

MODIFICATION

Date: 21 August 2013

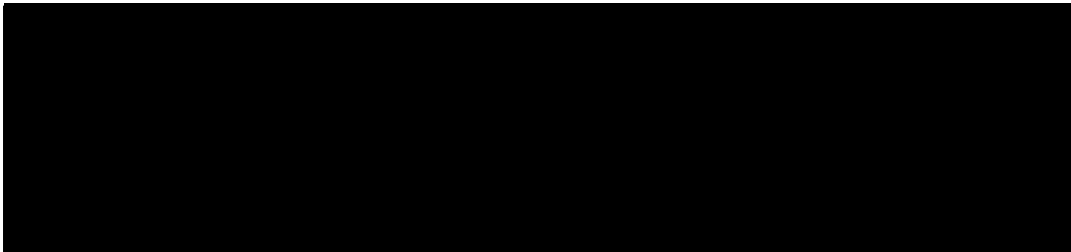
Contract: ODIA-13-06-022

Modification: 001

1. The Contract between the Army Athletic Association and Zach Spiker, Head Men's Basketball Coach, dated 01 June 2013 is hereby further modified as follows:
2. The present paragraph 5.01.a will be removed and replaced in its entirety by the following revised paragraph:
 - a. The guaranteed annual base compensation paid by the Fund to the Contractor under the Contract, if contract services are actually performed, shall be **\$142,500**.
3. It is understood and agreed that the Contract modification is effective 1 September 2013.
4. It is understood and agreed that this Contract modification and all above Contract modified terms are with the full and express mutual agreement of both parties to the Contract. All other terms of this Contract remain the same and in effect.

For the Contractor:

For the Army Athletic Association:



8-23-13

DATE 1 June 2013
CONTRACT ODIA-13-06-022

NONPERSONAL SERVICES CONTRACT

This Nonappropriated Fund Nonpersonal Services Contract (hereinafter, the "Contract") is deemed entered into the 1st day of June 2013 between the Army Athletic Association (hereinafter, the "Fund" or "AAA") and Zach Spiker (hereinafter, the "Contractor") for nonpersonal services in the organization and planning of the operations of the Head Men's Basketball programs. Nonpersonal services to be provided under this contract specifically include the provision of independent services as Head Men's Basketball Coach, United States Military Academy (hereinafter, the "USMA") and such other required performance pursuant to directives of the Director of Intercollegiate Athletics (hereinafter, the "DIA"). It is expressly understood and agreed by the Contractor that the Fund is a nonappropriated fund instrumentality of the Department of the Army and that no appropriated funds of the United States shall become due or be paid to the Contractor by reason of the Contract. It is also expressly understood by the contractor that the Contract is not subject to the Contract Disputes Act of 1978.

ARTICLE I - PURPOSE

The Fund and the Contractor have entered into the Contract because the Fund desires to obtain the services of the Contractor for a substantial period of time as described in Article IV, with the Contractor's assurance that he will provide such services the entire term of the Contract, a long term commitment by the Contractor being critical to the Fund's desire to run a stable athletics program, and the Contractor's desires to obtain the opportunities offered by the Fund, which are set forth in the Contract. The Fund and the Contractor agree that Head Coaches of intercollegiate athletic teams at the USMA conduct their professional activities under independent nonpersonal services contracts unique within the USMA, which incorporate control by external federal statute and regulations and which include evaluation and scrutiny of team performances by the USMA leadership and community, the public, and the media.

ARTICLE II - CONFIDENTIALITY

The Fund and the Contractor agree to keep the terms and conditions of the Contract confidential and to refrain from disclosing the terms and conditions of the Contract without the advance written permission of the other party, unless disclosure by the Fund is required by law or Federal regulation.

ARTICLE III - POSITION AND RESPONSIBILITIES

3.01. Contractor's Position and Responsibilities Subject to Substitution.

The Contractor, pursuant to the terms and conditions of the Contract, shall use his/her best full-time energies and abilities for the exclusive benefit of the Fund for the entire term of the Contract. It is the intent of the Fund and the goal of the parties that the Contractor shall serve as

the Head Coach of the USMA Intercollegiate Men's Basketball program throughout the term of the Contract. The parties understand, however, that the Fund retains the right to change the requirements of the nonpersonal services to be provided and to require the Contractor to substitute and provide other related services during the term of the Contract.

3.02. Description of Contractor's Responsibilities.

a. *Recognition of Requirement of Best Efforts in the Performance of Services.* The Contractor agrees to devote his/her best efforts full-time to the performance of services due the Fund, to give proper time and attention to furthering his/her responsibilities to the Fund and to comply with all rules and regulations referenced in the Contract, and with the policies and decisions established or issued by the USMA and the Fund. The Contractor recognizes that his/her statements about the USMA, the Fund and their administrators are often publicized and he agrees to use his best efforts to keep positive and constructive in tone any public comments he makes about the USMA or Fund policies or actions taken by senior officers or administrators. The Contractor also agrees that, notwithstanding the provisions of Section 5.05, during the term of the Contract, he will not engage, directly or indirectly, in any business which would detract from his/her ability to apply his best efforts to the performance of his duties hereunder or which would constitute a conflict of interest or an endorsement of a non-federal entity under the Joint Ethic Regulation (JER).

b. *General Duties and Responsibilities of Contractor.* During the Term of the Contract, under which the Contractor serves as Head Coach of the USMA intercollegiate Men's Basketball programs, the Contractor agrees to undertake and perform properly, efficiently, to the best of his ability and in consonance with the standards of the USMA and the Fund all duties and responsibilities attendant to the services to be provided as Head Coach of the USMA intercollegiate **Men's Basketball** programs as set forth in Section 3.02(c). The Contractor further agrees to abide by and comply with the constitution, bylaws, and interpretations of the National Collegiate Athletic Association (NCAA) and all NCAA, USMA, Fund, Patriot League or other applicable conference rules and regulations relating to the conduct and administration of the **Men's Basketball** programs. In the event that the Contractor becomes aware, or has reasonable cause to believe that violations of such constitution, bylaws, interpretations, rules or regulations may have taken place, he shall report the same promptly to the DIA. The Contractor agrees to adhere to, to respect and to follow the academic standards and requirements of the USMA in regard to recruiting and eligibility of prospective and current cadet athletes for the **Men's Basketball** programs. All academic standards, requirements and policies of the USMA and the Fund shall also be observed by the Contractor and members of his/her staff, including assistant coaches, at all times and shall not be compromised or violated at any time. If the Contractor is directed to provide other related services during the term of the Contract pursuant to the provisions of Section 3.01 hereof, he will undertake and perform properly, efficiently, to the best of his ability and, consonant with the standards of the Fund and the USMA, all duties and responsibilities delegated to him by the Fund as part of such position and shall comply with all of the provisions of the Contract applicable to such position.

c. *Specific Duties and Responsibilities as Head Coach.* As of the effective date of the Contract, the duties and responsibilities assigned to the Contractor in connection with his position as Head Coach of the USMA Intercollegiate **Men's Basketball** programs are as set forth below. The list of specific duties and responsibilities supplements and is not exclusive of the other general duties and responsibilities provided for elsewhere in the Contract.

(1) *General Description:* The Head Coach of the USMA intercollegiate **Men's Basketball** programs is a specialized nonpersonal service. By providing this service the Contractor is neither a federal employee nor a member of the USMA faculty. The Contractor is responsible for evaluating, recruiting, training and coaching cadet-athletes to compete successfully against intercollegiate level competition in a quality **Men's Basketball** programs.

(2) *Specific Service Responsibilities:* The provided service has these additional specific work responsibilities:

- (a) Direct assistant coaches, including compliance by such coaches with NCAA, Patriot League and other applicable conference rules and regulations;
- (b) Participate in the instruction and coaching of cadet-athletes;
- (c) Determine recruiting schedules;
- (d) Evaluate and recruit prospective players, and interview their parents and coaches;
- (e) Contact with media, alumni, and civic groups;
- (f) Work to integrate sports into the whole spectrum of Academy life to complement the USMA, the Office of the Director of Intercollegiate Athletics (ODIA), the Fund and their mission in the military community;
- (g) Have complete knowledge of the rules and regulations governing intercollegiate athletic competition and maintain strict compliance therewith by the program;
- (h) Be a disciplinarian but be fair, sympathetic and protective of the cadet-athletes while motivating them to excellence;
- (i) Maintain a mature and rational attitude, keep emotions in control; No physical or verbal abuse, both of which will be determined/defined by the Fund;
- (j) Attend and participate in regular press conferences as are set by the Office of the Director of Intercollegiate Athletics (ODIA);
- (k) Attend and participate in such other press conferences and promotions as requested by the DIA;
- (l) Cooperate with the staff of the Athletic Media Relations Office and the USMA Public Affairs Office (PAO) for the purpose of affecting a positive media image for the **Men's Basketball** team, the Army Athletic Association, and the USMA;

- (m) Make every effort to cooperate with and support the USMA staff and faculty to ensure that all cadet-athletes' academic and military requirements are met;
- (n) Take part in the promotions of other USMA and Army athletic programs and events as requested by the DIA;
- (o) At the discretion of the DIA, be directed to participate and speak at gatherings and related USMA and alumni functions, appearing on television and radio broadcasts of USMA intercollegiate sport name games and shows dedicated to USMA athletics, as may be developed, and any other appearances as directed by the DIA, at the Director's sole discretion; and
- (p) Monitor and attend when directed, conferences, training events, events and activities of organizations governing the intercollegiate program, to include specifically the NCAA, as deemed necessary by the Director of Athletics.

(3) *Responsibilities of DIA.* Contractor acknowledges that the DIA, or his appointed designee, will be responsible for:

- (a) Making all travel arrangements for team travel including transportation, housing, meals and related activities; and
- (b) Scheduling of games, including rescheduling of games to accommodate television broadcasts.
- (c) Setting the annual budget and Contractor agrees to accept and operate within the budget as set by the DIA.
- (d) Selecting and discharging of all assistant coaches after discussion with the Contractor. The terms of all contracts for assistant coaches shall normally be for one year only. The initial contract may be in excess of one year or may be only part of the initial year depending upon date of contract award.
- (e) The determination of all matters listed in Section 3.02(c)(3). The DIA or his appointed designee, will normally consult with the Contractor with respect to the responsibilities of the DIA listed in Section 3.02(c)(3). However, it is agreed and understood by all parties that the final determination and decision on all such matters, whether or not consultation has occurred, shall be within the exclusive decision making authority of the DIA or his appointed designee.

3.03. Contractor May Be Disciplined for Violations of NCAA and Conference Rules and Regulations.

- a. If the Contractor is found to be in violation of NCAA rules and regulations, during the term of the Contract, the Contractor shall be subject to disciplinary or corrective action as set forth in the

NCAA enforcement procedure. The Contractor may be suspended for a period of time, without compensation, or the Contract may be terminated as provided in Section 6.01(a) thereof if the Contractor is found to have been involved in serious and intentional violations of NCAA, Patriot League, or other applicable conference rules and regulations.

b. The Contractor is required to report to the DIA and to the Superintendent in writing, his/her knowledge of and/or his/her involvement in violations of the rules and regulations of the NCAA, Patriot League, the Eastern College Athletic Conference (ECAC), or other applicable league or conference now existing, its successor or thereafter enacted, which involve USMA.

3.04. Contractor's Responsibilities to Comply with Federal Law and Regulations Applicable to the USMA.

The Contractor is responsible for personal knowledge of and, where appropriate, compliance with the policies and regulations of the USMA, the Department of the Army (DA), and the Department of Defense (DoD), as they pertain to the services performed under the contract. Specifically, the Contractor shall be familiar with the Joint Ethics Regulation (JER) (DoD Directive 5500.7-R), which is applicable to all Government employees. Although the JER is not specifically applicable to contractor personnel, conduct on the part of the Contractor, which would constitute a violation of the JER by a federal employee and which is not otherwise authorized by the terms of this Contract may be cause for termination of this Contract under Section 6.01(a). Similarly, a violation of other applicable policies and regulations, as they pertain to the services performed under the Contract may be cause for termination under Section 6.01(a).

3.05. Reporting Relationship.

a. The Contractor shall timely report to the DIA at such designated time and date or to such other person as directed by the Contracting Officer, DIA or appointed designee, as the Contract designated and declared reporting superior of the Contractor.

b. The Contractor's service requirements and responsibilities shall be reviewed, revised and assignment or reassignment directed from time to time as deemed appropriate, by the Contracting Officer, DIA or appointed designee, as Contractor's reporting superior. As of the effective date of this Contract, the job duties and responsibilities assigned to the Contractor are those set forth in Section 3.02 thereof.

ARTICLE IV – TERM OF CONTRACT

The deemed effective date of the Contract is 1 June 2013. The contract shall terminate on 30 June 2018. The Term of Contract, however, is subject to the terms and conditions of Article VI thereof concerning termination.

ARTICLE V - COMPENSATION

5.01. Guaranteed Base Compensation.

a. The guaranteed annual base compensation paid by the Fund to the Contractor under the Contract, if contract services are actually performed, shall be \$162,500 per year.

b. Compensation shall be prorated on a daily basis depending upon actual dates of partial monthly service and otherwise shall be payable to the Contractor after the end of each month in equal monthly installments for the term of this contract.

5.02. Merit and Performance Incentive Awards.

a. The Contractor shall be eligible for an increase in Contract compensation at the sole discretion of the AAA, but only when performance exceeds or is beyond the satisfactory performance of the Contractor's duties and responsibilities specified in Section 3.02.

b. Additional annual performance bonuses may be awarded. Such bonuses shall only be earned on an annual basis and shall have no impact or effect on the guaranteed base compensation amount in Section 5.01.

(1) If the **Men's Basketball** team maintains one of the following CQPAs the Contractor may be awarded the one bonus amount that applies as indicated below:

CQPA 2.90 – 2.99	= \$2,000
CQPA 3.00 – 3.09	= \$4,000
CQPA 3.10 and above	= \$6,000

(2) If the **Men's Basketball** team wins the Conference Championship/NCAA bid, the contractor may be awarded a one-time payment of \$50,000.

(3) If the **Men's Basketball** team earns a NIT bid, the contractor may be awarded a one-time payment equal to the sum of one month's base salary.

(4) If the **Men's Basketball** team wins over Navy in Star competition or win over their biggest rival (as determined by the Fund), the Contractor may be awarded a one-time payment of \$3,000. If the team wins both games against Navy, the Contractor may be awarded \$10,000.

(5) If the **Men's Basketball** team wins the regular season Conference Championship, the Contractor may be awarded a one-time payment of \$10,000.

(6) If the Contractor earns the title of Coach of the Year, the contractor may be awarded a one-time payment of \$5,000.

(7) If the AAA elects to provide an award, such as a ring, watch, or other memento, to members of the **Men's Basketball** team based on NCAA participation and/or winning a Conference Championship, the contractor shall receive the same award.

5.03. Fringe Benefits.

During the term of the Contract, the Fund will provide the Contractor with the following fringe benefits described in this Section:

a. *Retirement Contribution.* If after one year, the Contractor elects to participate, he may contribute an amount not to exceed the dollar threshold established by the Internal Revenue Service (to be deducted monthly from his monthly paycheck) into the Contractor's retirement account with the Teacher's Insurance and Annuity Association of American/College Retirement Equity (TIAA/CREF). After one (1) year of service the Fund will match up to five percent (5%) of the Contractor's salary and deposit the same monthly amount into his account with TIAA/CREF. It is the sole responsibility of the Contractor to notify the fund, in writing of their desired contributions and any changes they wish to make to said contribution during the term of this contract.

b. *Accident and health Insurance.* If the Contractor elects to participate, the Fund shall pay an amount equal to fifty percent (50%) of the cost of the current Fund designated accident and health plan, which shall include coverage for the Contractor and his immediate family.

c. *Term Life Insurance.* If the Contractor elects to participate, the Fund shall pay to the Contractor an amount equal to fifty percent (50%) of the cost of the current Fund designated group term life insurance policy. The insurance policy coverage amount shall not exceed \$100,000.

d. *Expenses.* When approved in advance, the Fund will reimburse the Contractor for expenses reasonably incurred by him for the purpose of and in connection with the performance of his duties under this contract, including but not limited to expenses incurred while recruiting and evaluating prospective cadet athletes. It is expressly understood and agreed by the Contractor that reimbursement is contingent upon receiving advance approval by the Contracting Officer and is otherwise in accordance with governing Federal fiscal law and regulations. Such reimbursement shall be made in accordance with the standard procedures of the Fund upon presentation to the Fund of vouchers or other statements itemizing such expenses in reasonable detail. Any travel expenses or per diem incurred while in an authorized travel status shall be made payable in accordance with the Joint Travel Regulation (JTR). The Contractor shall be reimbursed for actual expenses incurred which are in excess of the established rates only if the Contractor has provided notice of such request and received advance approval by the Contracting Officer Representative.

e. *Housing.* The Contractor shall be required, as a condition of his employment and for the convenience of the Fund, to occupy living quarters furnished by the Fund. The cost incurred for heating fuel, water, electricity, sewer and refuse provided in conjunction with the occupancy of such quarters will be the responsibility of the contractor and deducted each month from the contractor's monthly paycheck per the invoice received. The contractor hereby agrees:

(1) To vacate such quarters no later than the termination date of the contract as specified in Article IV of the contract or within thirty (30) days after receipt of a notice of termination initiated by the Fund pursuant to Section 6.01

(2) That, upon vacating such quarters, the quarters will be cleaned in accordance with ODIA/AAA policy or the Contractor shall reimburse the Fund for the cost of having such quarters cleaned to meet policy standards. Such standards will be consistent with those expected of personnel living government quarters.

(3) That, upon vacating such quarters, the Contractor shall leave the quarters in a state of good order and repair, and that the Contractor shall reimburse the Fund for any damages determined by the Fund to be in excess of normal fair wear and tear.

(4) Contract understands and agrees that the timely vacating of quarters under this section of the contract is of the essence of the contract to the Fund. Accordingly, contractor agrees to pay, as liquidated damages to the Fund, \$300 dollars per day for each day the Contractor fails to vacate quarters in accordance with Section 5.03(e)(1) above.

f. Coaching Clinic: The Contractor will serve as Sports Camp Coach for men's basketball instructional camps and clinics, if offered by the Directorate of Intercollegiate Athletics and with the mutual agreement and understanding that all such operations are to be conducted in accordance with all applicable guidelines, policies and directives of ODIA, USMA, DA, DOD and other Federal regulation and law. If sports camps and clinics are offered and Contractor services are actually and successfully performed, the Contractor will receive as compensation 50% of net profits derived solely from the revenue of paid camper fees but such net profits shall be calculated only after all fixed, variable, direct and indirect expenses and costs associated with the operation of the camp have been deducted and paid in-full. It is specifically agreed and understood that if after all expenses and costs are calculated, deducted and paid in-full, that there is insufficient revenue available to determine a profit such that camp expenses and costs exceed camp gross revenue, then the Contractor will not receive compensation. It is understood by the Contractor that the performance by the Contractor of this service shall not excuse, nor be considered a waiver or delay of any other required services under the Contract.

g. Season Tickets for Personal Use. The Contractor will receive 4 season tickets for each Men's Basketball, Women's Basketball, Football, Hockey, and Lacrosse home games to be used at the Contractor's discretion. As applicable, the head coach for their respective sport listed above will also receive 4 away tickets per contest to be used at the Contractor's discretion. Value of tickets is at the staff and faculty rate.

h. Nike Bucks. As long as the Fund continues to receive Nike Bucks the Contractor receives Nike Bucks in the amount of \$3,000 per year.

i. Moving Expenses. NA.

5.04. Payment of Tax Obligations.

The Contractor is responsible for the payment of any state or federal income tax obligations which may be incurred by the Contractor due to his receipt of the items, payments and reimbursements paid or provided by the Fund as described in Sections 5.01, 5.02 and 5.03 above.

5.05. Outside Income.

The Contractor's services shall be exclusively available to the Fund during the term of the Contract. The Contractor will not participate in any commercial enterprise without the prior written approval of the DIA and shall not participate in the endorsement or sponsoring of any commercial product or venture.

a. *General Provisions Concerning Outside Income.* The following general terms and conditions shall apply to each case in which the Contractor seeks to or makes arrangements to earn outside income, such as paid speaking engagements, as a result of his being Head Coach of the USMA Men's Basketball program.

(1) *Fund Obligations Are Primary.* Such outside activities shall not interfere with the full and complete performance by the Contractor of his duties and obligations as a Fund contractor.

(2) *NCAA and Conference Rules Control.* In no event shall the Contractor accept or receive directly or indirectly any moneys, benefit or any other gratuity whatsoever from any person, corporation, Fund booster club or alumni association or other benefactor if such action would violate NCAA legislation or the constitution, bylaws, rules and regulations or interpretations thereof of the NCAA, Patriot League, the Eastern College Athletic Conference (ECAC), or other applicable league or conference now existing, its successor or thereafter enacted.

(a) In accordance with NCAA Bylaw 11.2.2, a detailed accounting of all such athletically related income and benefits from sources outside the institution will be provided annually by the Contractor to the DIA for the Superintendent, USMA.

(b) The Contractor shall not directly or by implication use the institution's name or logo in the endorsement of commercial products or services for personal gain.

(3) The Contractor shall not accept, without prior written approval from the DIA, compensation or gratuities of any kind whatsoever either directly or indirectly from an athletic shoe, apparel or equipment manufacturer in exchange for the use of such merchandise during practice or competition by the USMA's student-athletes.

(4) The Contractor shall, under no circumstances, accept compensation or gratuities of any kind whatsoever either directly or indirectly for scheduling athletic contests or individual meet participation with another institution or sponsor of athletic competition. Specifically, the contractor shall not accept compensation or gratuities from other institutions, schedule brokers or agents of TV networks or syndicates.

(5) *Contractor Retains All Revenues.* Except for the limitations on such outside compensation as established by the Fund or set forth in their contract and in the constitution, bylaws, rules and regulations and interpretations thereof of the NCAA, Patriot League, the Eastern College Athletic Conference (ECAC), or other applicable league or conference now existing, its successor or thereafter enacted, the Contractor shall be entitled to retain all revenue generated by such outside activities.

b. *Fund Is Not Liable.* Other than the Contractor's obligation to receive prior approval of outside activities, such approved activities are independent of the Contract and the Fund. The Fund shall have no responsibility or liability for any claims arising from such activities.

ARTICLE VI - TERMINATION

6.01. Termination By Fund.

The Contractor recognizes that he promises to remain as a Fund contractor through the entire term of their Contract. It is also recognized, however, that certain circumstances may make it appropriate for the Fund to terminate the contract prior to the completion of its entire term.

It is hereby agreed and understood by the contractor that upon termination, within 24 hours, under any provision in this section that the contractor shall return/turn in all government owned items in his possession and/or control – including but not limited to the following: cell phone, CAC card, files, player files, generally all records pertaining to their sport. Failure to do so will result in a payroll deduction for the amounts determined by the Fund.

a. *Termination By Fund for Cause.* The Fund shall have the right to terminate the Contract for cause prior to its normal expiration date, or prior to any extended termination date. The term “cause” shall include, in addition to its normally understood meaning in nonfederal employment contracts, any of the following examples:

- (1) Deliberate and serious violations of the duties outlined in Section 3.02 of the Contract or the Contractor’s refusal or unwillingness to perform such duties in good faith and to the best of his abilities;
- (2) Violations by the Contractor of any of the other terms and conditions of the contract not remedied after fifteen days (15) written notice to the Contractor;
- (3) Any conduct of the Contractor in violation of any criminal statute of moral turpitude;
- (4) A serious and intentional violation of any law, rule, regulation, constitutional provision, bylaw or interpretation of the NCAA, Patriot League, the Eastern College Athletic Conference (ECAC), or other applicable league or conference now existing, its successor or thereafter enacted, or a serious and intentional violation of federal law, DOD, DA, or USMA regulations applicable to USMA or the Fund, which apparent violation may, in the sole judgment of the DIA, reflect adversely upon the USMA or the Fund or its athletic program, including any serious violation which may result in the Fund being placed on probation by the NCAA, Patriot League, the ECAC, or other applicable league or conference now existing, its successor or thereafter enacted, and including any violation which may have occurred during prior employment of the Contractor at another NCAA member institution;
- (5) Conduct of the Contractor seriously prejudicial to the best interests of the USMA, the Fund, or its athletic program or which violates USMA’s or the Fund’s mission; or
- (6) Prolonged absence from duty without the consent of the Contractor’s reporting superior.

(7) Any other failure to perform the duties and responsibilities required by the terms and conditions of the Contract, including, but not limited to failure to accept reassignment under Section 3.01.

b. *Fund's Obligations Upon Termination for Cause.* In the event the Contract is terminated for cause in accordance with the provisions of Section 6.01(a) hereof, all obligations of the Fund to make further payments and/or to provide any other consideration hereunder shall cease at the end of the month in which such termination occurs. In no case shall the Fund be liable to the Contractor for the loss of any collateral business opportunities or any other benefits.

c. *Termination for Convenience by Fund.* The Fund shall have the right to terminate this Personal Services Contract prior to its normal expiration date, or as extended, without cause. Termination "without cause" shall mean termination of the contract on any basis other than those set forth in Section 6.01(a) above and under circumstances in which the Fund does not exercise its right under Section 3.01 of the contract to reassign the Contractor to another position as a Contractor of the Fund. Termination by the Fund without cause shall be accomplished by delivering to the Contractor written notice of the Fund's intent to terminate the contract without cause, which notice shall be effective upon the termination date set forth in the notice of termination or fifteen (15) days after receipt of such notice by the Contractor, whichever is later. If the Fund exercises its right under Section 6.01(c) to terminate the Contract without cause, the Contractor shall be entitled to liquidated damages only as provided for in Section 6.01(d) below, and the provisions in Article VII hereof concerning restrictions on the Contractor's ability to accept competitive employment shall have no further effect.

d. *Liquidated Damages Upon Termination By Fund Without Cause.* In the event that the Fund determines that termination for convenience is in the best interest of the Fund and a termination for convenience notice is issued to the Contractor prior to the expiration date stated in Article IV of the Contract, the Contractor shall be entitled to, as liquidated damages, a sum equal to the number of the remaining monthly guaranteed compensation payments which would have become due under Section 5.01 during the term of the contract, but for the termination for convenience under Section 6.01(c).

(1) The Fund's obligation shall be paid on a monthly basis prorated over the balance of the term of the contract and shall be subject to the Contractor's duty to mitigate the damages in accordance with Section 6.02, entitled "Mitigation of Damages." The Contractor will not be entitled to any other form of compensation, including any compensation under Sections 5.02 and 5.03 of the contract, upon the termination of the contract. In no case shall the Fund be liable for the loss of any collateral business opportunities.

(2) The parties have freely bargained for and agreed to the foregoing liquidated damages clause, giving consideration to the fact that termination of the contract for the convenience of the Fund prior to its natural expiration may cause the Contractor to lose certain business opportunities, which damages, if any, are extremely difficult to determine with certainty or fairly or adequately. The parties further agree that the payment of such liquidated damages by the Fund and accepted by the Contractor shall constitute full, adequate and reasonable compensation to the Contractor for the potential

damages and injury suffered by the Contractor because of such termination by the Fund. The foregoing is not, and shall not, be construed as a penalty.

6.02 Mitigation of Damages.

Notwithstanding any other provisions of the Contract, the Contractor agrees to mitigate the Fund's obligation to pay liquidated damages in connection with the Fund's decision to terminate the contract for the convenience of the Fund. The Contractor agrees to make reasonable and diligent efforts to obtain comparable employment as soon as reasonably possible after notice of termination has been received. All income earned by the Contractor for employment and other broadcast related services from a professional, college or university source or other nongovernmental sports related entity, after the effective date of the Contractor's termination is subject to mitigation of the Fund's obligation to pay liquidated damages to the Contractor. After the Contractor obtains, or could have obtained comparable employment, the Fund's financial obligations under the contract shall be mitigated to the extent of the additional earned income. Furthermore, monthly payments are subject to the Contractor's duty to take reasonable and diligent efforts to obtain alternative coaching positions for employment as soon as

possible after receipt of notice of termination. Such positions shall include professional, college or university Head and Assistant coach positions. Such payments may also be made contingent upon Contractor demonstrations of reasonable and diligent efforts to obtain such employment. All efforts to obtain employment shall be reported to the DIA and the Contracting Officer, in writing, before payment is authorized by the Fund for all monthly compensation. The Contractor agrees and understands that the Fund's duty to make monthly payments will cease if the Contractor fails to reasonably obtain comparable employment in a coaching or broadcast related services capacity from a professional league, college, university or other nongovernmental sports related entity or if the Contractor fails to timely provide the required monthly report detailing Contractor's efforts at obtaining alternative employment.

6.03. Termination By Contractor. The Contractor recognizes that his promise to work for the Fund for the entire term of the Contract is of the essence of the Contract to the Fund. Nevertheless, the parties agree that the Contractor may terminate the Contract prior to its normal expiration date, or as extended, but only upon the following terms and conditions.

a. *Written Notice by the Contractor.* The contractor may, at any time, terminate the Contract during its term by giving the Fund fifteen (15) days advance written notice of the termination of the Contract. The obligations of the Contractor under the Contract and, particularly, under Section 6.03(b) below concerning liquidated damages shall continue in full force and effect for all purposes notwithstanding the termination of the Contract pursuant to the Section 6.03.

b. *Liquidated Damages Upon Termination By Contractor.* If the Contractor terminates the Contract prior to its ending date, or ending date as extended, the Contractor agrees that the Fund shall be entitled to, as liquidated damages outlined below. If the Contractor terminates the Contract prior to its expiration, all compensation and other obligations owed by the Fund to the Contractor under the Contract will be terminated on the effective date of the Contractor's notice of termination or fifteen (15) days after receipt of such notice by the Fund, whichever is earlier. It is agreed by the Contractor that implementation of the Section 6.03(b) shall be without prejudice to any additional rights the Fund may have under applicable law.

If the contractor terminates the contract before 30 June 2014 – the contractor will owe the Fund a sum equal to \$550,000.

If the contractor terminates the contract before 30 June 2015 – the contractor will owe the Fund a sum equal to \$300,000.

If the contractor terminates the contract before 30 June 2016 – the contractor will owe the Fund a sum equal to \$140,000.

If the contractor terminates the contract before 30 June 2017 – the contractor will owe the Fund a sum equal to \$35,000.

c. Written Notice by the Contractor. The contractor may, at any time, terminate the Contract during its term by giving the Fund thirty (30) days advance written notice of the termination of the Contract without liquidated damages if any of the following occur: **he is hired as the Head Men’s Head Basketball Coach for Belmont University, College of Charleston, College of William and Mary, University of Delaware or Ohio University.**

ARTICLE VII – RESTRICTIVE COVENANT

The Contractor and the Fund agree that should another coaching opportunity or other position be presented or offered to the Contractor or should the Contractor be interested in another coaching position during the term of the Contract, the Contractor must notify the DIA and the Contracting Officer of such opportunity or interest. Concurrent with or subsequent to that notification, written permission must be given to the Contractor by the DIA and the Contracting Officer before the Contractor can pursue that opportunity or interest through any agent of the Contractor or anticipated coaching-position principals or before any discussions can be held by the Contractor with the anticipated coaching-position principals, which written permission shall not be unreasonably withheld.

ARTICLE VIII – Primacy of USMA Mission

8.01. USMA Mission is Primary.

The parties agree that, although the Contract is sports-related, the primary purpose of the Fund is to support the mission of the USMA. The USMA Mission is “To educate, train, and inspire the Corps of Cadets so that each graduate is a commissioned leader of character committed to the values of Duty, Honor, Country; professional growth throughout a career as an officer in the United States Army; and a lifetime of selfless service to the nation.” Accordingly, all the Fund’s legal arrangements, including the Contract, are in support of that mission. Thus, the USMA Mission shall have priority in the various provisions of the contract.

8.02. Contractor Support of USMA Mission.

The Contractor is expected to be supportive of institutional programs (Academic, Military, and Physical) to develop cadets as leaders of character. In addition, the Contractor is

expected to be an effective contributor to the four-year developmental process experienced by cadets. Toward the end, the Contractor must realize that student athletes at the USMA are cadets first and athletes second. Familiarity with the regulations for the United States Corps of Cadets, the Cadet Discipline system, the Cadet Honor Code and System, the Academic Programs (Red Book), and the Physical Programs (White Book) are essential.

ARTICLE IX – DISPUTES AND APPEALS

9.01. Disputes.

a. The Contract is subject to the rules and regulations promulgated by the Secretary of Defense and Secretary of the Army for NAF contracting (*See* AR 215-4 as modified by AR 210-3).

b. The Contract is not subject to the Contract Disputes Act of 1978 (41 U.S.C. 601-613).

c. All disputes arising under or relating to the Contract shall be resolved under the Section.

d. "Claims" as used in the Section, means a written demand or written assertion by the Contractor, seeking as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of Contract terms, or other relief arising under or relating to the Contract. A claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under the Section. The submission may be converted to a claim under the Section by complying with the submission requirement of the Section, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

e. Claim content.

(1) A claim by the Contractor shall be made in writing and submitted through the DIA to the Contracting Officer for a written decision. A claim by the Fund against the Contractor shall be subject to a written decision by the Contracting Officer.

(2) For Contractor claims exceeding \$100,000 the Contractor shall submit with the claim a certification that:

(a) The claim is made in good faith;

(b) Supporting data is accurate and complete to the best of the Contractor's knowledge and belief; and

(c) The amount requested accurately reflects the Contract's adjustment for which the Contractor believes the Fund is liable.

(3) The Certification shall be executed by the Contractor.

f. For claims of \$100,000 or less, the Contracting Officer must, if requested in writing by the Contractor, render a decision within 60 days of the request. For Contractor-certified claims over

\$100,000, the Contracting Officer must, within 60 days, decide the claim or notify the Contractor of the date by which the decision will be made.

g. The Contracting officer's decision shall be final unless the Contractor appeals as provided in Section 9.02. of this Article.

9.02. Appeals.

The Contracting Officer's decision on claims may be appealed by submitting a written appeal to the Armed Services Board of Contract Appeals within 90 days of receipt of the Contracting Officer's final decision. Decisions of the Armed Services Board of Contract Appeals are final and are not subject to further appeal.

ARTICLE X - Miscellaneous

10.01. Contractor Not Entitled to Tenure.

The parties hereby confirm their understanding that the Contractor's services under the Contract and in the position of Head Coach of the USMA intercollegiate **Men's Basketball** program or any other position to which the Contractor may be assigned in accordance with the terms of Section 3.01 of the contract does not constitute "federal employment" and does not create nor lead to any kind of tenure status.

10.02. Requirement of Contracting Officer Signature and Approval.

It is understood and agreed that the Contract shall not be effective until executed by a duly authorized Contracting Officer on the behalf of the Fund. The term "Contracting Officer" shall mean a person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings. Upon signature and approval by the Contracting Officer, the effective date of this contract for compensation purposes under Article IV above is deemed to be 01 October 2008.

10.03. Assignment of Contract.

The Contractor cannot assign any rights or delegate any obligations under the contract without the prior written permission of the DIA and the Contracting Officer.

10.04. Officials Not to Benefit.

No official or employee of the United States Government or its nonappropriated fund instrumentalities shall be allowed any share or part of the Contract, or shall be allowed to participate in any benefit that may arise therefore.

10.05. Contractor Warranty Against Third Party Brokerage of the Contract.

The Contractor warrants that no person or agent has been employed or retained to solicit or secure the contract for a commission, percentage, brokerage or contingent fee, except such bona fide person or agent maintained by the Contractor for the purpose of securing business. For breach of the warranty, the Fund shall have the right to annul the contract without liability or, in its discretion to deduct or recover from the contract price the full amount of such commission, percentage, brokerage, or contingent fee.

10.06. Audit of Contractor's Books.

The Contractor agrees that the DIA and the Contracting Officer or his/her duly authorized representative shall have the right to examine and audit the books and records of the Contractor directly pertaining to the contract during the period of the contract and until the expiration of three years after final payment under the Contract.

10.07. The Privacy Act Statement. The Privacy Act Statement is as follows by authority of 10 U.S.C. 3012; Principal purpose is identification of contractors who contract with the NAFI as individuals; information will be used to comply with IRS reporting requirements of certain payments made to individuals. Information furnished may be disclosed to other federal, state and local government agencies in the pursuit of their official duties. It may also be used for other lawful enforcement or litigation. The social security number (SSN) is used for identification of individuals and records. Disclosure is voluntary. If the information requested is not provided, the contract will not be executed. The payments received by the contractor under this contract may be reported to the Internal Revenue Service (IRS) in accordance with federal laws. Payments will be reported on IRS Form W-2 (miscellaneous income). If payments are reported to the IRS, the Contractor will be furnished a copy of the IRS Form W-2 by the Internal Operations Office.

10.08. Amendments to Contract.

Any amendments to the contract shall be in writing and shall be signed by the Contractor, and the Contracting Officer on the behalf of the Fund. No oral modifications or other writings are to be considered now or at any time as part of the contract unless reduced to writing as an amendment of the contract.

10.09. Prior Contracts Terminated.

The Contractor and the Fund mutually agree that this is the only contract between the parties and that all other contracts or agreements in effect prior to the execution of this Contract have been or are hereby formally terminated.

10.10. Notices.

Any notice or other communication which may be or is required to be given under the contract shall be in writing and shall be deemed to have been given on the earlier of the day actually received or on the close of business on the fifth business day next following the day when deposited in the United States Mail, postage prepaid, registered or certified, addressed to the party at the address set forth after his name below or such other address as may be given by such party in writing to the other:

If to the Contractor: Zach Spiker

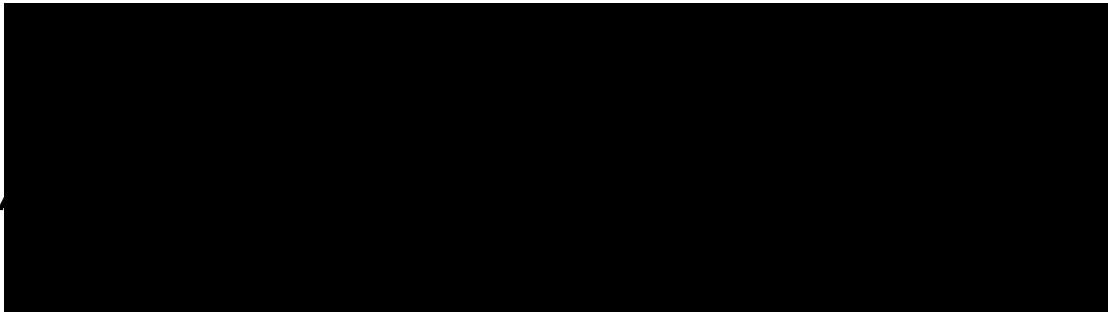


If to the Fund: Contracting Officer
681 Hardee Place
West Point, NY 10996

10.11. Merger Clause.

The foregoing constitutes the full and complete understanding all parties hereto with respect to the Contractor's services to be provided to the Fund under the Contract and supersedes all prior understandings, contracts and agreements, oral or written, concerning the Contractor's services to be provided to the Fund and compensation of the Contractor by the Fund.

IN WITNESS WHEREOF, the parties hereto have executed the contract or caused the contract to be executed as of the day and year first written above, intending to be legally bound by its provisions, the Contractor acknowledging that he reviewed or had the opportunity to review the Contract with his attorney.



8-23-13

Date