

BOARD OF REGENTS  
BRIEFING PAPER

**Agenda Item Title:** Football and Basketball Head Coach Contract Template and Guidelines  
**Meeting Date:** November 30, 2015

**2. BACKGROUND & POLICY CONTEXT OF ISSUE:**

In accordance with the Board of Regents Code, Title 2, Chapter 5, Section 5.4.2(e), contracts for head football and basketball coaches that exceed 36 months and all contracts that exceed \$1.2 million for the contract term, must be approved by the Board of Regents. On several occasions, the Board has discussed the terms of football and basketball coach contracts and Regents have suggested revisions to the common contract terms. Vice Chancellor for Legal Affairs, Brooke Nielsen, General Counsels Elda Sidhu and Mary Dugan, and Athletic Directors Tina Kunzer-Murphy and Doug Knuth met to discuss the coach contract template on Friday, October 2, 2015. A revised head coach contract template and proposed Guidelines are being presented for the Committee's review and approval.

**3. SPECIFIC ACTIONS BEING RECOMMENDED OR REQUESTED:**

A revised football and basketball head coach contract template and proposed Guidelines are presented for the Committee's review and approval.

**4. IMPETUS (WHY NOW?):**

The head coach contract template has been reviewed and revised by the Vice Chancellor for Legal Affairs and in addition, Guidelines regarding the head coach contracts have been drafted and are ready for the Committee's review and approval.

**5. BULLET POINTS TO SUPPORT REQUEST/RECOMMENDATION:**

- The Board of Regents must review and approve all head football and basketball coach contracts that exceed 36 months or which exceed \$1.2 million in total compensation.
- A common template for athletic coach contracts has been in use by the institutions for several years, but during the review and approval of coach contracts at public meetings, members of the Board have expressed concern and made suggestions regarding the terms of the head coach contracts.
- The proposed "Head Coach Employment Agreement" has been revised (new language is ***bold and italicized***) and proposed Guidelines have been drafted in consideration of the concerns and suggestions expressed by members of the Board. Input from the UNLV and UNR presidents, general counsels and athletic directors has also been received.
- The "NSHE Basketball/Football Coach Contract Template Revisions and Proposed Guidelines" highlights the proposed contract revisions and proposed Guidelines.
- **The proposed Guidelines include:**
  - **Changes to Template.** Any changes to the template language must be justified in writing and require Board approval.
  - **Long-term Contracts.** Long term contracts create huge potential liquidated damages and other monetary liabilities for the institution. The institution must address its ability to pay for those potential liabilities.
  - **Level of Base Compensation below the President.** The coach base compensation should always be less than the president. Institution shall provide justification for going above the president's base salary.

- **No Public Announcement until Contract has been Approved by Board of Regents.** Title 2, Chapter 5, Section 5.4.2(g) prohibits relocation of or events introducing a coach or athletic director until after the Board has approved the contract.
- **Timely Provision of Materials to the Board of Regents.** The contract negotiations should be completed in a timely manner so as to provide the Board of Regents with a copy of the proposed contract in advance of the meeting to approve the contract.
- **Diversity Efforts.** The institution shall provide written information regarding its efforts to obtain a diverse pool of candidates. An outside review of the institution process may be used.
- **The proposed revisions in the contract template include:**
  - Par. 3.3—Mandatory Background Check—failure to pass voids the contract.
  - Par. 3.4—Employee’s Certification of Truth and Accuracy of Materials and Representations—misrepresentation voids the contract.
  - Par. 4.1.b—Added option for head coach not to be subject to reassignment.
  - Par. 4.2.c.5—Good Sportsmanship—coach may be disciplined for violations of rules of sport (e.g. technical fouls, ejection from game).
  - Par. 4.2.c.8—Academic Performance—setting contract specific APR, NCCA or Conference required APR (whichever is greater) as minimum and requiring coach collaboration with plan to achieve APR.
  - Par. 4.3.b—Discipline/Corrective Action—revised the disciplinary provisions to give the AD authority to warn, reprimand, suspend with pay or take other non-monetary corrective measures; revised the disciplinary provisions to give the AD authority, with approval of the president, to suspend without pay and/or impose fines/penalties up to \$10,000 for each violation. The written disciplinary decision is public and the University may comment regarding the discipline.
  - Par. 4.5—Periodic Personnel Evaluations--two consecutive unsatisfactory evaluations results in termination. Evaluations are not subject to grievance, reconsideration or evaluation appeal process, but employee may submit a written rejoinder.
  - Par. 5.6.a—Media and Public Appearance Fee—number of required appearances must be achieved before fee is earned; if terminated for cause the fee is forfeited.
  - Par. 5.6.c—Additional Compensation (Revenue Enhancement Payment) is included in the template. The coach would receive 50% of every dollar above a specified thicket sales amount, to a maximum amount set in the contract. Payment is forfeited if Employee terminated on or before a specified date.
  - Par. 5.7—Supplemental Compensation (Athletic Performance Payment/Academic Gate):
    - The double payment for winning a conference and for being selected for a post season tournament is eliminated.
    - Added language to the effect that if the coach is terminated on or before a specified date for cause or for Employee’s convenience, payment is forfeited.
    - Added language regarding nonpayment of the bonus if the coach gives notice of termination for convenience by a specified date.
    - The “Academic Gate” is included--the APR must be at the NCAA or Conference minimum for post season play in order for the coach to receive performance payments.

- Added language defining what year APR is to be used--the previous academic year.
- Par. 6.1.a Termination Without Cause.
  - Added language that employee may be placed on paid administrative leave pending termination without cause.
  - Added language to clarify the mitigation requirement and that it includes volunteer positions.
- Par. 6.1.a.3--Mitigation of Damages Clause.
  - This clause shall be in the template since it provides additional protection for the institution and has not been found to be incompatible with liquidated damages by a Nevada court.
- Par. 6.1.c—Termination for Cause.
  - Added language “in sole reasonable judgment of the University” regarding Employer’s determination of “cause.”
  - Added language in subparagraph 9 to the effect that the employee may be disciplined for failure to take appropriate action to maintain the minimum APR.
  - Added language in subparagraph 10 to the effect that breach of the agreement is “cause.”
  - Added language in subparagraph 12 to the effect that two consecutive unsatisfactory evaluations is “cause.”
- Par. 6.1.d—Determination of Cause.
  - Revised the process for determination of cause; eliminated the cumbersome review committee process.
  - Added language providing for written notice, the Employee’s opportunity to respond in writing and an opportunity for a meeting with the president before a termination is effective.
  - Added language that written decision of the president is public and University may comment publicly regarding the discipline.
  - Added language that in the event the termination is reversed, the University may convert it to a termination for convenience.
- Par. 6.2--Employee Termination for Convenience--Liquidated Damages.
  - The amount owed to the institutions should be consistent.
  - Added a sliding scale of liquidated damages starting with total remaining base compensation plus 2X total base compensation and decreasing during the term of the contract (Par. 6.2.a.3).

**6. POTENTIAL ARGUMENTS AGAINST THE REQUEST/RECOMMENDATION:**

- The terms in the proposed template are too one-sided and will make recruiting of coaches more difficult.
- Institutions should have discretion to negotiate the terms of the coach contracts since the institution will have responsibility for the liability (monetary and otherwise) resulting from the contract.
- The institutions are subject to different conditions (e.g., size of programs, alumni support) and should not be required to use the same contract terms.

**7. ALTERNATIVE(S) TO WHAT IS BEING REQUESTED/RECOMMENDED:**

- Do not require the institutions to use a single template and a single set of Guidelines.
- Allow the institutions to negotiate basketball and football coach contract terms,

subject to the Board's ultimate approval.

**8. COMPLIANCE WITH BOARD POLICY:**

n/a

# NSHE BASKETBALL/FOOTBALL COACH CONTRACT TEMPLATE REVISIONS AND PROPOSED GUIDELINES

## Template Revisions:

### **Par. 3.3—Mandatory Background Check**

- Added language requiring employee background checks, initial and subsequent.
- Failure to pass background check invalidates contract and results in immediate termination.

### **Par. 3.4—Employee’s Certification of Truth and Accuracy of Materials and Representations**

- Added language requiring employee certification of truth and accuracy of all materials and representations.
- Falsification or misrepresentation voids the contract and results in immediate termination.

### **Par. 4.1.b (Option 2)—Head Coach may not be Reassigned**

- Added option for coach not to be subject to reassignment.

### **Par. 4.2.c.5—Good Sportsmanship**

- Added language to the effect that if the coach violates the rules of the sport (e.g., receives technical fouls or is ejected from a game), the institution may take disciplinary action in accordance with Pars. 4.3 and Par. 6.1.d.

### **Par. 4.2.c.8—Academic Performance**

- Added language setting either a contract specific APR level, NCAA or Conference required APR, whichever is greater, as the required minimum.
- Added language requiring coach collaboration with plan to achieve minimum APR.

### **Par. 4.3.b—Discipline/Corrective Action**

- Added language regarding warning, reprimand, suspension with pay and non-monetary corrective action imposed by Athletic Director.
- Added language regarding suspension without pay and fines/penalties not to exceed \$10,000 per violation, imposed by the Athletic Director with the approval of President.
- Added language making the written decision of the Athletic Director public and the University may comment publicly regarding the discipline.
- Added language that a determination of whether a violation has occurred is in sole reasonable judgment of the University.
- Added provisions for an expedited process which includes written notice to the employee, the employee’s opportunity to respond within one calendar day (time period can be extended), and the decision of the Athletic Director is final and not subject to appeal, grievance or reconsideration.

### **Par. 4.5—Periodic Personnel Evaluations**

- Added language referring to the existing Code provision regarding termination for two consecutive unsatisfactory evaluations.
- Added language to the effect that the evaluation is not subject to Code grievance, reconsideration or evaluation appeal procedure, but Employee may submit a written rejoinder.

### **Par. 5.6.a—Media and Public Appearances**

- Criteria for receiving the payment (e.g., number of required appearances) must be in every contract.
- Added language to the effect that if employee is terminated for convenience after fee earned, the fee is paid.
- Added language to the effect that if employee is terminated for cause, the fee is forfeited.

**Par. 5.6.c—Additional Compensation (Revenue Enhancement Bonus)**

- This clause is included in the template and provides for an additional payment if ticket revenue exceeds a set threshold for season ticket and single season game ticket revenue.
- If the threshold is exceeded, the coach is paid 50% for every dollar above the threshold to a set maximum amount.

**Par. 5.7—Supplemental Compensation (Performance Bonus/Academic Gate)**

- The double payment for winning a conference and for being selected for a post season tournament is eliminated.
- Added language regarding non-payment of bonus if the coach is terminated for cause or resigns for convenience by a specified date.
- The “Academic Gate” is included--the APR must be at the NCAA or Conference required level for post season play (whichever is greater) in order for the coach to receive performance bonuses.
- Added language defining what year APR is to be used--the single year APR from the previous academic year.

**Par. 6.1.a Termination Without Cause**

- Added language that employee may be placed on paid administrative leave pending termination without cause.
- Added language to clarify the mitigation requirement and that it includes volunteer positions (Subsection 2).

**Par. 6.1.a.3--Employer Termination for Convenience--Mitigation of Damages Clause**

- This clause shall be in the template since it provides additional protection for the institution and has not been found to be incompatible with liquidated damages by a Nevada court.

**Par. 6.1.c—Termination for Cause**

- Deleted the 10 day “cure period.”
- Added language “in sole reasonable judgment of institution” regarding the employer’s determination of cause.
- Added language in subparagraph 9 to the effect that the employee may be disciplined for failure to take appropriate action to maintain the minimum APR or above.
- Added language in subparagraph 10 to the effect that breach of the agreement is “cause.”
- Added language in subparagraph 12 to the effect that two consecutive unsatisfactory evaluations is “cause.”

**Par. 6.1.d—Determination of Cause**

- Revised the process for determination of cause; eliminated the cumbersome committee review process.
- Added language regarding written notice, the Employee’s opportunity to respond in writing and opportunity for a meeting with the President.

- The process can be completed in 8 calendar days but the time periods may be extended.
- Added language that written decision of the President is public and University may comment publicly regarding the discipline.
- Added language that in the event the termination is reversed by a court, the University may convert it to a termination for convenience.

**Par. 6.2--Employee Termination for Convenience--Liquidated Damages.**

- The amounts owed to the institutions should consistent.
- Added a sliding scale of liquidated damages starting with total remaining base compensation plus 2X total base compensation and decreasing during the term of the contract (Par. 6.2.a.3).

**Proposed Guidelines:**

1. **Changes to Template Language.** Any changes to the template language must be justified in writing and require Board approval.
2. **Art. III--Term of the Contract:** Long term contracts create huge potential liquidated damages and other monetary liabilities for the institution. The institution must address its ability to pay for those potential liabilities.
3. **Par. 5.1--Level of Base Compensation:** Should always be less than the president. Institution shall provide justification for going above the president's base salary.
4. **No Public Announcement until Contract has been Approved by Board of Regents.** Title 2, Chapter 5, Section 5.4.2(g) prohibits relocation of or events introducing a coach or athletic director until after the Board has approved the contract.
5. **Timely Provision of Materials to the Board of Regents.** The contract negotiations should be completed in a timely manner so as to provide the Board of Regents with a copy of the proposed contract in advance of the meeting to approve the contract.
6. **Diversity Efforts.** The institution shall provide written information regarding its efforts to obtain a diverse pool of candidates. An outside review of the institution process may be used.

# HEAD COACH EMPLOYMENT AGREEMENT

**BETWEEN**

**BOARD OF REGENTS OF THE**

**NEVADA SYSTEM OF HIGHER EDUCATION**

**ON BEHALF OF**

**THE** \_\_\_\_\_

**AND**





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DRAFT

**HEAD COACH EMPLOYMENT AGREEMENT**  
**between**  
**Board of Regents of the Nevada System of Higher Education,**  
**on behalf of**  
**the University of \_\_\_\_\_**  
**and**  
**\_\_\_\_\_**

This Head Coach Employment Agreement (this “**Agreement**”) is effective this \_\_\_\_ day of \_\_\_\_\_, 2015 (the “**Effective Date**”), contingent upon the approval of the Board of Regents of the Nevada System of Higher Education, by and between the Board of Regents of the Nevada System of Higher Education, on behalf of the University of \_\_\_\_\_ (the “**University**”), and \_\_\_\_\_ (the “**Head Coach**” or the “**Employee**”).

**ARTICLE 1 – PURPOSE**

The University and the Head Coach have entered into this Agreement because the University desires to contract the Employee for the period set forth in Article 3 with the Employee’s assurance that Employee will serve the entire term of this Agreement, a long-term commitment by the Employee being critical to the University’s desire to run a stable athletic 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 University community and among University employees, including evaluation and scrutiny of program performance by the public and the news media and control by external rules and regulations, including without limitation the rules and regulations of the National Collegiate Athletic Association (“**NCAA**”) and the athletic conference of which the University is a member (the “**Conference**”). These circumstances justify job security and commitment by the Employee longer than one year but less than a continuous appointment. The Employee desires to obtain the opportunities of employment with the University which are set forth in this Agreement. For these reasons, the University has agreed to employ the Employee and the Employee has promised to be employed by the University upon the terms and conditions set out in this Agreement.

**ARTICLE 2 – PUBLIC DOCUMENT**

The parties agree that this Agreement is a public document and that the University may release copies of this Agreement to persons requesting the same.

**ARTICLE 3 – TERM OF EMPLOYMENT, NOTICE OF NON-RENEWAL, MANDATORY BACKGROUND CHECK, AND EMPLOYEE’S CERTIFICATION OF TRUTH AND ACCURACY OF MATERIALS AND REPRESENTATIONS**

**3.1. TERM OF EMPLOYMENT**

The Employee’s employment hereunder shall commence on the Effective Date, subject to the approval of the Board of Regents of the Nevada System of Higher Education by \_\_\_\_ , \_\_\_\_\_, and shall continue until this Agreement terminates upon the close of business at the University on \_\_\_\_ , \_\_\_\_\_, (the “**Term**”), provided, that this provision is subject to the terms and conditions of Article 6 hereof concerning termination and Article 7 hereof concerning restrictions on competition, and neither party shall have any right to terminate this Agreement prior to the close of business at the University on \_\_\_\_ , \_\_\_\_\_, except as provided therein.

**3.2. NOTICE OF NON-RENEWAL**

**THE PARTIES TO THIS AGREEMENT EXPRESSLY UNDERSTAND AND AGREE THAT THE PROVISIONS OF THIS ARTICLE CONSTITUTE THE NOTICE TO THE EMPLOYEE OF THE NONRENEWAL OF EMPLOYMENT AT THE UNIVERSITY AND THAT EMPLOYEE’S EMPLOYMENT WILL TERMINATE UPON THE CLOSE OF BUSINESS AT THE UNIVERSITY ON THE DATE SET FORTH IN THIS ARTICLE 3, AND THAT, NOTWITHSTANDING ANY PROVISION OF THE NEVADA SYSTEM OF HIGHER EDUCATION (“NSHE”) CODE**

(BOARD OF REGENTS' HANDBOOK, TITLE 2) (HEREINAFTER, "NSHE CODE") TO THE CONTRARY, NO OTHER NOTICE OF NONRENEWAL OF EMPLOYMENT SHALL BE REQUIRED.

### 3.3. MANDATORY BACKGROUND CHECK

*Employee is subject to a mandatory background check to be undertaken by the University and completed within sixty (60) days of the Effective Date of this Agreement. Employee's failure to pass the initial background check to the satisfaction of the University, in its sole reasonable discretion, invalidates and voids this Agreement and results in immediate termination for cause. Following initial employment, Employee is subject to and hereby consents to additional background check(s) at the University's discretion at any time during employment. Employee's failure to pass any background check to the satisfaction of the University, in its sole reasonable discretion, invalidates and voids this Agreement and results in immediate termination for cause.*

### 3.4. EMPLOYEE'S CERTIFICATION OF TRUTH AND ACCURACY OF MATERIALS AND REPRESENTATIONS

*Employee does hereby certify and declare that Employee's application materials, including but not limited to resumes and curriculum vitae submitted in support of candidacy for employment are a true and accurate representation of Employee's education, credentials, qualifications, experience, and background and acknowledges that falsification of employment applications or documents submitted to the NSHE, or making other false or fraudulent representations in securing employment is prohibited. Falsification or misrepresentation of education, credentials, qualifications, experience, or background and/or evidence that degrees offered in support of candidacy for employment have been issued from non-accredited institutions, in University's sole reasonable discretion, invalidates the employment contract and voids this Agreement and results in immediate termination for cause.*

## ARTICLE 4 – POSITION

### 4.1 Employment As Head \_\_\_\_\_ Coach Of University.

#### 4.1.a. Position

The Employee is hereby employed by the University. Throughout the Term, the Employee shall use Employee's best full-time energies and abilities for the exclusive benefit of the University. The Employee shall serve as the Head Coach of the University's \_\_\_\_\_ program (the "**Program**"), and the Employee, as Head Coach, shall also serve as the primary and responsible administrator of the Program.

#### 4.1.b. Head Coach is Administrator; Reassignment

Employee is an "administrator" as that term is defined by the policies, rules and regulations of the Board of Regents of the Nevada System of Higher Education and is subject to reassignment. In the event that Employee is reassigned to duties other than those as Head Coach of the Program during the Term of this Agreement, Employee's compensation shall be limited to the Base Salary and fringe benefits set forth in Articles 5.1 and 5.2 of this Agreement.

OR

#### 4.1.b. Head Coach May Not Be Reassigned

*Notwithstanding that Employee shall have administrative duties, Employee is not subject to reassignment from the position of Head Coach to another position at the University.*

### 4.2 Description Of Employee's Responsibilities

#### 4.2.a. Recognition Of Duties

The Employee agrees to be a loyal employee of the University. The Employee agrees to devote Employee's best efforts full time to the performance of all duties for the University, to give proper time and attention to furthering Employee's responsibilities to the University and to comply with all rules, regulations, policies, and decisions established or issued by NSHE, the University, the NCAA, and the Mountain West Conference (the "**Conference**") or any successor conference, and to comply with all rules, regulations, policies, and decisions established or issued by

the athletic department of the University (the “**Athletic Department**”). The Employee agrees that, notwithstanding any provision of Article 5.8 herein, during the Term, Employee will not engage, directly or indirectly, in any business or investments that would materially detract from or interfere with Employee’s ability to apply best efforts to the performance of all duties hereunder. Subject to the provisions of Article 5.8, the Employee also agrees not to knowingly usurp any corporate or competitive opportunities of the University.

**4.2.b. General Duties And Responsibilities of Employee**

During the Term, the Employee agrees to undertake and perform properly, efficiently, to the best of Employee’s ability and consonant with the standards of the University all duties and responsibilities attendant to the position of Head Coach of the Program as set forth in Article 4.2.c below. The Employee further agrees to abide by and comply with the constitution, bylaws and interpretations of the NCAA and all NCAA and University rules and regulations relating to Employee’s conduct and administration of the Program, including recruiting rules, as now constituted or as any of the same may be amended during the term hereof, as well as the applicable constitution, bylaws, rules and regulations of the Conference. In the event that the Employee becomes aware of, or has reasonable cause to believe that violations of any NCAA constitution, bylaws, rules or regulations, or official interpretations thereof, may have taken place, Employee shall report the same promptly to the University’s Director of Intercollegiate Athletics (“Athletic Director”) or designee.

It is further understood that Employee is individually responsible for compliance with the policies of NSHE, the University, including, but not limited to, those of its Athletic Department, and with the rules and regulations of the NCAA and the Conference and the constitution, bylaws, rules, regulations and official interpretations thereof, as may be in effect from time to time, and for reporting violations and potential violations thereof to the Athletic Director. The Employee agrees to adhere to, respect and follow the academic standards and requirements of the University in regard to the recruiting and eligibility of prospective and current student athletes for the Program.

All academic standards, requirements and policies of NSHE and University shall also be observed by the Employee and members of Employee’s staff, including assistant coaches, at all times and shall not be compromised or violated at any time. It is the goal and desire of both the University and Employee that student athletes in the Program perform at the highest possible academic level. As Head Coach, the Employee will publicly support the mission and policies of the University and the Athletic Department. Employee shall not exhibit any behavior that brings Employee or University into public disrepute, contempt, scandal or ridicule or in any behavior that is unfavorable to the reputation or ethical standards of NSHE or University. In Employee’s position as Head Coach of the Program, the Employee is held directly accountable for these general responsibilities relating to the Program: implementation of the budget for the Program and the recruiting, training, supervision, evaluation and performance of student athletes and coaching staff.

As Head Coach of the Program, Employee shall be positive in supporting the Program, the Athletic Director, the Athletic Department, and the University.

**4.2.c. Duties and Responsibilities While Employed As Head Coach**

The duties and responsibilities assigned to the Employee in connection with this position as Head Coach of the Program are as set forth below. The Employee’s specific job duties and responsibilities shall be reviewed, assigned and revised from time to time, after consultation with the Employee, by the Athletic Director. The duties and responsibilities are not exclusive of the other general duties and responsibilities provided for elsewhere in this Agreement.

**1. Specialized Position**

The position of Head Coach of the Program is a specialized professional position. The Employee is responsible for evaluating, recruiting, training and coaching student athletes to compete successfully against major college competition in a quality program and the Employee is expected to conduct the Program in a manner most beneficial to the University and its Athletic Department.

**2. Coaching**

Employee shall participate in the instruction and coaching of student-athletes and shall effectively apply experience in recruiting, training and coaching of student-athletes.

### 3. Recruiting

Employee shall determine evaluation schedules for high school contests and junior college contests, as appropriate, to interview and recruit prospective student-athletes.

### 4. Rules Compliance

Employee shall comply with all rules, regulations, guidelines and policies of the Athletic Department, the NCAA and the Conference. Employee shall have complete knowledge of the rules and regulations governing intercollegiate athletics and maintain strict compliance therewith and attend all department-wide rules education meetings unless the Athletic Director or designee gives prior approval for absence from such meetings.

### 5. Good Sportsmanship

Intercollegiate athletics contests shall be conducted in a sportsmanlike manner. Employee shall use best efforts to ensure that all student-athletes, coaches and staff who are associated with the Program conduct themselves in a sportsmanlike manner. Employee shall (and shall also ensure that that all student-athletes, coaches and staff) exhibit ethical behavior at all NCAA and Conference competitions and shall conduct themselves in accordance with the rules of the NCAA and the Conference and the playing rules of the respective sports. ***If Employee violates playing rules of the sport in which Employee serves as Head Coach (including, but not limited to, receipt of technical fouls or ejection from any game), Employee may be subject to disciplinary or corrective action as set forth in the NCAA, Board of Regents' or University enforcement procedure and/or as set forth below in Article 4.3 and Article 6.1.c and d.*** Employee shall (and shall also use best efforts to ensure that all student-athletes, coaches and staff) refrain from making negative comments regarding an opposing institution or its players, teams, coaches/staff or game officials, and shall create a healthy environment for competition.

### 6. Fiscal Management

Employee is responsible for all aspects of fiscal management related to the Program. The Employee, in conjunction with the Athletic Director may be required to assist in securing outside funding to meet the needs of the Program or to enhance the overall Athletic Department programs, if necessary.

### 7. Support Academic Mission

Employee shall work towards integration of intercollegiate athletics and the experience for each student-athlete into the whole spectrum of academic life and to complement the University and its mission.

### 8. Academic Performance

Commencing with the academic year \_\_\_\_\_, and each academic year thereafter for the Term, the Employee will use best efforts to maintain a minimum academic performance rate ("**APR**") of \_\_\_\_\_ **or above, or** as established by the NCAA or the Conference, whichever is the higher, for all athletes on the Program's team. If the said minimum APR is not achieved in any academic year, Employee shall, within thirty (30) days of the end of the academic year, prepare and submit to the Athletic Director or supervisor a written plan of action to achieve the minimum APR in the next academic year. ***Upon approval by the Athletic Director or supervisor, Employee shall collaborate with all applicable units to implement such plan.*** Employee shall require all athletes on the Program's team to follow all academic procedures established by the Athletic Department.

### 9. Other Specific Duties and Responsibilities

The Athletic Director or designee may assign any additional duties and responsibilities that are reasonably related to the position of Head Coach for the sport in which Employee serves as Head Coach.

#### 4.3 Employee Subject to Discipline/Corrective Action for Violations of Board of Regents, Institution, NCAA, and Conference Rules and Regulations

##### 4.3.a. Prior Employment

If the Employee is found to have violated NCAA rules and regulations during prior employment at another NCAA member institution, the Employee shall be subject to disciplinary or corrective action as set forth in the NCAA enforcement procedure.

**4.3.b. Discipline/Corrective Action**

**1. Warning, Reprimand, Suspension with Pay and Non-monetary Corrective Action**

**Notwithstanding any provisions of the NSHE Code, if the Employee is found to be in violation of Board of Regents, University, NCAA or Conference rules and regulations, or provisions of this Agreement, including, but not limited to, the prohibitions set forth in Article 6.1.c hereof, while employed by the University, the Employee, in the University's sole reasonable judgment, may be subject to disciplinary or corrective action as set forth in the NCAA, Board of Regents, University or Conference enforcement procedure and/or as set forth in this Article 4.3.b.1. The Athletic Director may issue a verbal or written warning, issue a written reprimand, suspend the Employee with pay, require the Employee to undergo additional training or education and/or impose any additional non-monetary disciplinary or corrective actions, including those allowed under NCAA or Conference rules or regulations. Nothing in this section shall prevent the Employee from also being disciplined under Article 4.3.b.2 of this Agreement or from Employee's employment being terminated as provided in Article 6.1.c and d. hereof for such violations.**

**The Athletic Director shall give the Employee written notice of intent to discipline. The written notice must describe the circumstances of the alleged prohibited conduct, the alleged violations, the intended discipline and may include materials or documentation in support of the charges. The Employee may present a written response to the Athletic Director within one (1) calendar day after receipt of the written notice. The time period for the Employee's written response may be extended by the Athletic Director for good cause, as determined in the sole and absolute discretion of the Athletic Director. Under this Article 4.3.b.1, there is no right to an evidentiary hearing with regard to any proposed discipline or to an appeal of the Athletic Director's decision. The Athletic Director shall issue a written decision within a reasonable time after receiving Employee's written response, if any, and the decision of the Athletic Director is final and not subject to any appeal, grievance or reconsideration. Notwithstanding any provision of the NSHE Code to the contrary, the written decision of the Athletic Director pursuant to this Article 4.3.b.1 shall be considered public and may be provided by University to the media or any other third party. Employee expressly agrees that, notwithstanding any NSHE Code provision to the contrary, the University shall be permitted to comment publicly regarding any discipline imposed pursuant to this Article 4.3.b.1 (including through public statements, press release, press conferences and in response to any public statements made by the Employee).**

**Employee acknowledges and agrees that the administrative process provided herein constitutes legal due process, and that no further administrative process is required.**

**2. Suspension Without Pay, Fines/Penalties**

**Notwithstanding any provisions of the NSHE Code, if the Employee is found to be in violation of Board of Regents, University, NCAA or Conference rules and regulations, or provisions of this Agreement, including, but not limited to, the prohibitions set forth in Article 6.1.c hereof, while employed by the University, the Employee, in University's sole reasonable judgment, may be subject to disciplinary or corrective action as set forth in the NCAA, Board of Regents, University, or Conference enforcement procedure and/or as set forth in this Article 4.3.b.2. The Athletic Director, with the approval of the University's President, may suspend the employee without pay and/or impose a fine or monetary penalty not to exceed \$10,000 per violation. Nothing in this section shall prevent the Employee from also being disciplined under Article 4.3.b.1 of this Agreement or shall prevent the Employee's employment from being terminated as provided in Article 6.1.c and d. hereof for such violations.**



*The Athletic Director shall give the Employee written notice of intent to discipline. The written notice must describe the circumstances of the alleged prohibited conduct, the alleged violations, the intended discipline, and may include materials or documentation in support of the charges. The Employee may present a written response to the Athletic Director within one (1) calendar day after receipt of the written notice. The time period for the Employee's written response may be extended by the Athletic Director for good cause, as determined in the sole and absolute discretion of the Athletic Director. Under this Article 4.3.b.2, there is no right to an evidentiary hearing with regard to any proposed discipline or to an appeal of the Athletic Director's decision. The Athletic Director shall issue a written decision within a reasonable time after receiving Employee's written response, if any, and the decision of the Athletic Director is final and not subject to any appeal, grievance or reconsideration. Notwithstanding any provision of the NSHE Code to the contrary, the written decision of the Athletic Director regarding discipline imposed pursuant to this Article 4.3.b.2 shall be considered public and may be provided by University to the media or any other third party. Employee expressly agrees that, notwithstanding any NSHE Code provision to the contrary, the University shall be permitted to comment publicly regarding any discipline imposed pursuant to this Article 4.3.b.2 (including through public statements, press release, press conferences and in response to any public statements made by the Employee).*

*Employee acknowledges and agrees that the administrative process provided herein constitutes legal due process, and that no further administrative process is required.*

#### **4.4 Reporting Relationship**

The Employee shall report to the Athletic Director. The Employee is expected to work closely with a variety of athletic departments and University staff on all matters affecting the Program or otherwise connected with the discharge of Employee's duties as an employee of the University.

#### **4.5 Annual Personnel Evaluations**

The Employee's performance of job duties and responsibilities, distinguished from Employee's win-loss record will be evaluated by the Athletic Director or the Employee's direct supervisor periodically on the duties and responsibilities set forth in this Agreement according to the responsibilities set forth in Article 4.2.

40% Competitiveness;  
40% Academics and rules compliance;  
10% Institutional goals, including diversity, and citizenship and  
10% Program administration.

These evaluations also will take into account prior evaluations and the expectations and goals set for the Employee in such prior evaluations. Academic achievement shall include, but not be limited to, maintenance of the APR as set forth in Article 4.2.c.8. **An overall "unsatisfactory" rating in two consecutive annual performance evaluations shall be cause for termination by University in accordance with Article 6.1.c and d below. Employee's evaluations are not subject to the provisions of the NSHE Code, Title 2, Chapter 5, Article 5.2.3 (statement of reasons), Article 5.3.4 (reconsideration) or Article 5.12 (evaluations). However, Employee may submit a written rejoinder to the evaluation, which will be included in the Employee's personnel file.**

In addition, each year that the Employee serves as Head Coach of the Program, the Employee will be responsible for evaluating assistant coaches, who shall be evaluated on the same basis as performance evaluations are done for other professional employees of the University or as specified in the assistant coach's contract of employment.

### **ARTICLE 5 – COMPENSATION**

In consideration for the promises Employee has made in entering into this Agreement, the Employee shall be entitled to the compensation as described below. All payments, including non-cash consideration and benefits, by the University are subject to normal deductions and withholding of all applicable state, local and federal taxes, including all provisions, regulations and guidelines of the Internal Revenue Code, and for any retirement or other benefits to which

the Employee is entitled or in which Employee participates, and are subject to the terms and conditions of Article 6 hereof concerning termination of this Agreement and Article 7 hereof concerning restrictions on competitive employment.

### **5.1 Base Salary**

The base salary paid by the University to the Employee for all services and satisfactory performance of the terms and conditions of this Agreement shall be at the base rate of \$\_\_\_\_\_ ("Base Salary") per fiscal year (a fiscal year begins on July 1 and ends the following June 30), prorated to the portion of the fiscal year the Employee is actually employed, and payable in equal monthly installments by the University to the Employee on the first working day of each consecutive calendar month during the Term. Notwithstanding this Article 5.1, in the event there are salary reductions throughout the Nevada System of Higher Education for any fiscal year during the Term, Employee's salary shall be reduced by the same percentage and in the same manner as other non-tenured faculty of University through the mechanisms required by the Board of Regents, such as, for example, pay cuts and unpaid leave days. If the Nevada State Legislature grants a Cost of Living (COLA) increase for state employees and if the Nevada System of Higher Education authorizes a COLA increase for its employees, Employee is not entitled to receive a COLA increase. If the Nevada State Legislature funds merit awards for Nevada System of Higher Education faculty and the Nevada System of Higher Education and University authorizes merit awards for University employees, Employee is not eligible to participate in the merit program.

### **5.2 Fringe Benefits**

Except as provided herein, the Employee shall be entitled to the standard fringe benefits provided to all other professional employees of the University including, but not limited to, retirement contributions based upon the Base Salary paid pursuant to Article 5.1 of this Agreement, insurance and sick leave. The Employee is responsible for notifying the Athletic Director or designee in writing of any request to use sick leave time. Annual leave shall not be earned or accrued; however, personal leave may be taken at times and in duration approved in advance or as directed by the Athletic Director, at the request of Employee or otherwise.

### **5.3 Expenses**

The University will reimburse the Employee for all travel and out-of-pocket expenses reasonably incurred by him for the purpose of and in connection with the performance of Employee's duties under this Agreement, including, but not limited to, expenses incurred while recruiting and scouting. Such reimbursement shall be made in accordance with standard reimbursement rates and procedures of the University upon presentation to the University of standard travel reimbursement forms, vouchers or other statements itemizing such expenses in reasonable detail. In addition, the University will provide the Employee's spouse or domestic partner, and minor child(ren) with team travel privileges to all University away games and all University NCAA post-season travel at the standard state per diem rate.

### **5.4 Automobile**

The University, as additional compensation to the Employee, shall make arrangements for and provide to the Employee, on a loan basis, one (1) automobile for use by Employee for so long as the Employee serves as Head Coach of the Program. The University further agrees to provide appropriate liability and comprehensive automobile insurance to cover the Employee's use and operation of said automobile. The Employee shall be responsible for all other expenses involved in the use and operation by Employee of said automobile. In addition, Employee agrees to comply with all applicable policies, guidelines and employee agreements related to the use and operation of said automobile.

### **5.5 Season Tickets and Membership**

The University shall make available to the Employee, upon request, for the Employee's personal and professional use and not for commercial sale, transfer or barter, a number of athletic tickets as follows:

a. The University shall make available to the Employee, so long as Employee serves as Head Coach of the Program and for no longer, \_\_\_\_\_ Season \_\_\_\_\_ Tickets;

b. The University shall make available to the Employee, so long as Employee serves as Head Coach of the Program and for no longer, upon request, up to \_\_\_\_\_ tickets to all other University varsity sport home games.

c. The University will arrange for membership privileges, at no cost to Employee, at a local golf or country club for as long as Employee serves as the Head Coach of the Program and for no longer.

## 5.6 Other Compensation

### 5.6.a. Media and Public Appearances

In consideration for Employee's satisfactory, as evaluated in the Athletic Director's sole discretion, media and public/donor appearances (the "**Appearances**") scheduled by the University (**on and off season**) of no less than \_\_\_\_\_ radio appearances \_\_\_\_\_ television/internet appearances, and \_\_\_\_\_ public/donor appearances **per fiscal year**, the University shall pay Employee \$\_\_\_\_\_ per fiscal year, not subject to COLA, retirement contributions or retirement deductions ("**Media and Public Appearance Fee**"), only for so long as the Employee is serving as Head Coach of the Program. **The Media and Public Appearance Fee** shall be paid no later than \_\_\_\_\_ days after the end of the fiscal year **in which it is earned**. The Appearances may include appearances before civic, faculty, student, alumni, booster or other like groups, as may be reasonably determined by **the Athletic Director. Notwithstanding the payment time stated herein, the Media and Public Appearance Fee is not earned unless and until the minimum number of satisfactory appearances set forth above has occurred.**

***In the event Employee earns the Media and Public Appearance Fee but the University terminates Employee's employment for its convenience pursuant to Article 6.1.a or Employee terminates employment for convenience pursuant to Article 6.2, University shall pay Employee the earned Media and Public Appearance Fee. In the event Employee earns the Media and Public Appearance Fee but the University undertakes a process under Article 6.1.c, the payment of any Media and Public Appearance Fee shall be delayed pending the outcome of the process and, in the event the process results in termination of the Employee's employment for cause pursuant to Article 6.1.c and d, Employee shall forfeit the Media and Public Appearance Fee.***

### 5.6.b. Shoe and Apparel Contract

The University may enter into contract(s) with one or more shoe, apparel and/or equipment companies that require the Program to wear its shoes, its apparel and/or use its equipment during practice and/or competition. All payments or other consideration from any source related to use of shoes, apparel, equipment or any other product by the Program shall be made exclusively to the University, and not directly to Employee. Any contracts under this Article 5.6.c that require payment to the Employee shall be disbursed through the Athletic Department. Such disbursements by the Athletic Department shall be made within a reasonable period upon receipt of said monies. In no event shall the University be liable for any payment or disbursement of monies unless and until the University receives said monies for disbursement. The University shall use reasonable efforts to collect monies owing.

However, Employee may contract independently with a shoe, apparel and/or equipment company for Employee himself to wear, promote, endorse or consult with the manufacturer, distributor or seller of such products concerning the design and/or marketing of shoes, apparel or equipment, provided that any such outside employment contract is in writing, does not conflict with any existing or potential contracts or opportunities of University, is approved in advance in writing by the Director of Athletics or designee, does not extend beyond the Term, and terminates herewith. Employee shall not enter into negotiations or preliminary discussions regarding any such independent contract without the prior written consent of the Director of Athletics or designee, which consent shall not be unreasonably withheld. Employee may agree to directly receive compensation due under such independent contract only to the extent that the amounts and schedule for payment/delivery of such compensation is fully and accurately disclosed in the document by which the prior written approval of the Director of Athletics or designee is requested for Employee to enter into such independent contract.

### 5.6.c. Additional Compensation - Revenue Enhancement Payment

The Employee shall receive additional compensation for the Program's achievement of the following:

1. Revenue Enhancement **Payment**: If the total of **the Program's** ticket revenue, including season ticket and single game ticket revenue, exceeds \$\_\_\_\_\_ in any given **Program**

season, University shall pay the Employee [a bonus] **an amount** equal to 50% of every dollar of that season's ticket revenue exceeding \$\_\_\_\_\_ **[enter amount above]**, up to a maximum payment to Employee of \$\_\_\_\_\_, **not subject to COLA, retirement contributions or retirement deductions** (the "**Revenue Enhancement Payment**"). The Revenue Enhancement Payment, if any, shall be paid to Employee no later than the \_\_\_\_ day of \_\_\_\_\_ immediately following completion of the season for which the **payment** was earned. **In the event Employee earns the Revenue Enhancement Payment, but** Employee's employment is terminated on or before \_\_\_\_\_ of that year, whether: (i) by University with or without cause pursuant to Article 6.1; or (ii) by Employee for the Employee's convenience pursuant to Article 6.2, **Employee shall forfeit the Revenue Enhancement Payment.** Upon the written approval of the Athletic Director, the Employee may direct the University to distribute the Revenue Enhancement **Payment**, or any part thereof, **to the Program's assistant** coaches as additional compensation to them.

## 5.7 Supplemental Compensation - Athletic Performance Payment

During employment as Head Coach of the Program, the Employee shall have the opportunity to earn supplemental compensation in the amounts and upon the conditions set forth below, based upon the exceptional performance of the Program's team and also based upon the team's participation in post-season games, including the additional services required of Employee in preparation for and participation in such post-season games ("**Athletic Performance Payment**"). The Employee may direct the University to distribute the **Athletic Performance Payment** that is earned under the provisions of this Article 5.7, or any part thereof, to the **Program's** assistant coaches as supplemental compensation to them upon the written approval of the Athletic Director.

For each year that the **Program's** single year **APR is at the level required by the NCAA or Conference for post season play, whichever is higher**, the University shall pay the Employee, as additional compensation, a total maximum amount of \$\_\_\_\_\_ per fiscal year for the Program's achievement of the following:

Athletic Performance:

- a. For winning or tying the Conference Regular Season Championship: \$\_\_\_\_\_.
- b. For winning the Conference Tournament Championship: \$\_\_\_\_\_.
- c. For receiving the Conference Coach of the Year Award or Co-Coach of the Year Award: \_\_\_\_\_.
- d. In the NCAA Tournament:
  - i. For the team advancing in each round: \$\_\_\_\_\_.
  - ii. For the team playing in the Final Four: \$\_\_\_\_\_.
  - iii. For the team winning the NCAA Championship: \$\_\_\_\_\_.
- e. In the NIT Post Season Tournament:
  - i. For the team advancing in each round: \$\_\_\_\_\_.
  - ii. For the team playing in the Final Four: \$\_\_\_\_\_.
  - iii. For the team winning the NIT Championship: \$\_\_\_\_\_.

The Athletic Performance **Payment** shall not be **earned and payable** unless the **Program's** single year APR is **achieved and maintained at the minimum level set forth above** for the immediately preceding academic year. **In the event Employee earns the Athletic Performance Payment but Employee's employment is terminated on or before \_\_\_\_\_ of that year, whether: (i) by University for cause pursuant to Article 6.1.c and d; or (ii) by Employee for the Employee's convenience pursuant to Article 6.2, Employee shall forfeit the Athletic Performance Payment.**

## 5.8 Opportunities to Earn Outside Income

While employed as Head Coach of the Program, Employee shall have the opportunity to earn outside income as a result thereof, but only upon the following terms and conditions:

### 5.8.a. General Provisions Concerning Outside Income

The following general terms and conditions shall apply to each case in which the Employee seeks to or makes arrangements for activities to earn outside income as a result of being Head Coach of the Program.

**5.8.a.1. University Obligations are Primary**

Such outside activities shall not interfere with the full and complete performance by the Employee of Employee's duties and obligations as a University employee, recognizing always that the Employee's primary obligations lie with the University and its students.

**5.8.a.2. Laws and University, NCAA and Conference Rules Control**

In no event shall the 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: (1) the laws of the State of Nevada; (2) the NSHE Code, any other provisions of the NSHE Board of Regents Handbook, or rules or policies of the University or its Board of Regents; or (3) NCAA legislation or the constitution, bylaws, rules and regulations, or interpretations thereof, or of the Conference, as now or hereafter enacted. Changes or amendments of such laws, legislation, constitution, bylaws, policies, rules and regulations or interpretations thereof shall automatically apply to this Agreement without the necessity of a written modification of this Agreement or of notification to Employee.

**5.8.a.3. University Approval is Required**

The Employee shall obtain the advance written approval of the University's President, through the Athletic Director or supervisor, before entering into any agreements to receive outside income, which approval shall not be unreasonably withheld.

**5.8.a.4. University is Not Liable**

ANY ARRANGEMENTS FOR OUTSIDE COMPENSATION AND THE ACTIVITIES THEREUNDER ARE INDEPENDENT OF THE EMPLOYEE'S UNIVERSITY EMPLOYMENT, AND THE EMPLOYEE HEREBY RELEASES THE UNIVERSITY FROM ANY LIABILITY, DAMAGES OR CLAIMS FOR ANY PAYMENT OF OUTSIDE COMPENSATION OR FOR ANY CLAIMS ARISING THEREFROM UNDER ANY CIRCUMSTANCES WHATSOEVER. EMPLOYEE HEREBY EXPRESSLY RELEASES UNIVERSITY, ITS REGENTS, OFFICERS, EMPLOYEE'S AND AGENTS FROM ANY AND ALL CLAIMS FOR THE LOSS OF ANY COLLATERAL BUSINESS OPPORTUNITIES OR ANY OTHER BENEFITS, PERQUISITES OR INCOME RESULTING FROM ANY OUTSIDE ACTIVITIES OF EMPLOYEE.

**5.8.b. Commercial Endorsement**

Subject to the provisions of Article 5.8.a hereof, the University and the Employee agree that the Employee may undertake commercial endorsements of products and services in which Employee is identified as the Head Coach of the Program, but that Employee may not otherwise associate the University's name with an endorsement and provided that all such endorsements must cease at the termination of this Agreement or at such time as Employee stops serving as Head Coach of the Program.

**5.8.c. Income from Written and Video Materials**

Subject to the provisions of Article 5.8.a hereof, the Employee may write and release books and magazine and newspaper articles, columns or video productions in connection with Employee's position as Head Coach of the Program. The Employee agrees to act in a professional manner in all such matters and shall in no way disparage the Nevada System of Higher Education, the University, their activities, programs, regents, officers, employees or agents.

**5.8.d. Summer Camp**

Subject to the provisions of Article 5.8.a hereof and subject to the availability of the facilities in question, for so long as the Employee serves as Head Coach of the Program, the Employee shall have the opportunity to use University facilities in connection with a summer camp run by the Employee and using Employee's name, along with Employee's identification as the Head Coach of the Program, provided that the University is reimbursed by Employee for its actual and overhead expenses incurred in making the facilities available, and upon such conditions as may be required from time to time by the University's administration. For all camps and/or clinics the Employee may conduct, the Employee shall comply with all applicable NSHE and child protection policies. In addition, for all camps and/or clinics Employee may conduct, Employee shall purchase comprehensive general liability insurance with limits set forth by the University and which shall name the Board of Regents of the Nevada System of Higher Education as an

additional insured. Prior to the commencement of such camps and/or clinics, Employee shall provide the Athletic Director or supervisor with certificates of insurance evidencing such insurance. The University may waive the insurance requirements if it is determined in the best interest of the University to conduct the camps and/or clinics through a division or department of the University. Any profits made by the Employee from this enterprise, after deducting any fees that may be due to the University for conducting the camps and/or clinics through a division or department of the University, shall be retained by him solely. Employee may direct the University to distribute this supplemental compensation, or a part thereof, to Employee's assistant coaches as supplemental compensation to them upon the written approval of the Athletic Director or Employee's supervisor. Employee shall hold harmless and defend University from any and all liability arising from any camp Employee conducts.

#### **5.8.e. Conflict of Interest/Competing Organizations**

Employee acknowledges that NSHE and institution Conflict of Interest/Compensated Outside Services Policies and all related rules and procedures thereunder apply to Employee during the Term. Consistent with such policies, Employee agrees for the Term not to serve, directly or indirectly, as an employee or otherwise, as a director, personnel executive, advisor and/or consultant, for any other university athletic program or organization, nor shall he perform athletic-related services for any organization, league, conference, college, club or group, with or without compensation, without the prior written consent of the University, which consent can be withheld in the University's sole and absolute discretion. During the Term of employment hereunder, Employee shall not make or continue to hold any investment in or be associated with any enterprise, which could be deemed to be competitive with University's objectives and philosophies or with the Athletic Department, without first having obtained the written approval of the University's President.

#### **5.8.f. Disclosure of Outside Income**

In accordance with NCAA regulations, the Employee shall report annually in writing to the President of the University, through the Athletic Director or Employee's supervisor, on or before June 30 of each fiscal year, all income from sources outside the University, including, but not limited to, income from annuities, sports camps, housing benefits, complimentary ticket sales, television and radio programs and endorsement or consultation contracts with athletic shoe, apparel or equipment manufacturers or sellers, and the University shall have reasonable access to all records of the to report outside income directly to the NCAA.

### **ARTICLE 6 – TERMINATION**

#### **6.1 Termination by University**

The Employee recognizes that Employee's promise to remain as Head Coach of the Program through the entire Term is of the essence of this Agreement to the University. It is also recognized, however, that certain limited circumstances may make it appropriate for the University to terminate this Agreement prior to the completion of its entire term, as follows:

##### **6.1.a. Termination Without Cause**

At any time after commencement of this Agreement, University, for its own convenience, may terminate this Agreement by giving ten (10) calendar days prior written notice to Employee **and may immediately place Employee on paid administrative leave. The provisions of Title 2, Chapter 6, Section 6.5 do not apply to the University's decision to place Employee on administrative leave as provided in this Article 6.1.a.** The termination shall be effective no earlier than ten (10) calendar days after receipt of the written notice of termination. If the University terminates this Agreement for convenience, the University shall pay to Employee, as liquidated damages and not a penalty, the following sum calculated as of the effective date of termination:

##### **6.1.a.1.**

Except as set forth in subsections 6.1.a.2 and 3, below, in the event that University terminates this Agreement for its own convenience between the Effective Date and \_\_\_\_\_, University shall pay Employee as liquidated damages and not a penalty, an amount equal to Employee's Base Salary as defined in Article 5.1 of this Agreement, excluding all deductions required by law, payable monthly until the expiration of the Term, or in accordance with a payment schedule agreed upon by the President of the University and the Employee in writing.

Employee shall be entitled to no other compensation or fringe benefits, except as otherwise required by law.

**6.1.a.2.**

The parties have both been represented by, or had the opportunity to consult with, legal counsel in the negotiations of this Agreement and have bargained for and agreed to the foregoing liquidated damages provision, giving consideration to the fact that the Employee may lose certain benefits, supplemental compensation, or outside compensation relating to Employee's employment with University, which damages are extremely difficult to determine with certainty. The parties further agree that the payment of such liquidated damages by University is Employee's sole remedy and the acceptance thereof by Employee shall constitute adequate and reasonable compensation to Employee for the damages and injury suffered by Employee because of such termination by University. The liquidated damages are not, and shall not be construed to be, a penalty.

**6.1.a.3.**

Notwithstanding the liquidated damages provisions of this Article 6.1.a, the Employee agrees to mitigate the University's obligations to pay liquidated damages by making reasonable and diligent efforts to obtain employment; such employment includes, but is not limited to, any head or assistant coaching or other athletic position with, or consulting or other services of any kind provided to, **or any volunteer position with**, any school, college, university, professional or semi-professional athletic team or any athletic conference, organization, league or association, or any sports-related position **or volunteer position**, or services provided **or volunteered** to any sports-related entity, including without limitation any media entity. **Failure to reasonably and diligently seek other employment shall relieve the University of its obligation to pay liquidated damages under this Article.** After the Employee obtains such new employment **or volunteer position**, the University's financial obligations under this Agreement, including payment of liquidated damages, ceases. Employee shall inform the University in writing immediately upon acceptance of new employment **or volunteer position**.

**6.1.b. Automatic Termination upon Death or Disability of Employee**

This Agreement terminates upon the Employee's death. Notwithstanding any provision of the NSHE Code to the contrary, in addition to any benefits which may be paid to the estate of the deceased Employee from insurance, retirement or any other source, the University shall pay to the Employee's estate the Employee's salary through the day death occurred, plus any earned, accrued but unused annual leave, if applicable under University policies, together with one-twelfth of the Employee's base salary.

Upon total or permanent disability of the Employee, within the meaning of the University's disability insurance for employees, the Employee is required to first use all unused, accrued sick leave and, if applicable, annual leave or other leave authorized under University policies. Upon the expiration of such leave or the period of six (6) months, whichever comes last, this Agreement shall automatically terminate and the Employee shall be entitled to benefits as provided by the University's long-term disability insurance coverage. Benefits provided under this Article are calculated on the Base Salary as set forth in Article 5.1 of this Agreement.

**6.1.c. Termination by University for Cause**

The University shall have the right to terminate this Agreement for cause at any time. **In the sole reasonable judgment of the University**, the term "cause" shall include, any of the following:

1. Insubordination, including but not limited to, failure to follow instructions from the Athletic Director consistent with the terms of this Agreement, failure to comply with Athletic Department policies and procedures, failure to perform material duties and responsibilities of Head Coach as specified in this employment agreement or as reviewed, assigned, and revised in accordance with Article 4.2 of this Agreement;
2. Deliberate and serious violations, of the duties outlined in Article 4.2 of this Agreement or refusal or unwillingness to perform such duties in good faith and to the best of the Employee's abilities;
3. Any conduct of the Employee in violation of any criminal statute of moral turpitude;
4. A serious or intentional violation of any law or of any policy, rule, regulation, constitutional provision, bylaw or interpretation of the University, the Nevada System of Higher Education, the NCAA or the Conference, which violation may, in the sole reasonable judgment of the University, reflect adversely upon the

University or its Athletic Department, including any violation which may result in the University being sanctioned by the NCAA or the Conference, and including any violation which may have occurred during prior employment of the Employee at another NCAA member institution;

5. A serious or intentional violation of any law or of any policy, rule, regulation, constitutional provision, bylaw or interpretation of the University, the NCAA or the Conference, by Employee or student athletes in the Program, which violation may, in the sole reasonable judgment of the University, reflect adversely upon the University or the programs of its Athletic Department. This shall include, without limitation, any violation which may result in the University being sanctioned by the NCAA or the Conference, any may also include any violation which may have occurred during prior employment of the Employee at another NCAA member institution;
6. Conduct of the Employee which, in the sole reasonable judgment of the University, is seriously prejudicial to the best interests of the University or its Athletic Department, or which violated the University's mission;
7. Any behavior that brings Employee or University into public disrepute, contempt, scandal or ridicule or any behavior that would bring disfavor to the reputation or ethical standards of NSHE or the University;
8. Prolonged absence from duty without the written consent of the Athletic Director or designee;
9. **Failure to take appropriate steps to achieve and maintain the minimum APR in any academic year as required by Article 4.2.c.8, including Employee's failure to require all athletes on the Program's team to follow all academic procedures established by the Athletic Department, and also including failure to propose and implement a written plan of action to achieve the minimum APR for the next academic year if the said minimum APR is not achieved in any academic year;**
10. **Breach of this Agreement;**
11. Any cause adequate to sustain the termination of any other University employee under the provisions of NSHE Code, Title 2, Chapter 6; **and/or**
12. **Overall unsatisfactory rating in the Employee's annual personnel evaluation for two (2) consecutive years.**

#### 6.1.d. Determination of Cause and Employee's Right to University Hearing

**Notwithstanding any provisions of the NSHE Code, including but not limited to Title 2, Chapter 6, if in the sole reasonable judgment of the University, the Employee is found to be in violation of Board of Regents, University, NCAA or Conference rules and regulations, or provisions of this Agreement, including, but not limited to, the prohibitions set forth in Article 6.1.c hereof, while employed by the University, Employee may be terminated for cause. The Athletic Director shall provide a written recommendation to the President of the University that Employee's be terminated for cause. The Employee shall be given a copy of the written recommendation, the opportunity to respond in writing and the opportunity for a meeting with the President prior to termination. With the approval of the President, the Athletic Director may immediately place Employee on paid administrative leave pending the President's determination regarding cause. The provisions of NSHE Code Title 2, Chapter 6, Section 6.5 do not apply to the decision to place Employee on administrative leave as provided in this paragraph.**

**The written recommendation to the President must describe the circumstances of the alleged prohibited conduct, the alleged violations, and may include any materials or documentation in support of the charges. Employee shall be provided a copy of the Athletic Director's written recommendation to the President, and within three (3) calendar days after receipt of the written recommendation, may submit a written response, with any supporting materials or documentation to the President and to the Athletic Director. Thereafter, the Athletic Director may submit a written reply to the President and the Employee within three (3) calendar days after receipt of the Employee's written response. The meeting with the President shall take place no later than two (2) calendar days after the Athletic Director submits any written reply. The President has sole and absolute discretion to extend any of these time periods. The Athletic Director shall attend the meeting between the Employee and the President. Employee may have an advisor present at the meeting with the President, but the advisor may not participate actively in the meeting. If Employee chooses to have an advisor present, the Athletic Director may also have an advisor present although the advisor may not participate actively in the meeting.**

**The President shall issue a written decision within a reasonable time after the meeting with the Employee. The decision of the President is final and not subject to any appeal, grievance or reconsideration. Employee acknowledges and agrees that the administrative process provided herein constitutes legal due**



**process, and that no further administrative process in connection with Employee's termination for cause is required.**

**Notwithstanding any provision of the NSHE Code to the contrary, the written decision of the President terminating Employee pursuant to this Article 6.1.d shall be considered public and may be released by University to the media or any other third party. Employee expressly agrees that, notwithstanding any NSHE Code provision to the contrary, the University shall be permitted to comment publicly regarding termination pursuant to this Article 6.1.d (including through public statements, press release, press conferences and in response to any public statements made by the Employee).**

**Employee further understands and agrees that in the event a termination is subsequently reversed or determined to be unfounded by a court of competent jurisdiction, the University has the right, in its sole and absolute discretion, to convert Employee's termination to a termination without cause in accordance with Article 6.1.a hereof.**

#### **6.1.e. University's Obligations Upon Termination for Cause**

In the event this Agreement is terminated for cause in accordance with the provisions of Article 6.1.c and d hereof, as of the effective date of such termination, all of the University's obligations to the Employee under this Agreement subsequent to that date shall cease. In no case shall the University be liable to the Employee for the loss of any collateral or outside business opportunities or any other benefits, perquisites or income resulting from activities such as, but not limited to, camps, clinics, media appearances, apparel or shoe contracts, consulting relationships or from any other source whatsoever.

## **6.2 Termination by Employee**

### **6.2.a. Termination for Convenience of Employee**

The Employee understands that Employee's promise to remain employed as Head Coach for the entire Term is of the essence of this Agreement to the University. The Employee also understands 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 employment with the University prior to the expiration of this Agreement. In recognition of these understandings, the parties agree that while the Employee may, nevertheless, terminate this Agreement prior to its normal expiration, such termination shall be only upon the following terms and conditions:

#### **6.2.a.1. Written Notice of Termination**

The Employee, for Employee's own convenience, may terminate this Agreement during its term by giving prior written notice to the University. Such termination shall be effective no earlier than ten (10) calendar days after receipt of the written notice unless otherwise agreed to by the parties in writing. Such termination by the Employee must occur at a time outside the Program's team's playing season and recruiting contact periods, as defined by the NCAA, so as to minimize the impact of such termination upon the Program.

#### **6.2.a.2. Liquidated Damages**

If the Employee terminates this Agreement for convenience, all obligations of the University shall cease as of the effective date of the termination, and the Employee or **Employee's** designee shall pay to the University, as liquidated damages and not a penalty, the following sums calculated as of the effective date of termination:

Employee shall pay to the University an amount equal to Employee's Base Salary as defined in Article 5.1 of this Agreement for the period remaining in the Term (partial months shall be prorated) and, in addition to this amount, the Employee shall also pay to the University:

- a. If the Employee terminates this Agreement for convenience between the Effective Date and **the 2 year anniversary of the Effective Date, an amount equal to two times the amount of Employee's Base Salary as defined in Article 5.1;**

- b. If the Employee terminates this Agreement for convenience between ***the 2 year anniversary of the Effective Date and the 3 year anniversary of the Effective Date, an amount equal to one and one-half times the amount of Employee's Base Salary as defined in Article 5.1;*** and
- c. ***If the Employee terminates this Agreement for convenience after the 3 year anniversary of the Effective Date, an amount equal to the entire remaining Base Salary due to Employee as set forth in Article 5.1 (partial months prorated).***

The liquidated damages shall be due and payable within twenty (20) calendar days of the effective date of the termination, or in accordance with a payment schedule agreed upon by the President of the University and the Employee in writing, and any unpaid amount shall bear simple interest at a rate of eight (8) percent per annum until paid.

#### **6.2.a.3. Not a Penalty**

The parties have both been represented by, or had the opportunity to consult with, legal counsel in the negotiation of this Agreement and have bargained for and agreed to the foregoing liquidated damages provision, giving consideration to the fact that the University will incur administrative and recruiting costs in obtaining a replacement for Employee, that the University will lose the benefit of its investment in the Employee, and that the University may face potentially increased compensation costs if Employee terminates this Agreement for convenience, all of which amounts are extremely difficult to determine with certainty. The parties further agree that the payment of such liquidated damages by Employee is University's sole remedy and the acceptance thereof by University shall constitute adequate and reasonable compensation to University for any and all damages and injury suffered by it because of such termination by Employee. The liquidated damages are not, and shall not be construed to be, a penalty.

#### **6.2.b. Effect of Termination by Employee**

If the Employee terminates this Agreement prior to its expiration pursuant to Article 6.2.a, all compensation and other obligations owed by the University to the Employee under this Agreement will be terminated on the effective date of the Employee's termination, except such sums as are earned by and are still owing to the Employee prior to the effective date of the Employee's termination. The provisions of this Article 6.2 shall be without prejudice to any right the University may have under applicable law.

In no case shall the University be liable to the Employee for the loss of any collateral business opportunities or any other benefits, perquisites or income resulting from activities such as but not limited to camps, clinics, media appearances, apparel or shoe contracts, consulting relationships or from any other sources whatever, that may ensue as a result of the Employee's termination of this Agreement.

### **ARTICLE 7 – RESTRICTIVE COVENANTS**

#### **7.1 Confidential Information**

The parties agree that in the course of employment, Employee will have access to confidential information regarding the Athletic Department and its programs, including donor lists and donor information, which could be used by other institutions to place the Program's team at a competitive disadvantage. Employee shall not provide, and is prohibited from providing, any such confidential information to other institutions, their coaches, employees, student athletes, agents or representatives.

#### **7.2 Other Employment Opportunities**

The parties agree that should another coaching opportunity be presented to the Employee or should the Employee be interested in another position as a coach at any institution of higher education which is a member of the NCAA or the NAIA, or any team participating in any professional league or conference in the United States or elsewhere, requiring the performance of duties prior to the expiration of the Term or any extension hereof, the Employee shall immediately notify the Athletic Director in writing of such opportunity or interest.

## ARTICLE 8 – MISCELLANEOUS

### 8.1 Assistant Coaches

Subject to such limitations as may be imposed from time to time by the NCAA or the Conference, the University shall provide the Program with up to the maximum permissible number of assistant coaches. The Employee shall have the authority to recommend the hiring and termination of assistant coaches for the Program, subject to the review of the University's Affirmative Action Officer and the Athletic Director and the approval of the President of the University, as the University's appointing authority, or the President's designee. All assistant coaches shall be University employees. It is understood that, except as may be provided in any other written employment agreement, assistant coaches are immediately responsible to the Employee, who will assign the duties of each of the assistant coaches, and that the Employee is responsible for the activities of such assistant coaches as those activities relate to the educational purposes and the athletic interests of the University. It is further understood, however, that the Employee and assistant coaches are additionally responsible to the Athletic Director for compliance with the policies of the University, including its Athletic Department, with the rules and regulations of the NCAA and the constitution, bylaws, rules, regulations, and all official interpretations thereof, and the rules and regulations of the Conference, as may be in effect from time to time.

### 8.2 Other Remedies

The Employee shall be entitled to use the grievance procedures established by the University Bylaws for the resolution of disputes under this Agreement.

### 8.3 Choice of Law and Venue

It is the intent of the parties hereto that this Agreement shall be governed by and construed in accordance with the laws of the State of Nevada and the laws of the State of Nevada shall govern the validity, performance and enforcement of this Agreement. Any and all disputes arising out of or in connection with this Agreement shall be litigated in a court of competent jurisdiction in \_\_\_\_\_ County, State of Nevada, and the parties hereby expressly consent to the jurisdiction of said court.

### 8.4 Assignment of Agreement

The Employee's rights and interests under this Agreement may not be assigned, pledged or encumbered by the Employee.

### 8.5 Merger Clause

**THIS AGREEMENT CONSTITUTES THE FULL AND COMPLETE UNDERSTANDING OF THE PARTIES WITH RESPECT TO THE EMPLOYMENT OF THE EMPLOYEE BY THE UNIVERSITY AND SUPERSEDES ALL PRIOR UNDERSTANDING AND AGREEMENTS, ORAL OR WRITTEN, REGARDING THE EMPLOYEE'S EMPLOYMENT BY THE UNIVERSITY.**

### 8.6 Amendments to Agreement

This Agreement may be amended at any time only by a written instrument duly approved by the Board of Regents of the Nevada System of Higher Education, and executed by the Chancellor or designee, the University, through its designated representative, and the Employee.

### 8.7 Severability

If any provision or provisions hereof shall be deemed invalid or unenforceable, either in whole or in part, this Agreement shall be deemed amended to delete or modify, as necessary, the offending provision or provisions or to alter the bounds thereof in order to render it valid and enforceable.

## **8.8 No Waiver of Default**

No waiver by the parties hereto 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 any other covenant, term or condition contained herein.

## **8.9 Acknowledgement**

The Employee acknowledges that Employee has read and understands the foregoing provisions of this Agreement and that such provisions are reasonable and enforceable and Employee agrees to abide by this Agreement and the terms and conditions set forth herein. Employee acknowledges having had the opportunity to consult with counsel of Employee's choice regarding the provisions of this Agreement prior to signing it.

## **8.10 Indemnification of University**

The Employee agrees to hold harmless and indemnify the University from any and all suits, claims, demands, damages, liability, costs and expenses, including attorneys' fees and costs, arising out of the Employee's performance of acts outside the scope of this Agreement, or for acts in pursuit of outside income as permitted by this Agreement, except such suits, claims or demands in which the Employee seeks to compel the University to comply with its obligations hereunder or in which the Employee seeks to enforce any remedies Employee may have hereunder. This Article 8.10 shall survive the termination for any reason of this Agreement.

## **8.11 University Retains All Materials and Records**

All materials or articles of information including, without limitation, personnel and student athlete records, recruiting records, team information, films, statistics or any other material or data, furnished to the Employee by the University, developed by the Employee on behalf of the University or at the University direction or for the University's use, or otherwise in connection with the Employee's employment hereunder, are and shall remain the sole property of the University. Within two (2) calendar days after the Employee ceases to serve as Head Coach of the University's Program, after the expiration of the Term, or after this Agreement's earlier termination as provided herein, the Employee shall immediately cause any such materials in Employee's possession or control to be delivered to the University. In addition, the Employee shall relinquish possession of any automobile(s) provided under Article 5.4 of this Agreement in accordance with the terms of the related vehicle loan program and/or agreement. This Article 8.11 shall survive the termination for any reason of this Agreement.

## **8.12 Employee Will Not Incur University Indebtedness**

It is mutually agreed and understood that the Employee shall not incur any indebtedness for or on behalf of the University without first securing the approval of the Athletic Director.

## **8.13 Government Immunity Not Waived**

It is expressly agreed and understood between the parties that the University is an entity of the State of Nevada and that nothing contained herein shall be construed to constitute a waiver or relinquishment by the University of its right to claim such exemption, privileges and immunities as may be provided by law.

## **8.14 Notice**

Any notice or communication which may or is required to be given under this Agreement shall be in writing and shall be deemed to have been given on the earlier of either the day actually received or on the close of business on the third 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 at its name below or such other address as may be given by such party in writing to the other:

**If to the Employee:**

With a copy to: \_\_\_\_\_

**If to the University:**

Director of Intercollegiate Athletics  
University of \_\_\_\_\_  
Department of Intercollegiate Athletics

\_\_\_\_\_  
\_\_\_\_\_

**8.15 Applicability of Nevada System of Higher Education Code**

Except as expressly stated herein, this Agreement is subject to the provisions of the Nevada System of Higher Education Code, Title 2 of the NSHE Board of Regents' Handbook, as may be amended from time to time during the Term.

**8.16 Captions**

All captions in this Agreement are included for convenience only and do not constitute, nor are incorporated in, the terms and conditions of this Agreement.

**[SPACE INTENTIONALLY LEFT BLANK]**

**[SIGNATURE PAGE TO FOLLOW]**

IN WITNESS WHEREOF, the parties hereto have executed this Agreement or caused this Agreement to be executed, effective the day and year first written above, intending to be legally bound by its provisions upon approval of the Board of Regents of the Nevada System of Higher Education, the Employee acknowledging that Employee has had an opportunity to review this Agreement with Employee's attorney.

BOARD OF REGENTS OF THE NEVADA SYSTEM  
OF HIGHER EDUCATION, ON BEHALF OF THE  
UNIVERSITY \_\_\_\_\_.

EMPLOYEE: \_\_\_\_\_

By: \_\_\_\_\_  
Chancellor

By: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_  
President

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Director, Intercollegiate Athletics

Date: \_\_\_\_\_

By: \_\_\_\_\_  
General Counsel

Date: \_\_\_\_\_