

## **HEAD COACH EMPLOYMENT AGREEMENT**

THIS EMPLOYMENT AGREEMENT (this "Agreement") effective as of September 1, 2021 is between The University of Texas at El Paso (the "University") and **Kevin Baker** ("Head Coach") (collectively, the "Parties"). This Agreement terminates and replaces any prior agreement between the parties relating to the employment of Head Coach by the University.

For and in consideration of the mutual promises and covenants set forth herein, the Parties agree as follows:

### **1. PURPOSE**

The Parties expressly agree this Agreement terminates and replaces any prior agreement between the Parties relating to the employment of Head Coach by the University, including yet not limited to the agreement dated effective September 19, 2017, and its First Amendment dated effective August 31, 2020.

The Parties have entered into this Agreement because the University desires to employ Head Coach as the Women's Basketball Head Coach for the period provided and Head Coach desires to serve the entire term of this Agreement, a long-term commitment by the Parties being critical to Head Coach's decision to enter into this Agreement and the University's desire to run a stable intercollegiate Women's Basketball Program (the "Program"). The Parties agree that, although this Agreement is athletics-related, the primary purpose of the University and, accordingly, of all its legal arrangements, including this Agreement, is educational. Head Coach recognizes the importance of the maintenance and observance of the principles of institutional control over the Program. Head Coach agrees to recognize and respect the organizational structure of the University in the execution of his duties under this Agreement.

### **2. DEFINITIONS**

As used in this Agreement (including within these paragraphs) the following terms shall have these meanings:

"NCAA" shall mean the National Collegiate Athletic Association, and its successor.

"C-USA" shall mean the Conference USA Conference, its successor or any other athletic conference of which the University may be a member.

"Governing Athletics Rules" shall mean any and all present or future legislation, rules, regulations, directives, written policies, bylaws and constitutions, and official or authoritative interpretations thereof, and any and all amendments, supplements, or modifications thereto, promulgated hereafter by the NCAA or the C-USA Conference or any successor of such association or conference, or by the Athletics Director in the conduct and administration of the Athletics Department.

"University Rules" shall mean any and all present or future legislation, rules, regulations, directives, written policies, bylaws, and constitution, and official or authoritative interpretations

thereof, and any and all amendments, supplements, or modifications thereto promulgated hereafter by the University or by the Board of Regents of The University of Texas System.

### **3. TERM OF EMPLOYMENT**

The term of this Agreement shall begin on **September 1, 2021**, and shall terminate on **August 31, 2024** (the "Term"), subject to the provisions below for termination. To extend or renew the Term of this Agreement, both Parties must sign a written agreement to do so. Head Coach agrees that oral agreements to renew or extend this Agreement are invalid and non-binding. This Agreement in no way grants Head Coach a claim to tenure in employment, nor shall Head Coach's service pursuant to this Agreement count in any way toward tenure at the University.

### **4. HEAD COACH'S DUTIES AND RESPONSIBILITIES**

**A. Recognition of Duties.** Subject to the other provisions of this Agreement, Head Coach shall devote his full time, skill, and attention to the performance of his duties as the Head Women's Basketball Head Coach at the University. He will report directly to and act and perform to the reasonable satisfaction of the Athletics Director, who will determine Head Coach's duties and responsibilities. Head Coach's job duties and responsibilities may be reviewed and revised from time to time by the Athletics Director, provided such duties are reasonable and consistent with duties typical of an intercollegiate Women's Basketball Head Coach who coaches at an NCAA Division I Women's Basketball program. Within 45 days following the conclusion of each season, Athletics Director shall evaluate Head Coach's performance.

**B. Duties and Responsibilities.** The following list of duties and responsibilities supplements, and is not exclusive of, other general duties and responsibilities provided for elsewhere in this Agreement. The duties and responsibilities of the position include, but are not limited to, the following:

(1) Head Coach has primary authority and responsibility for ensuring the Women's Basketball team is competitive against major college competition, and is supported by the faculty, administration, students, fans, and alumni of the University.

(2) Head Coach will be responsible for customary head coaching decisions including, without limitation, the systems and strategies used on the court (both in practice and actual game play), conduct of practice and training, selection of team members, position assignment of players, and all other matters relating to the preparation, practice for, and playing of games.

(3) Head Coach will comply with the academic policies established by the University and the NCAA. Head Coach shall maintain an environment in which the pursuit of higher education is a priority as reflected by class attendance, grade point averages, the NCAA academic progress rates (APR), and the NCAA graduation success rates (GSR).

(4) The University has established a tradition of ethical conduct at all levels of University life. In accordance with this tradition, Head Coach, as a member of the Athletics Department, agrees to represent the University in an honorable and ethical manner at all

times. Standards for ethical conduct are established and enforced by the University, the University of Texas System, the C-USA Conference, and the NCAA.

(5) Head Coach will oversee all aspects of prospective student-athlete recruiting, including recruiting contacts, evaluations, official visits, telephone calls and other communications, and any travel-related activities of prospective student-athletes and the Program's coaching staff.

(6) Head Coach will ensure that all student-athletes recruited for the University's Program receive Head Coach's guidance in the importance of academic performance, are provided proper academic counseling, and are encouraged to and given every opportunity to meet the degree requirements necessary to graduate from the University.

(7) Head Coach shall engage in fair, safe and responsible treatment of student-athletes in the Program, and will avoid behavior that jeopardizes a student-athlete's health, safety, or welfare. Head Coach understands and agrees that the final medical decisions regarding student-athlete participation in organized practices and/or competitions shall be made by the medical and training room staff.

(8) Head Coach shall have team rules which must be approved by the Athletics Director prior to implementation or enforcement, and shall maintain and enforce conduct (both on and off the court), disciplinary rules, and sanctions, fairly and uniformly for all student-athletes in the Program so as to ensure academic and moral integrity while encouraging excellence.

(9) Head Coach is responsible for conducting his duties and managing the Program within the annual budgets established for the Program by the Athletics Director and the University.

(10) Head Coach agrees to cooperate in the scheduling of games for the Program and agrees that such scheduling will be mutually coordinated and agreed upon with the Athletics Director, in consideration of the overall needs of University Athletics. Head Coach will use reasonable efforts to arrange travel and scheduling by student-athletes in such a manner as to minimize lost classroom time. The Athletics Director or Athletics Director's designee will be the final authority on scheduling decisions.

(11) Head Coach will be required to perform such services in connection with sports camps and clinics as may be assigned by the Athletics Director. Head Coach may not participate in sports camps or clinics that are not approved by the Athletics Director.

(12) Head Coach recognizes that his statements about the University and its administrators are often publicized and he agrees to use his best efforts to keep positive and constructive in tone any public comments he makes about University policies or actions taken by senior administrators.

(13) Head Coach has authority and responsibility to make decisions as to the hiring, continued employment, job titles, compensation, and discharge of assistant coaches

and all other personnel employed exclusively for the Program. All such decisions shall be made in consultation with the Athletics Director and are subject to the prior approval of the Athletics Director and will be in accordance with the policies and procedures of the University's Human Resources guidelines and the University of Texas System.

(14) Head Coach agrees to conduct annual performance evaluations for all assistant coaches and to ensure that such assistant coaches comply at all times with all Governing Athletics Rules and University Rules.

(15) Head Coach shall cooperate fully with the University in promoting the Program, the University's Athletic Fund, the University, the University's Alumni Association, and other University-affiliated organizations. Such cooperation includes, but is not limited to, (a) attendance and participation at meetings, events, and media outlets of the University and University-affiliated organizations; (b) endorsement of products and performance of promotional services; and (c) personal appearances, in each case as directed by the Athletics Director.

(16) For the period that Head Coach is the Women's Basketball Head Coach at the University, Head Coach will be required to assist in the production of and to appear on any radio or television show that features the Program, including, but not limited to, any weekly radio and television shows.

(17) Head Coach will continue to work with the University and use his best efforts to continue raising funds necessary to adequately fund the Program. Head Coach shall allow his name, likeness, and biographical sketch to be used by the University for fundraising and for any other reasonable purpose that supports the Program or the University.

(18) If the University enters into agreements with various manufacturers and distributors to provide athletic equipment, supplies, and accessories ("Products") for the University's intercollegiate athletics department or the Program, then in accordance with the terms of such agreements, Head Coach will participate in promotional activities and endorse those Products that are provided for use in the Program. Head Coach, the assistant coaches, student-athletes, and other personnel of the Program will be required to use the Products in practice, games, and at public appearances in accordance with the terms of any such agreements.

(19) Head Coach will be a Campus Security Authority ("CSA") as defined by the Clery Act. As a CSA, Head Coach will comply with University policies on the reporting of crime statistics and related information to the official designated by the University for the purposes of Clery Act reporting.

(20) In compliance with Title IX of the Education Amendments of 1972 and Texas Education Code Sec. 51.252, Head Coach will be a Responsible Employee as defined by University policies on Sexual Harassment and Sexual Misconduct. As a Responsible Employee, Head Coach will report incidents of sexual misconduct (including sexual harassment, sexual assault, dating violence and stalking) to the University's Title IX Coordinator or Deputy Title IX Coordinator as required by University policy.

(21) Head Coach shall also perform such other duties and responsibilities that are consistent with his position as may be assigned from time-to-time by the Athletics Director.

**C. NCAA and Other Governing Athletics Rules and University Rules.**

(1) Head Coach agrees to know, recognize, and comply in all respects with NCAA and other Governing Athletics Rules and University Rules. He shall also educate and monitor any and all assistant coaches, graduate assistants, volunteer coaches, and other staff members under the supervision of Head Coach for compliance with NCAA and other Governing Athletics Rules and University Rules. In the performance of all his duties and obligations under this Agreement, Head Coach will abide by and comply with all Governing Athletics Rules and University Rules and all decisions issued by the University, as well as strive to comply with the spirit and intent of such rules.

(2) It shall be the responsibility of Head Coach to promote an atmosphere of compliance within the Program and to monitor the activities regarding compliance of all assistant coaches and other administrators involved with the Program who report directly or indirectly to Head Coach. In this regard, Head Coach shall take special notice of NCAA Bylaw 11.1.1.1, Head Coach Control (and any amendments made to that Bylaw during the Term of this Agreement). If, at any time during the Term of this Agreement, Head Coach knows, or has reasonable cause to believe that he or any other person has violated, or allowed or caused to be violated, any Governing Athletics Rules or University Rules, or if Head Coach receives notice or information that the NCAA or the C-USA Conference intends to investigate or to review any alleged violations of Governing Athletics Rules or University Rules, he must immediately report such information, knowledge or belief to the Athletics Compliance staff and Athletics Director. If such information, knowledge, or belief includes allegations that the Athletics Director was complicit in the alleged violation, Head Coach must immediately report such information, knowledge, or belief to the President of the University.

(3) Pursuant to NCAA Bylaws 11.2.1 & 19.2.3, Head Coach has an affirmative obligation to cooperate fully in the NCAA infractions process, including the investigation and adjudication of a case. Specifically, full cooperation includes, but is not limited to:

- (a) affirmatively reporting instances of noncompliance to the NCAA in a timely manner and assisting in developing full information to determine whether a possible violation has occurred and the details thereof;
- (b) timely participation in interviews and providing complete and truthful responses;
- (c) making a full and complete disclosure of relevant information, including timely production of materials or information requested, and in the format requested;
- (d) disclosing and providing access to all electronic devices used in any way for business purposes;

- (e) providing access to all social media, messaging and other applications that are or may be relevant to the investigation; and
- (f) preserving the integrity of an investigation and abiding by all applicable confidentiality rules and instructions.

(4) If Head Coach is found to be in violation of Governing Athletics Rules, whether while employed by the University or during prior employment at another NCAA member institution, Head Coach shall be subject to disciplinary or corrective action as set forth in this Agreement, as well as in the provisions of the NCAA enforcement procedures, including suspension without pay or termination of employment.

**D. Reassignment of Duties.** Throughout the Term of this Agreement, Head Coach shall use his best full-time energies, efforts, and abilities for the exclusive benefit of the University. It is understood by the Parties, however, that at the discretion of the Athletics Director, Head Coach may be removed from the duties and responsibilities as Women's Basketball Coach and reassigned to other duties and responsibilities within the Athletic Department. In the event of such reassignment, beginning on the date of such reassignment, Head Coach's total compensation for the performance of such reassigned duties and responsibilities shall be the Annual Base Salary in effect at the date of reassignment, which Annual Base Salary is listed in Section 6.A.(1) of this Agreement. The University's obligations under Section 6.B shall terminate upon reassignment at the University's sole discretion. Upon cessation of his head coaching duties and responsibilities, Head Coach shall voluntarily relinquish all appointments on NCAA or athletic conference committees, subcommittees and/or councils of any nature if so requested by the University. If the University exercises its right to reassign Head Coach and the Head Coach refuses to accept such reassignment, the University may terminate this Agreement pursuant to Section 7.A.

## **5. OTHER EMPLOYMENT**

During the Term of this Agreement, Head Coach shall either (a) not engage in any other employment, act in a consulting or independent contractor capacity to any person, partnership, association, or corporation, or receive any athletically-related income or benefit from sources outside the University; or (b) be permitted to engage in outside employment only after receiving the prior written approval of the Athletics Director and the President of the University in accordance with University Rules on outside employment and commitment. Each request for approval must be in writing and shall specify the source and amount of the income or benefit to be received, and approval shall be required annually. Head Coach shall also make a written annual report through the Athletics Director to the President of the University specifying the amount of all income and benefits from approved sources outside the University in accordance with all University Rules and Governing Athletic Rules. Except when Head Coach is required by the University to endorse, promote, appear in advertisements of, or consult with regard to athletic equipment or accessories for the purpose of complying with contractual obligations of the University, the name, marks, or logos of the University may not be used and Head Coach may not be identified as the Women's Basketball Head Coach at the University (1) for purposes related to any employment, consulting, or athletically related activities of Head Coach, other than for the University, or (2) in connection with Head Coach's endorsement, support, promotion, or advertisement of any person, partnership, corporation, association, product, or service.

The Parties agree that, should another head coaching opportunity be presented to Head Coach during the Term of this Agreement, Head Coach must notify the Athletics Director of such opportunity or interest and permission must be given to Head Coach by the Athletics Director before any discussions can be held by Head Coach or his representative with the anticipated head coaching position principals. Such permission shall not be unreasonably withheld.

## **6. COMPENSATION AND BENEFITS**

### **A. Base Salary.**

(1) Effective as of September 1, 2021, the annual base salary ("Annual Base Salary") for duties performed by Head Coach under this Agreement shall be \$249,000, payable in 12 monthly installments. The Annual Base Salary will be reviewed at least annually and may be adjusted as required by the legislature or as deemed appropriate by the University.

(2) Head Coach will also receive all other regular employment benefits provided by the University to similarly-situated administrative and professional non-tenured, at-will employees of the University, and such benefits may be modified or terminated. Head Coach acknowledges and agrees that such regular employment benefits may be modified from time to time, including, without limitation, terminated, as provided for by legislative action of the State of Texas or by action of the Board of Regents of The University of Texas System or the University.

**B. Fringe Benefits.** For the period that Head Coach serves as the University's Women's Basketball Head Coach, he will also be entitled to the compensation and benefits found in this Section 6.B. Each of these benefits is subject to the University Rules and Governing Athletics Rules. In the event any of these benefits does not comply with the University Rules and Governing Athletics Rules, the non-compliant benefit(s) shall be null and void.

(1) **Summer Camps.** The University will sponsor summer Women's Basketball camps for youths. For the period that Head Coach is the Women's Basketball Head Coach, for performance of services in connection with such camps as may be assigned by the Athletics Director, Head Coach will be paid a percentage of the net proceeds for each camp. Net proceeds are defined as revenues less expenses as determined by the University in accordance with generally accepted accounting principles. Head Coach will be paid in accordance with the decision of the Athletics Director who will use reasonable business judgment to determine the fair and reasonable amount to be paid to Head Coach. In addition, Head Coach shall use reasonable business judgment to determine the fair and reasonable amount to be paid to each assistant coach and others for summer camp service and such amounts will be treated as expenses. Payment to Head Coach will be made within 30 days after submission of complete summer camp financial records to the Athletics Director or his designee, upon which the records must be found satisfactory by the Athletics Director, and such financial records are reconciled. In no event shall the payment be later than the end of the calendar year in which the camp ends. In the event a summer camp fails to yield net proceeds, the University maintains no obligation for payment to Head Coach. Head Coach shall not be entitled to conduct or direct summer camps that are not sponsored by the University.

(2) **Automobile.** For the period that Head Coach is Women's Basketball Head Coach, the University may obtain a courtesy automobile from a local dealership for Head Coach's use. Head Coach will comply with all University Rules and Governing Athletics Rules relating to the use of the car. At a minimum, if a courtesy car is provided to Head Coach, he will report the business and personal use of the automobile monthly to the Office of the Vice President for Business Affairs in a format determined by that office. The personal use of such automobile will be valued according to the guidelines of the Internal Revenue Service and reported as income to Head Coach.

(3) **Family Travel.** It is understood by the parties that while Head Coach is serving as the Women's Basketball Head Coach, an immediate family member may be called upon from time to time to travel and/or attend various functions on behalf of the University. When engaged in such activities and subject to any limitations or conditions placed by Rules or Regulations, Head Coach's immediate family member will be entitled to reimbursement for travel and other reasonable and necessary expenses incurred while engaging in such official activities, provided that such activities are at the direction of and have the prior approval of the Athletics Director.

C. **Performance Incentives.** As a bonus, to supplement Head Coach's compensation, as set out herein, the University agrees to pay the following sums upon attainment of each specified goal, provided the Program is in compliance with all Governing Athletics Rules and University Rules, and there are no pending or active NCAA or C-USA Conference investigations or major violations of which Head Coach knew or should have known. Head Coach must also complete the Women's Basketball season as Women's Basketball Head Coach to receive any performance incentives for that season. Payment will be made to Head Coach within 60 days after goal is accomplished.

Specified Goal	Incentive Amount
1. C-USA <u>Regular</u> Season Championship ✓	One month Annual Base Salary*
2. C-USA <u>Tournament</u> Championship ✓	One month Annual Base Salary*
3. National Invitation Tournament ("NIT") Appearance	\$5,000
4. The higher of: a. National Invitation Tournament ("NIT") First Round Win; or b. National Invitation Tournament ("NIT") Second Round Win; or c. National Invitation Tournament ("NIT") Third Round Win; or d. National Invitation Tournament ("NIT") Fourth Round Win	\$5,000 \$10,000 \$15,000 \$20,000
5. NCAA Tournament Appearance for an "at large"	\$15,000
6. The higher of:	



a.	NCAA Tournament 1 <sup>st</sup> round victory; or	\$15,000
b.	NCAA Tournament 2 <sup>nd</sup> round victory; or	\$20,000
c.	NCAA Tournament Sweet 16 victory; or	\$25,000
d.	NCAA Tournament Elite 8 victory; or	\$30,000
e.	NCAA Final Four Victory; or	\$40,000
f.	NCAA Championship.	\$50,000
7.	Finish in the Top 25 in National Poll **	One month Annual Base Salary*
8.	C-USA Coach of the Year (coaches poll)	One month Annual Base Salary*
9.	National Coach of the Year (coaches poll)	One month Annual Base Salary*
10.	Annual Academic Progress Report (APR) Published (MAAC Report) Score 975 or above	\$1,000
11.	Win against New Mexico State University (NMSU) in regular season game	\$1,000
12.	Additional performance incentives may be awarded to Coach as deemed appropriate by the Athletic Director and approved by the University President	

\* Annual Base Salary as noted in Section 6.A

\*\* Determined after the end of the regular season but before C-USA Tournament

**D. Deductions from Compensation.** Payments to Head Coach by the University pursuant to the terms of this Agreement shall be subject to all deductions required by state and federal law or regulation. The University will make such other deductions permitted by law and authorized by Head Coach in writing.

## 7. SUSPENSION AND TERMINATION

**A. Suspension or Termination by the University for Cause.** The University shall have the right and option to either suspend Head Coach for a period of time with or without pay or to terminate Head Coach's employment and this Agreement for cause prior to the termination date stated in Section 3 above. In the event this Agreement is terminated for cause, all obligations of the University to make further payment or provide any other consideration hereunder shall cease as of the date of termination. In no case shall the University be liable to Head Coach for the loss of any collateral business opportunities, or any benefits, perquisites, income or consequential damages suffered by Head Coach as a result of the University's termination of his employment. In addition to its normally understood meaning in employment contracts, the term "cause" shall include, without limitation, any of the following:

(1) Failure or refusal by Head Coach to perform any of the obligations, duties or responsibilities outlined in Section 4 or any refusal or unwillingness to perform any of such obligations, duties or responsibilities in good faith and to the best of Head Coach's abilities;

(2) A serious or major violation or a pattern of violations of any Governing Athletics Rules or University Rules, whether intentional or negligent, by Head Coach, or the allowing or condoning, whether directly or by negligent supervision, of any such violation or pattern of violations, by any coaching staff or other person under Head Coach's

supervision and direction, including student-athletes in the Program, which violation was known (or reasonably should have been known) by Head Coach in the course of his normal duties, and which may, in the sole judgment and discretion of the Athletics Director, reflect adversely upon the University, its athletics program or The University of Texas System, including, without limitation, any violation which may result in the University being investigated or placed on probation by the NCAA or the Conference;

(3) Failure by Head Coach to report immediately to the Athletics Compliance staff and the Athletics Director, any alleged violations of the Governing Athletics Rules or University Rules by Head Coach or by any coaches, staff members, student-athletes, or other persons that become known to Head Coach;

(4) Failing or refusing to fully cooperate in an inquiry or investigation conducted by the University, The University of Texas System, the NCAA, the C-USA Conference, or a law enforcement agency. This includes, but is not limited to, failing to provide information or documents in a timely manner in response to any reasonable requests by the University, The University of Texas System, the NCAA, the C-USA Conference, or directing or otherwise instructing any coach, staff member, student-athlete or other person not to cooperate or comply with such an inquiry;

(5) Failure by Head Coach to immediately report to the University's Title IX Coordinator or Deputy Title IX Coordinator any information Head Coach knows relating to alleged or suspected sexual misconduct (including sexual harassment, sexual assault, dating violence or stalking);

(6) Any fraud or dishonesty by Head Coach while performing the duties required by this Agreement, including, but not limited to, falsifying, altering or otherwise fraudulently preparing any document(s) or record(s) of, or required by The University of Texas System, the University, the NCAA, or the Conference pertaining to the Program, recruits, student-athletes, transcripts, eligibility forms, compliance reports, expense reports, or any other document pertaining or related to any sanction of the Program;

(7) Engaging in conduct that violates any Governing Athletics Rules or University Rules concerning (a) consensual relationships between employees and students or (b) sexual harassment;

(8) Any conduct, including acts or omissions, that misleads the University or the Athletics Director about any matters related to the Program, including matters related to the Head Coach, any assistant coaches, or other staff members or any student-athletes;

(9) Any prolonged absence from the performance of Head Coach's obligations, duties and responsibilities under this Agreement without prior consent of the Athletics Director;

(10) Engaging in, assisting, encouraging, or soliciting others to engage in bookmaking, illegal gambling, or betting of any type involving any intercollegiate or professional athletic contest;

(11) Possession, use, sale, or manufacture of any narcotics, drugs, or other controlled substances or steroids or other chemicals in a manner which is prohibited by the University Rules or Governing Athletics Rules, or allowing, encouraging, or condoning the possession, use, sale, or manufacture of any narcotics, drugs, alcohol, controlled substances, steroids or other chemicals by any student-athlete in a manner which is prohibited by the University Rules or Governing Athletics Rules, or failure or refusal to fully participate and cooperate in the University's implementation and enforcement of any narcotic, drug, alcohol, controlled substance, steroid, or other chemical testing program(s);

(12) Any conduct (a) that the University administration reasonably determines is unbecoming to a Head Coach and reflects poorly on the University, the Program, or The University of Texas System; or (b) resulting in a criminal charge being brought against Head Coach involving a felony, or any crime involving theft, dishonesty, or moral turpitude;

(13) Team APR, NCAA Graduate Success Rate, or other academic measure that causes the Program to be ineligible for a post-season tournament game and Head Coach has repeatedly exhibited, in the opinion of the Athletics Director, grossly negligent failure to create and support an atmosphere of academic success and accountability; or

(14) Any cause adequate to sustain the termination of any regular staff employee of the University.

The University shall have no obligation to use progressive discipline regarding Head Coach's misconduct. Any University decision to utilize progressive discipline shall not create any future obligation for the University to use progressive discipline.

**B. Suspension arising from Force Majeure.** The University, in its sole discretion, shall have the right, upon proper notice, to temporarily suspend without pay, via furlough or other applicable means, its obligations under this Agreement and suspend Head Coach's employment prior to the termination date stated in Section 3 above, for reasons of Force Majeure (as defined below) which may affect the University's Athletic Department and/or Program. "Force Majeure" are circumstances beyond the control of the University that effectively prevent the University from performing its obligations under this Agreement, and include yet are not limited to the inability of the Program to continue engaging in all or part of NCAA and/or C-USA conference play for the season, the failure of the Program to play at any NCAA and/or C-USA games because of proven detention by sickness, accidents, riots, strikes, acts of terrorism, epidemics, pandemics, acts of god, or other legitimate conditions beyond University's control.

**C. Termination by the University without Cause.** The University shall have the right to terminate Head Coach's employment and this Agreement without any reason and without cause prior to the termination date stated in Section 3 above. In the event this Agreement is terminated without cause, (1) all obligations of the University to Head Coach pursuant to this Agreement shall cease as of the date of any such termination, (2) Head Coach shall be eligible for any post-termination benefits applicable to regular employees of the University (i.e. COBRA insurance eligibility, et al), (3) the University will pay to Head Coach, in lieu of any and all other legal remedies or equitable relief available to Head Coach, liquidated damages equal to fifty percent (50%) of the Base Annual Salary ("Payout Amount") at the time of such termination

without cause. Such liquidated damages shall be paid on a monthly basis through the Payout Period.

Head Coach acknowledges his obligation to minimize the payments due to him under Section 7.C and agrees to make every reasonable effort to obtain other employment as long as the University has the obligation to make payments under Section 7.C. If Head Coach obtains new employment the Payout Period, the University's financial obligations under Section 7.B shall be reduced by the total compensation received by Head Coach in his new position, including employee benefits, whether in cash, deferred payments, or in kind. If Head Coach's salary in his new position exceeds that which Head Coach would have been paid at the University, the University's financial obligations would immediately cease. Head Coach shall immediately, upon acceptance of other employment, notify the Athletics Director in writing of such employment and the total compensation to be paid to Head Coach for the employment. In addition, Head Coach agrees to provide the University with a copy of his W-2 form for each calendar year as long as the University has the obligation to make payments under Section 7.B. For the avoidance of all doubt, the Parties understand and agree that the duty to make the liquidated damages payment shall not be treated as a subsidy for any future employer to pay Head Coach less than market value for his services.

If the University ends this Agreement without cause prior to the termination date stated in Section 3 above, in accordance with the provisions of Section 7.C hereof, the University in no case shall be liable for Head Coach's 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, personal appearances, radio, television, internet, marketing and promotional services, apparel or shoe agreements, equipment agreements, consulting relationships or from any other sources that may result from the University's termination of this Agreement without cause.

**D. Termination of Employment by Head Coach.** The Parties agree that Head Coach has special, exceptional and unique knowledge, skill and ability as a Women's Basketball Head Coach which, in addition to the continuing acquisition of head coaching experience at the University, as well as the University's special need for continuity in its Women's Basketball program, render Head Coach's services unique. Head Coach further recognizes and agrees that his promise to work for the University for the entire term of this Agreement is an essential consideration in the University's decision to employ him as Head Coach of the Program. Head Coach also recognizes and agrees that the University is making a highly valuable investment in his continued employment by entering into this Agreement and if he were to resign or otherwise terminate his employment as Head Coach with the University prior to the expiration of this Agreement to accept another coaching position, the University will suffer damages the amount, nature and extent of which is difficult to determine and which may include, but not be limited to, additional expenses to search for and employ another Head Coach, salary or other compensation to hire another Head Coach, tangible and intangible detriment to the University's intercollegiate Women's Basketball program and the support of its fans and donors. Accordingly, Head Coach agrees that in the event he resigns or otherwise terminates his employment under this Agreement prior to the expiration of the initial term of this Agreement and accepts another coaching position, he shall pay to the University as liquidated damages, and not as a penalty, the following amounts:

(a) If Head Coach leaves during the first year of this Agreement, from September 1, 2021 to August 31, 2022, he will pay the University \$300,000;

(b) If Head Coach leaves during the second year of this Agreement, September 1, 2022 to August 31, 2023, he will pay the University \$150,000;

(c) If Head Coach leaves during the third year of this Agreement, September 1, 2023 to August 31, 2024 he will pay the University \$75,000.

The Parties covenant and agree that the amount of damages to be paid to the University hereunder is fair and reasonable. Payment of said liquidated damages will be in a single lump sum amount with payment to be made within thirty (30) calendar days of Head Coach ceasing to be the head coach. If Head Coach terminates his employment under this Agreement prior to its expiration in accordance with Section 7.D, his compensation and benefits, to the extent not already vested, shall cease upon the termination date.

**E. Waiver of Claims.** The financial consequences of termination of this Agreement or suspension hereunder are exclusively set forth herein. Therefore, with the sole exception of payments required by this Agreement, in any instance of termination for cause or without cause, or suspension effected in accordance with the procedures established in this Agreement, neither Head Coach nor the University shall be entitled to receive, and each hereby waives any claim against the other, and their respective officers, directors, agents, employees, successors, and personal representatives for consequential damages by reason of any alleged economic loss, including, without limitation, loss of collateral income, deferred income, loss of earning capacity, loss of business opportunity, loss of perquisites, loss of fees from speech, camp or other outside activity, or damages allegedly sustained by reason of alleged humiliation or defamation resulting from the fact of termination, the public announcement thereof, or the release by the University or Head Coach of information or documents required by law. Head Coach acknowledges that in the event of termination of this Agreement for cause, without cause or otherwise, Head Coach shall have no right to occupy the position of Women's Basketball Head Coach and that his sole remedies are provided herein and shall not extend to injunctive relief.

**F. Termination for Disability/Death.** If Head Coach dies or becomes permanently disabled to the extent that, in the judgment of the Athletics Director, Head Coach cannot satisfactorily perform the duties of Women's Basketball Head Coach ("Inability to Perform"), this Agreement shall terminate and all obligations of the University to compensate Head Coach pursuant to this Agreement shall cease as of the date of such death or disability. The University shall be obligated to compensate Head Coach or Head Coach's estate in accordance with this Agreement for services performed prior to the termination date and Head Coach or Head Coach's estate shall be entitled to those benefits, if any, that are payable under any University sponsored group employee insurance or benefit plan in which Head Coach is or was enrolled.

**G. Covenant Not to Recruit Previously Identified Players.** Head Coach agrees that he will not, for a period of one year after resignation and acceptance of employment with another collegiate Women's Basketball program, personally contact or otherwise seek to recruit any high school senior or transfer prospective student-athlete (a prospective student-athlete who is eligible for admission to the University or who has started classes for his senior year in high school) previously contacted or recruited by the University.

## 8. MISCELLANEOUS

A. **Merger and Amendment.** The provisions of this Agreement constitute the entire agreement between the Parties with respect to the subject matter hereof and no prior or contemporaneous agreement, either written or oral, shall have the effect of varying the terms hereof. No amendment to this Agreement shall be effective unless reduced to writing and signed by the Parties.

B. **Unenforceability of Provisions.** The provisions of this Agreement are severable. If any provision of this Agreement is determined by a proper court or authority to be invalid, illegal, or unenforceable, such invalidity, illegality, or unenforceability shall not affect or impair the remainder of this Agreement, and this Agreement shall remain in full force and effect without such invalid, illegal, or unenforceable provision.

C. **Governing Law.** This Agreement shall be construed, enforced, and governed by and in accordance with the laws of the State of Texas. The University and Head Coach agree that venue for any dispute arising from or related to employment shall be in El Paso County, Texas. This provision does not prevent the University from removing to federal court any action brought in state court, and Head Coach hereby consents to, and waives any objections to such removal.

D. **Exemptions, Privileges, and Immunities.** It is expressly agreed and understood between the Parties that nothing contained herein shall be construed to constitute a waiver by the University of its right to claim such exemptions, privileges, and immunities as may be provided by law.

E. **Mutual Understanding.** Each party has read this Agreement, fully understands the contents of it, has had the opportunity to obtain independent legal advice regarding the Agreement's legal effect, and is under no duress regarding its execution.

F. **Confidential Information; University Property.** Head Coach acknowledges that while employed by University he will occupy a position of trust and confidence and will receive and have access to Confidential Information, as hereinafter defined. Head Coach acknowledges that such Confidential Information is specialized, unique in nature and of great value to the University, and that such information gives the University a competitive advantage. During the Term and thereafter, Head Coach shall not use the Confidential Information or disclose the Confidential Information to any third party, except (i) as required to perform Head Coach's duties to the University in a manner consistent with professional standards and obligations; (ii) as authorized by the University; (iii) in furtherance of the University's legitimate business interests; (iv) to comply with applicable laws or policies; (v) to the extent such Confidential Information shall have become public other than by Head Coach's unauthorized use or disclosure. Notwithstanding the foregoing, in no event shall Head Coach use or disclose (unless required by judicial or government order) Confidential Information if such use or disclosure will expose the University to competitive disadvantage, legal liability, or will otherwise harm the University. For purposes of this Agreement, "Confidential Information" means any information not generally available to the public or not in the public domain at the time of separation regarding the University, including, but not limited to, all personnel and student records; recruiting records and activities; Program activities, such as nutrition and strength activities; Program film; Program budgets, projections, or other financial information; vendor contracts; information regarding actual

or potential NCAA, Conference, legal or regulatory proceedings, and any other information that should by its nature or context be recognized as University property or confidential information.

**G. Return of Property.** Within 10 days of the expiration of this Agreement or its earlier termination with or without cause by either party, Head Coach shall immediately deliver or return to the University all property furnished by the University to Head Coach in the course of Head Coach's employment by the University, including, without limitation, computer equipment, car, keys, and documents, records, lists, data, drawings, prints, and notes related to University business.

**H. Counterparts.** This Employment Agreement may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but all such counterparts shall together constitute one and the same Employment Agreement.

**I. Disclosure.** The parties acknowledge and agree that the University is required to comply with the Texas Public Information Act.

**J. Review.** This Agreement is subject to review and approval by the President of the University or President's delegate, and Executive Vice Chancellor for Academic Affairs.

IN WITNESS WHEREOF, the Parties hereto, having represented and warranted their authority to enter into and execute this Agreement, has executed this Agreement effective as of the date established herein.

**UNIVERSITY:**

**HEAD COACH:**

**THE UNIVERSITY OF TEXAS AT EL PASO**

By:   
**Mark McGurk**  
Vice President for Business Affairs

  
**Kevin Baker**

Date: 7/1/2021

Date: June 30, 2021

Approved as to content:

By:   
**Jim Senter**  
Athletics Director

Date: 6/30/2021

**APPROVED:**



Archie Holmes  
Executive Vice Chancellor for  
Academic Affairs  
The University of Texas System

Date: 7/15/21