

## HEAD COACH EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT (this "Agreement") is between The University of Texas at El Paso (the "University") and Dana Dimel ("Head Coach") (collectively, the "Parties"). This Agreement terminates and replaces in its entirety any prior agreement and amendments thereof 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 have entered into this Agreement because the University desires to employ Head Coach as the Head Football 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 Football 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.

The Parties previously entered a Head Coach Employment Agreement dated effective as of July 10, 2018 (hereinafter "2018 Agreement") and amendments thereto, with a term ending on January 31, 2023. The Parties expressly agree that said 2018 Agreement and any amendments thereto shall be considered terminated upon the execution of this Agreement and all obligations of the Parties thereunder shall be deemed null and void.

### 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 January 1, 2022, and shall terminate on January 31, 2025 (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 Football 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 Head Football Coach who coaches at an NCAA Division I, Football 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 Football 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 field (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 maintain and enforce conduct (both on and off the field), and 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 by 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 Head Football 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.

## 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 Head Football 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 January 1, 2022, the Base Annual Salary for duties performed by Head Coach under this Agreement shall be \$800,000, payable in monthly installments ("1<sup>st</sup> Year Base Salary").

(2) Effective January 1, 2023, the Base Annual Salary for duties performed by Head Coach under this Agreement shall be \$825,000, payable in monthly installments ("2<sup>nd</sup> Year Base Salary").

(3) Effective January 1, 2024, the Base Annual Salary for duties performed by Head Coach under this Agreement shall be \$850,000, payable in monthly installments (“3<sup>rd</sup> Year Base Salary”).

(4) The Base Salary will be reviewed at least annually and may be adjusted in accordance with (i) a Force Majeure event (as defined below), or (ii) with any generally applicable program of pay adjustment for Athletic Department employees; or (iii) as required by the legislature or as deemed appropriate by the University.

(5) 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 Head Football 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 football camps for youths. For the period that Head Coach is the Head Football 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 Head Football Coach, the University will obtain a (1) 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 or the car allowance. 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) Country Club Membership. For the period that Head Coach is Head Football Coach, he will receive one full membership in either the El Paso Country Club or the Coronado Country Club.

(4) Family Travel. It is understood by the parties that while Head Coach is serving as the Head Football 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 the Athletics Director and have the prior approval of the University President.

(5) Home Game Tickets. For the period that Head Coach is Head Football Coach, he will receive up to 10 (ten) tickets for each home game played at the University to be used at his discretion. Said Home Game Tickets will be located in a section of the University Sun Bowl Stadium as determined by the University 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. Coach must be employed by University on the date of any game or event that earns the performance incentive and must have participated as head coach in such game or event. Head Coach must also complete the Football season as Head Football Coach to receive any performance incentives for that season. Payment will be made to Head Coach within sixty (60) days after goal is accomplished.

<u>Specified Goal</u>	<u>Incentive Amount</u>
1. C-USA Western Division Championship	One month Base Annual Salary*
2. C-USA Champion	One month Base Annual Salary*
3. NCAA National Championship	\$100,000
4. NCAA Post-Season Bowl Game appearance	Two Weeks Base Annual Salary*
5. NY6 Bowl Game Appearance or College Football Playoff (CFP) Appearance	One month Base Annual Salary*
6. Win against a Power Five opponent	\$25,000 per win
7. Win after the sixth win in a Regular Season Game	\$10,000 per win not to exceed \$60,000 per Regular Season
8. C-USA Coach of the Year Award	One month Base Annual Salary*
9. National Coach of the Year designation by a nationally recognized poll/association	Two month Base Annual Salary*



10. Single-year Annual Academic Progress Report (APR) Published (MAAC Report) score of 960-969 = \$5,000, 970-984 = \$7,500, 985 or higher = one month Base Annual Salary	The amounts listed are not cumulative for this particular incentive*
11. Annual cumulative Grade Point Average (GPA) for football team players for Spring and Fall academic terms of 3.0 or above	One month Base Annual Salary*
12. Annual cumulative graduation rate of scholarship football team players who have exhausted their eligibility greater than 80% (eighty percent)	One month Base Annual Salary*
13. Football Season Ticket sales increase of 25% or more over previous year's sales	Two weeks Base Annual Salary*
14. Football Home Game attendance at the Sun Bowl Stadium increase of 20% or more over previous year's attendance	Two weeks Base Annual Salary*

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

**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.

**E. Assistant Coach Salary Pool.** The total salary pool for the ten (10) full-time assistant coaches and the support staff shall be \$2,730,750 dollars, effective immediately. The total salary pool shall increase on each anniversary of this Agreement by no less than five percent (5.0%) in years 2022 and 2023 and two and a half percent (2.5%) in year 2024. Coach shall determine, subject to applicable Board of Regents' approval, the amount to be paid to each assistant coach, as mutually agreed upon between Coach, the University's Athletics Director, and the Vice President for Business Affairs and consistent with the University's employment policies.

## 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 for cause. 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.

Head Coach and the University acknowledge that it is not the desire or the intention of the University that Coach's employment be terminable for minor, technical or otherwise insignificant acts of misconduct by Coach, or for minor, technical or otherwise insignificant University regulations or NCAA or Conference violations which do not entail the risk of Level I institutional penalties. Furthermore, it is not the intention or desire of the University that that this Agreement be terminable if Level II or lesser violations occur after Coach has properly exercised institutional control under the Principles of Institutional Control as prepared by the NCAA Committee on Infractions. The significance of violations or misconduct of any type are at the sole discretion of the University.

**B. 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) except as otherwise provided herein, 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 for the duration of the payout period from the date of termination through the end of the Term ("Payout Period") in the following amounts and manner set forth below:

a) If termination by University without cause occurs during the first year of this Agreement, beginning on January 1, 2022 and ending on December 31, 2022, an aggregate amount equal to (1) one hundred percent (100%) of the (i) 1st Year Base Salary remaining unpaid as of the date of termination and (ii) 2nd Year Base Salary and (2) sixty-five percent (65%) of the 3rd Year Base Salary, provided however, in the event the University's Football team is NCAA Post-Season Bowl Game eligible in the 2022 season, then such amount shall equal 100% of the 3rd Year Base Salary;

b) If termination by University without cause occurs during the second year of this Agreement, beginning on January 1, 2023 and ending on December 31, 2023, an aggregate amount equal to (1) one hundred percent (100%) of the 2nd Year Base Salary remaining unpaid as of the date of termination and (2) sixty-five percent (65%) of the 3rd Year Base Salary, provided however, in the event the University's Football team is NCAA Post-Season Bowl Game eligible in the 2022 and/or 2023 season, then such amount shall equal 100% of the 3rd Year Base Salary;

c) If termination by University without cause occurs during the period beginning on January 1, 2024 and ending on January 31, 2025, an amount equal to sixty five percent (65%) of the 3rd Year Base Salary remaining unpaid as of the date of termination, provided however, in the event the University's Football team is NCAA Post-Season Bowl Game eligible in the 2022 and/or 2023 season, then such amount shall equal one hundred percent (100%) of the 3rd Year Base Salary remaining unpaid as of the date of termination.

Such liquidated damages shall be paid on a monthly basis in the same manner as if Head Coach had remained employed by University for the remainder of the Payout Period. In addition, University will pay to Coach, no later than the last day of the month in which University exercises its right to Terminate this Agreement without cause, any compensation or incentive compensation actually earned and accrued but unpaid, as well as all expenses incurred in the performance of his duties but not yet reimbursed or otherwise received by the date of the termination, less all applicable taxes and other withholdings.

Head Coach acknowledges his obligation to minimize the payments due to him under Section 7.B 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.B. If Head Coach obtains new employment during the Payout Period, the University's financial obligations under Section 7.B shall be reduced by the monthly total compensation received (not including any compensation or signing bonus directly related and clearly identified as moving expenses and/or temporary housing) 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.B 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.

**C. Termination of Employment by Head Coach.** The Parties agree that Head Coach has special, exceptional and unique knowledge, skill and ability as a Football 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 Football 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 Football 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 Term of this Agreement and accepts another coaching position, he or a third-party on Head Coach's behalf shall pay to the University as liquidated damages, and not as a penalty, the following amounts:

- (a) If Head Coach leaves prior to December 1, 2022 or prior to a bowl game if UTEP is a participant arising from the 2022 Football season, whichever occurs last, he shall pay the University \$1,500,000.00;
- (b) If Head Coach leaves between December 2, 2022 and December 1, 2023 or prior to a bowl game if UTEP is a participant arising from the 2023 Football season, whichever occurs last, he shall pay the University \$750,000.00;
- (c) If Head Coach leaves between December 2, 2023 and December 1, 2024, or a prior to a bowl game if UTEP is a participant arising from the 2024 Football season, whichever occurs last, he shall pay the University \$250,000.00;
- (d) If Head Coach leaves on or after December 2, 2024, or after a bowl game if UTEP is a participant arising from the 2024 Football season, whichever occurs last Head Coach shall not owe any liquidated damages to the University.

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 30 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.C, his compensation and benefits, to the extent not already vested, shall cease upon the termination date.

The parties expressly agree that assignment to or assumption by a third party of any of Head Coach's liquidated damages payment obligations established herein shall not release Head Coach from any of Head Coach's obligations unless paid in full to University, nor shall it be deemed to be a consent by University to any subsequent assignment, transfer, or assumption by another party.

**D. 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 Head Football Coach and that his sole remedies are provided herein and shall not extend to injunctive relief.

**E. 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 Head Football 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.

**F. 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 football 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. Force Majeure.** If either party is unable to perform any obligation under the Agreement due to causes reasonably beyond its control, or because of an epidemic, pandemic, war, riot, civil unrest, fire, air space closure, ground stop, act of nature, then the performance of both Parties is excused until such matters are resolved to the extent that performance may resume.

**E. 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.

**F. 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.

**G. 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.

**H. Return of Property.** Within ten (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.

**I. 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.

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

**K. Review.** This Agreement is subject to review and approval by the President or the President's delegate and Executive Vice Chancellor for Academic Affairs, and the Board of Regents of The University of Texas System.

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 last date written below.

UNIVERSITY:

HEAD COACH:


THE UNIVERSITY OF TEXAS AT EL PASO

By:   
Mark McGurk  
Vice President for Business Affairs

  
Dana Dimel

Date: 3/8/2022

Date: 3/6/22

By:   
Jim Senter  
Vice President and Athletics Director

Date: 3/7/22



**APPROVED:**

*Archie Holmes*

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

Date: 3/17/22