees that if the Employee is found to have committed a major violation or infraction or repeated secondary violations of NCAA regulations, the Employee shall be subject to disciplinary or corrective action as set forth in the provisions of the NCAA infractions process (see NCAA Bylaw 19), including suspension without pay or termination of employment. Refusal to cooperate or furnish complete and accurate information relevant to an investigation of a possible violation could result in a finding of unethical conduct that could result in disciplinary action, up to and including suspension without pay or termination of employment (NCAA Bylaw 10.1).

## **ARTICLE VII - TERMINATION**

### **A. Termination by the University.**

In the event Employee accepts employment in any capacity with an employer other than the University (except as permitted under Article V of this Agreement), or, unless as otherwise agreed to in this Agreement, if Employee resigns, dies, or becomes permanently disabled to the extent that, in the judgment of the Associate Vice President/Director of Intercollegiate Athletics, Employee cannot satisfactorily perform the duties of Men's Soccer Head Coach, this Agreement shall terminate and all obligations of the University to compensate Employee pursuant to this Agreement shall cease as of the date of such employment, resignation, death, or disability. The University shall be obligated to compensate Employee or Employee's estate in accordance with this Agreement for services performed prior to the termination date and, in the event of disability or death, Employee or Employee's estate shall be entitled to those benefits, if any, that are payable under any University sponsored group employee insurance or benefit plan in which Employee is enrolled.

(1.) This Agreement shall terminate automatically upon Employee's death, or upon written notice from the University if Employee is unable to perform the duties of the position to which Employee is then assigned for a period of more than one hundred twenty (120) consecutive days.

(2.) Except for automatic termination of this Agreement under Article VII(A)(1) or termination for “good cause” reasons under Article VII(A)(3), if the University terminates this Agreement for reasons other than good cause pursuant to this Article VII(A)(2), the University shall pay to the Employee a sum as full and complete liquidated damages equal to 100% of the remaining Base Salary for the current contract year, 100% of the Base Salary for the immediately following contract year if applicable, and 50% of the Base Salary for each of the subsequent contract year(s) remaining in the Term, if applicable, less all mandatory payroll deductions. Payment shall be made by the University within ninety (90) days of employment termination. Any payments by the University to the Employee under this Article VII(A)(2) shall be in accordance with the Government Severance Pay Act (5 ILCS 415/). “Contract Year” as used in this paragraph is defined to mean the twelve (12) month period commencing every July 1 and ending the following June 30, except for the Contract Year commencing July 1, 2023, which is a seven (7) month period ending the following January 31.

(3.) This Agreement may be terminated upon written notice from the University at any time by the University for “Good Cause.” In the event the Employee is terminated and/or fired by the University at any time for Good Cause, the Employee is not entitled to the payment of any salary, benefits, damages or severance pay beyond the effective date of said termination for Good Cause (except for amounts earned, accrued, vested or due prior to such date). For purposes of this Agreement, “Good Cause” shall be defined, along with its other normally understood meanings in employment contracts, as:

- a) The failure by the Employee to perform in any material respect any of the Employee’s duties or obligations under this Agreement;
- b) A deliberate or serious violation of any local, State or federal law, rule, regulation or Constitutional provision, or Board or University bylaw, regulation or rule, which violation may, in the sole judgment of the University, reflect unfavorably upon the University;
- c) Material insubordination;
- d) Employee’s conviction or plea of *nolo contendere* to a misdemeanor involving financial impropriety, moral turpitude or harassment, or any conviction or plea of *nolo contendere* to any felony, or the University’s independent finding of any conduct of the Employee that constitutes financial impropriety, moral turpitude or harassment and reflects unfavorably upon the reputation or mission of the University;
- e) Participation in an act of dishonesty, which act is materially harmful to the University;
- f) Major violation or infraction or repeated violations or infractions by Employee of NCAA bylaws, rules or regulations, as they may be amended from time to time and/or major violation or infraction or repeated violations or infractions by Employee of the bylaws, rules or regulations of any athletic conference with which the University is affiliated;

- g) Prolonged absence (defined as more than sixty [60] consecutive days) from duty without consent of Employee's supervisor, except as provided by the federal Family and Medical Leave Act, or other applicable law(s) or regulation(s);
- h) Misconduct (as defined by the Government Severance Pay Act (5 ILCS 415/)) or willful neglect in the performance of the Employee's duties that harms the University;
- i) Material violations of University or Department of Intercollegiate Athletics policies, including but not limited to the *Nondiscrimination/Harassment Policy* or *Title IX/Sexual Misconduct Policy*;
- j) Failure of the Employee to promptly report to the Associate Vice President/Director of Intercollegiate Athletics or other responsible official if Employee knows (or would have known in the exercise of reasonable diligence) of a serious rule violation of NCAA or the MAC (or any athletic conference with which the University is affiliated), or any local, State, or federal law, rule, regulation or Constitutional provision, or Board or University bylaw, regulation or rule by Employee, an assistant coach, staff member, athlete, or other representative of the University's athletic interests;
- k) Failure to abide by Employee's obligations as described in Article III(A) or Article VII(B)(1) of this Agreement;
- l) Or as otherwise defined by law.

The standard for termination for Good Cause (to the extent in conflict with University rules or policies which permit termination) shall be as defined in this Article.

The University shall have no obligation to use progressive discipline regarding the Employee's misconduct. Any University decision to utilize progressive discipline shall not create any future obligation for the University to use progressive discipline. In the event of termination of this Agreement for Good Cause, all obligations of the University under this Agreement shall cease immediately; provided, however, that the University shall be responsible to pay the Employee all amounts of compensation the Employee has earned (or which have accrued or have been achieved), but remain unpaid, as of the date of termination.

**B. Termination by Employee.**

Employee recognizes and accepts that Employee's promise to work for the University for the entire term of this multi-year Agreement is the essence of this Agreement with the University. Employee also recognizes that the University is making a highly valuable investment in Employee's continued employment by entering into this Agreement and that its investment would be lost were Employee to resign or otherwise terminate Employee's employment with the University as Men's Soccer Head Coach prior to fulfilling the terms of this Agreement. While recognizing these agreements and this entire Agreement, the parties agree that Employee may, nevertheless, voluntarily terminate

Employee's employment under this Agreement prior to its normal expiration, but only upon the following terms and conditions:

(1.) Should another coaching opportunity be presented to Employee or should Employee be interested in another coaching position or senior administrator position during this Agreement, Employee must notify the University's Associate Vice President/Director of Intercollegiate Athletics of such opportunity or interest in writing before any discussions can be held by Employee and/or any individual or entity acting on behalf of the Employee with the anticipated coaching position or senior administrator position principals.

(2.) If Employee accepts another coaching (collegiate or professional) or senior administrator position ("Position") before the completion of the Term, the University would sustain losses or incur expenses including, but not limited to, the cost of a search for Employee's replacement, a loss to the continuity and/or success of the Men's Soccer program, and a loss to the program's reputation. It is acknowledged that it is difficult, if not impossible, to determine the exact actual damages and, therefore, the parties agree that should the Employee terminate this Agreement at any time prior to January 31, 2024, while the Employee is Men's Soccer Head Coach to accept another Position, Employee will without further terms or conditions personally pay or cause to be paid by another on Employee's behalf in lump sum without delay within ninety (90) days of Employee's resignation effective date to the University a sum equal to the applicable amount specified below in (3). This payment will uncontestably and indisputably be as liquidated damages, in lieu of all other damages, and not as a penalty.

(3.) If Employee resigns Employee's position as the University's Men's Soccer Head Coach to accept another Position, Employee must inform that institution or organization of this provision and Employee's one-time amount payable to the University would be as follows:

- If Employee accepts another position between July 1, 2020 and June 30, 2021: \$160,000
- If Employee accepts another position between July 1, 2021 and June 30, 2022: \$80,000
- If Employee accepts another position between July 1, 2022 and June 30, 2023: \$40,000
- If Employee accepts another position between July 1, 2023 and January 31, 2024: \$0

Once paid, such payment shall constitute University's sole compensation and remedy. The University agrees to waive and hereby does waive any claim to punitive damages. In addition, the University agrees that the Employee shall be permitted to terminate this Agreement upon written notice to the University in the event the University materially breaches this Agreement and fails to cure such material breach within a reasonable period of time. In such an instance, no liquidated damages or other damages shall be payable by Employee whatsoever.

(4.) It is agreed that the provisions in this paragraph and elsewhere in this Agreement are fair and equitable and shall be considered neither a penalty nor a punishment.

### **C. Limitation of Damages for Terminations.**

Except for automatic termination as defined in Article VII of this Agreement, in the event of a termination by the University, with or without cause, damages which may be assessed against the University (or anyone connected with the University) shall not include loss of any collateral business opportunity, or of extra compensation (regardless of source) or any other benefits (whether contemplated by this Agreement or not) from any source outside the University. Nothing herein shall be deemed to be an acknowledgement that any damages whatsoever are available in the event the termination is for cause. Employee agrees to waive and hereby do waive any claim to punitive damages. Any payment to Employee by University under this Article VII shall be considered liquidated damages, in lieu of all other forms of damages or expenses, and the parties agree that Employee's acceptance thereof shall constitute adequate and reasonable compensation to Employee for all damages, expenses and/or injury suffered by Employee because of said termination by the University. In no case shall the University be liable for the loss of any collateral business opportunities or any other benefits or income resulting from activities such as, but not limited to, Men's Soccer camps, clinics, media appearances, apparel or shoe contracts, consulting relationships, or from any other sources that may ensue as a result of the University's termination of this Agreement. The foregoing is not, nor shall it be construed to be, a penalty.

#### **ARTICLE VIII - STANDARD OF CONDUCT**

Employee's employment and performance is subject to the policies, rules and Regulations of the Board of Trustees of Northern Illinois University, the institutional rules of the University, the Constitution, Bylaws and rules of the NCAA, and the constitution, bylaws and rules of any intercollegiate athletic conference of which the University is a member. Violations or infractions of such constitutions, bylaws, policies, rules, or regulations by Employee shall be sufficient cause for such disciplinary action as may be appropriate under the applicable constitutions, bylaws, policies, rules, or regulations.

#### **ARTICLE IX - MISCELLANEOUS**

##### **A. Tenure.**

Pursuant to University Regulations, Employee is not eligible for tenure, nor is there any expectation of continuing employment or re-appointment other than that which might be set forth in this Employment Agreement or any written modifications hereto.

##### **B. Entire Agreement: Amendments.**

This Employment Agreement constitutes the full and complete understanding of the parties with respect to Employee's employment as Men's Soccer Head Coach and supersedes all prior understandings, either written or oral, between the parties, including the Men's Soccer Head Coach Contract last executed on February 6, 2018. This Agreement may be amended only in writing, except for increases in pay or benefits, which may be accomplished without the necessity of written modification or amendment.

##### **C. Severability.**

If any provision of this Employment Agreement is judicially found to be invalid or unenforceable, either in whole or in part, this Agreement shall be deemed amended to delete or modify, if necessary, the offending provision or provisions or to alter the bounds thereof in order to render it valid, mutually binding and enforceable.

**D. No Waiver of Default.**

No waiver by either party of any default or breach of any covenant, term, or condition of this Agreement shall be deemed to be a waiver of any other default or breach of the same or other covenant, term or condition contained herein.

**E. University to Retain All Materials and Records.**

All materials or articles of information, including, without limitation, personnel records, recruiting records, team information, films, statistics, or any other material or data furnished to Employee by the University or developed by Employee on behalf of the University or at the University's direction or for the University's use or otherwise in connection with Employee's employment hereunder are and shall remain the sole confidential property of the University.

**F. Publicity Rights.**

University shall have the non-exclusive right to use the Employee's name, nickname, initials, autograph, facsimile signature, voice, video or film portrayals, photographs, likenesses, images or facsimile images for the purpose of promoting the University and the Men's Soccer Team.

**G. Employer's Legal Immunities and Defenses.**

Nothing in this Employment Agreement shall be construed to constitute a waiver or relinquishment by the University, the Board of Trustees, or the State of Illinois or their respective officers, employees, or agents of their right to claim such exemptions, defenses, privileges and immunities from lawsuits as may be provided by state or federal law.

**H. Notices.**

Any notices required by or sent pursuant to this Employment Agreement shall be in writing and shall be deemed to have been given on the earlier of the day actually received or on the day such notice is mailed, postage pre-paid, in the U.S. Mail, addressed to the party at the address set forth below, or at such other address which may be designated, in writing, by one party to the other.

To the Employee: Ryan Swan  
Last Known Home Address On File with University's Human Resources Department

To the University: Associate Vice President/  
Director of Intercollegiate Athletics  
Northern Illinois University

With copies to: Vice President and General Counsel  
Northern Illinois University



**I. Mutual Understanding.**

Each party has read this Employment Agreement, fully understands its terms and provisions, and has had the opportunity to obtain independent legal advice.


**ARTICLE X - GOVERNING LAW**

The validity, interpretation, performance, and enforcement of this Agreement shall be governed by the laws of the State of Illinois.

IN WITNESS WHEREOF, the parties have executed this Employment Agreement in the spaces below.

**BOARD OF TRUSTEES OF  
NORTHERN ILLINOIS UNIVERSITY**


**RYAN SWAN**

By   
Beth Ingram  
Executive Vice President & Provost

By   
Ryan Swan

Date 5/21/2020

Date 5/26/2020

By   
Sean T. Frazier  
Associate Vice President and  
Director of Intercollegiate Athletics

Date 5/22/2020