

## PERSONAL SERVICES AND GUARANTY AGREEMENT

**THIS PERSONAL SERVICES AND GUARANTY AGREEMENT** (this "Agreement") is made and entered into on this 6<sup>th</sup> day of February, 2015, to be effective December 4, 2012, by and between THE RAZORBACK FOUNDATION, INC., an Arkansas non-profit corporation, (the "Foundation"), and Bret Bielema ("Bielema"), to-wit:

### **INTRODUCTORY PROVISIONS**

A. The Foundation is involved in the raising of funds from donors for the furtherance of the athletic program including, but not limited to, scholarships, gifts to the University of Arkansas at Fayetteville for the Athletic Department, improving and/or building facilities, etc.

B. The Foundation relies heavily and extensively upon known coaches and athletic personalities in addition to its own staff to make speeches before various booster groups, Razorback Club meetings, public appearances before other organizations, and various fund-raising activities on behalf of the Foundation.

C. The Foundation desires to obtain the services of Bielema for speaking engagements before the Razorback Club, other service clubs, television and radio appearances, public appearances, and fund-raising efforts for promotion and advancement of Razorback athletics and the Foundation due to his well known, respected, and recognized name.

D. The Foundation acknowledges that Bielema currently has a eight (8) year agreement with the University of Arkansas which unless extended pursuant to its terms ends on December 31, 2020 (the "Employment Agreement"). The Employment Agreement provides that the University of Arkansas will provide a Third Party Guarantor of the Employment Agreement and the Foundation desires to be such Third Party Guarantor. The Employment Agreement is attached hereto as Exhibit "A" and is incorporated herein by reference.

E. This Personal Services and Guaranty Agreement replaces all previous Personal Services and Guaranty Agreements entered into between the parties and all previous Personal Services and Guaranty Agreements are hereby null and void.

**NOW, THEREFORE**, in consideration of the mutual promises and covenants contained herein, the parties hereby agree as follows:

1. The Foundation desires to obtain the services of Bielema and Bielema desires to provide to the Foundation his services by speaking at Razorback Club

meetings, fund-raising, making public appearances before service clubs, appearing on radio and television shows, granting interviews to the media, making public appearances for promotion and advancement of Razorback athletics and the Foundation and any and all other public appearances requested by the Foundation beginning on December 4, 2012, and continuing through December 31, 2020. The Foundation agrees to pay all reasonable expenses incurred by Bielema in making said appearances.

2. Both the Foundation and Bielema agree that the Foundation will assign the speaking engagements that Bielema is to perform for the Foundation. The Foundation, however, acknowledges that it will first clear all appearances, speaking events, or fund-raising activities with Bielema so as to coordinate those engagements with Bielema's schedule, and the Foundation further agrees that any scheduling that it does for Bielema shall not in any way interfere with his duties and responsibilities as head coach of the University of Arkansas football program, and that said duties and job responsibilities of Bielema to the University of Arkansas Athletic Department will take priority over the services that are to be performed for the Foundation. Further, Bielema may refuse any engagement if he has a reasonable basis for failure to accept the engagement.

3. Bielema further acknowledges that all services that he renders on behalf of the Foundation will be on his own time and not time which is being paid by the University of Arkansas Athletic Department or the State of Arkansas.

4. The Foundation and Bielema both acknowledge that the relationship between the Foundation and Bielema is that of an independent contractor arrangement.

5. The Foundation shall pay to Bielema and Bielema shall accept from the Foundation the sum of Five Hundred Thousand and No/100 Dollars (\$500,000.00) per year for speaking engagements and the other obligations required for each year of this Agreement. Such sum shall be paid in eleven (11) monthly installments of Forty-One Thousand Six Hundred Sixty-Six and 66/100 Dollars (\$41,666.66) each and one (1) monthly installments of Forty One Thousand Six Hundred Sixty-Six and 74/100 Dollars (\$41,666.74).

6. If at any time during the term of this Agreement, Bielema is terminated for cause by the University of Arkansas and the same is not overturned by an administrative committee or judicial body, then this Agreement shall become null and void upon the termination date and the Foundation shall not be required to honor any additional terms of this Agreement except for the proration of any amounts already earned and not paid to Bielema up until the date and time of the termination of this Agreement. Termination for cause shall be defined the same as termination for cause by the Employment Agreement between Bielema and the University of Arkansas.

7. If Bielema voluntarily terminates his position with the University of Arkansas, then this Agreement shall become null and void on the date and time that Bielema voluntarily terminates his Employment Agreement. Bielema will not be entitled to any additional benefits under the terms of this Agreement except for the proration of any amounts due Bielema up until the date and time of the termination of this Agreement.

8. If Bielema is terminated for the convenience of the University of Arkansas, the Foundation shall pay to Bielema the amounts specified below:

YEAR	AMOUNT
December 4, 2012 - December 31, 2015	\$15,400,000
January 1, 2016 - December 31, 2016	\$15,400,000
January 1, 2017 - December 31, 2017	\$15,400,000
January 1, 2018 - December 31, 2018	\$11,700,000
January 1, 2019 - December 31, 2019	\$7,900,000
January 1, 2020 - December 31, 2020	\$4,000,000

The foregoing amounts shall be paid on a non-cumulative basis beginning with the effective date of the termination for convenience in accordance with the foregoing schedule (the "Guaranty Payment"). The Guaranty Payment shall be paid in equal monthly installments on the last calendar day of each month with any partial months being prorated over the remaining balance of the Term as of the effective date of the termination for convenience. The Guaranty Payment shall be subject to the duty of mitigation as set forth in this Guaranty Agreement and/or other conditions set forth in this Guaranty Agreement. This payment to Bielema shall be in full satisfaction of the guarantee by a third party that is required under the Employment Agreement. The amount specified in this paragraph shall be the total amount that will be paid by the Foundation to Bielema and Bielema shall be entitled to no additional funds from the Foundation of any kind or nature except for the amounts already earned and not paid to Bielema up until the date and time of any termination of the Employment Agreement.

9. Bielema further hereby agrees to waive any obligations of the University of Arkansas and the Foundation in exchange for the sum to be paid under paragraph 8 of the Agreement. Additionally, if Bielema is terminated for the convenience of the University of Arkansas and the Foundation makes the payments as required by paragraph 8, the Foundation shall be relieved of any of its other obligations under this Agreement regarding personal services and Bielema shall be entitled to no additional amounts from

the University of Arkansas and/or the Foundation except for the amounts already earned and not paid to Bielema up until the date and time of any termination of the Employment Agreement.

10. If Bielema is terminated for the convenience of the University of Arkansas in consideration of the amount specified in paragraph 8, in addition to any agreement to pay compensation with the Razorback Foundation, Bielema shall release and discharge the Foundation, its officers, trustees, and employees from and against any liability of any nature whatsoever related to or arising out of this Agreement and/or any amendments hereto, Bielema's employment at the University of Arkansas, and Bielema's termination for convenience of the University of Arkansas, including, but not limited to, the following: any and all claims arising under or relating to any Federal or state constitutions, laws, regulations, common law, or any other provision of law. Bielema further covenants and agrees that he knowingly and voluntarily accepts this guaranty, after consulting with his legal counsel or after voluntarily choosing not to consult legal counsel, in full and complete satisfaction of any and all obligations of the Foundation and as an alternative to the time, expense, and trouble of any future litigation. Bielema acknowledges and intends for the Foundation to rely upon this provision in entering into this Agreement.

Bielema further covenants and agrees that any exercise of ownership or control by him over any partial or total payment under paragraph 8 of this Agreement shall constitute an act of ratification and/or sufficient and valuable consideration which absolutely and unconditionally forever releases, discharges and waives any and all alleged liability of the Foundation, its officials, representatives, and employees, in both their official and individual capacities, from and against any and all claims of any nature whatsoever (including, but not limited to, any and all claims arising from or relating to any Federal or state constitutions, laws, regulations, common law, or any other provision of law) relating to or arising out of this Agreement, Bielema's employment at the University of Arkansas, and Bielema's termination for convenience of the University of Arkansas for any and all such claims which arise or may have arisen between Bielema's initial date of employment, and the date of Bielema's termination for convenience; provided, however, that the scope of the release, discharge and waiver granted by Bielema herein shall not include a release, discharge, or waiver of any claims arising from the failure to pay all sums due under this Agreement.

11. If Bielema is terminated by the University of Arkansas for its convenience and the Foundation is obligated to pay the amounts specified in paragraph 8 herein, Bielema agrees that those payments shall be subject to the following mitigation provisions. Bielema shall be required to do the following: Bielema shall have the duty to mitigate his damages by making reasonable efforts to gain re-employment. The parties understand and agree that if Bielema is successful in gaining such re-employment, or

alternative employment of any kind the Foundation's Guaranty Payment obligations shall be reduced by the amount of compensation Coach earns from such employment (so long as such employment coincides with the Guaranty Payments). The Foundation's right to reduce its obligations shall not include amounts Coach may earn from passive investments or interest not associated with new employment.

12. If Bielema is discharged under paragraph 8 herein above and institutes litigation concerning anything against the University of Arkansas or the Foundation except for nonpayment under this Agreement then all amounts specified in paragraph 8 herein will be waived by Bielema and he will not be entitled to any compensation as specified herein. If subsequent to discharge Bielema has already received a portion of or all of the amount specified in paragraph 10 and then institutes litigation, he shall immediately repay said amounts and if he does not repay said amounts then the Foundation shall be entitled to a judgment for the amounts he has received plus interest at the highest rate allowed by Arkansas law.

13. Bielema agrees that the Foundation's act of entering into this agreement on behalf of the University of Arkansas guarantying its obligations to Bielema will be consideration to Bielema for his agreement to pay back to the University of Arkansas a certain amount as set forth in his employment agreement with the University of Arkansas (for purposes of this Agreement, Paragraph 16 "Termination by Coach – Salary Repayment" of Bielema's employment agreement with the University of Arkansas is incorporated herein as it relates to the amount Bielema is required to pay back to the University of Arkansas). In addition to his agreement to pay that amount to the University of Arkansas, he agrees that all obligations of the Foundation shall cease upon the date of his resignation, except for the Foundation's obligation to provide amounts earned but not yet paid at the time of Bielema's resignation.

The payments required pursuant to Paragraph 16 "Termination by Coach – Salary Repayment" of Bielema's employment agreement with the University of Arkansas will be paid by Bielema to the University of Arkansas in accordance with his Employment Agreement entered into on the \_\_\_\_\_ day of \_\_\_\_\_, 2015.

14. If any provision of this Agreement is declared invalid or unenforceable, such provision shall be deemed modified to the extent necessary and possible to render it valid and enforceable. Notwithstanding, the unenforceability or invalidity of any provision shall not affect any other provision of this Agreement, and this Agreement shall continue in full force and effect and be construed and enforced as if such provision had not been included, or had been modified as above provided, as the case may be.

15. This Agreement is governed by and shall be construed and enforced under the laws of the State of Arkansas, and venue for this Agreement shall lie solely with the

Circuit Court of Washington County, Arkansas.

16. This Agreement binds and is for the benefit of the Foundation, its successors, assigns and legal representatives.

17. No waiver, discharge, or modification of a provision of this Agreement is valid unless it is evidenced by a writing signed by or on behalf of the party against whom the waiver, discharge or modification is sought to be enforced. The failure of any party to require performance by the other party of any provision of this Agreement shall not be deemed to subsequently effect the parties' rights to enforce a provision hereof. A waiver of a breach of any provision of this Agreement is not a waiver of any other breach of the provision or waiver of the provision.

18. Each party warrants and represents that they have the full right, power and authority to enter into this Agreement and make the agreements in it.

19. Time is of the essence.

20. In further consideration for the Guaranty Payment set forth in Paragraph 8 of this Agreement, Bielema covenants and agrees that all release and waiver provisions under this Agreement, including, but not limited to, Paragraph 10, shall apply with equal force to the Board of Trustees of the University of Arkansas, the University of Arkansas, Fayetteville, and the University's Trustees as well as all officials, representatives and employees, each in his or her individual and official capacity (collectively, the "Board"). The Foundation and Bielema agree that the Board is an express third-party beneficiary of this Agreement and entitled to enforce all release and waiver provisions, including, but not limited to, Paragraph 10, of this Agreement. This provision shall survive the termination of this Agreement for any reason.

21. This Agreement contains the entire agreement between the parties with respect to the subject matter contained herein and supersedes any prior contemporaneous agreements or representations, oral or written, between them. This Agreement may not be modified or changed, nor may the terms of this Agreement be extended except by a written instrument signed by both parties.

**IN WITNESS WHEREOF**, this Agreement is made and entered into on the date and year first written above in original duplicates, to be effective as of December 4, 2012.

**RAZORBACK FOUNDATION, INC.**

By: \_\_\_\_\_  
Sean Rochelle - Executive Director

**BRET BIELEMA**

\_\_\_\_\_  
Bret Bielema