

FIRST AMENDMENT TO EMPLOYMENT AGREEMENT

THIS FIRST AMENDMENT TO EMPLOYMENT AGREEMENT ("Amendment") is made this 18th day of July, 2024, by and between West Virginia University Board of Governors for and on behalf of West Virginia University ("University") and Mark Kellogg ("Coach").

WHEREAS, University and Coach entered into an Employment Agreement, dated January 5, 2024 (collectively the "Agreement");

WHEREAS, University and Coach now desire to amend the Agreement; and,

NOW, THEREFORE, WITNESSETH, that for and in consideration of the mutual covenants and conditions herein contained, and other good and valuable consideration, the receipt and sufficiency of all of which hereby is acknowledged by the parties hereto, University and Coach agree to amend the Agreement as follows:

1. Article I, EMPLOYMENT & TERM, shall be amended to add an additional year to the term; the amended Termination Date shall be April 30, 2029. Further, this article shall be amended to add the following subsections A and B:

A. One-Time Automatic Extension. In the event that during one of the next two basketball seasons occurring during the Term (2024-25 and 2025-26) Coach successfully coaches the women's basketball team to a finish in the top 6 of the final regular season standings of the Big 12 Conference, or such other league or conference of which the University shall become a member during the Term (the "Conference"), after giving effect to all Conference tie breakers, the Term of this Agreement will be extended for one (1) additional year and the Termination Date shall be April 30, 2030.¹

B. Impact of Automatic Extension. If the automatic extension described above is awarded, Coach's Supplemental Compensation in Agreement Year 2030 (May 1, 2029 – April 30, 2030) will increase by Twenty-Five Thousand Dollars (\$25,000); therefore, Coach's Total Salary for Agreement Year 2030 will be Seven Hundred Thousand Dollars (\$700,000). Except as set forth in this Amendment, all other terms and conditions of the Agreement will remain the same in Agreement Year 2030.

2. In Article III.A., Salary, the compensation table, as set forth in Article III.A., shall be deleted and replaced with the following table:

¹ For the avoidance of doubt, if the women's basketball team finishes in the top 6 of the Conference standings in both of the referenced seasons, only one (1) extension will have been earned.

Agreement Year	Base Salary	Supplemental Compensation	Total Salary
2025 (May 1, 2024, to April 30, 2025)	\$500,000	\$75,000	\$575,000
2026 (May 1, 2025, to April 30, 2026)	\$500,000	\$100,000	\$600,000
2027 (May 1, 2026, to April 30, 2027)	\$500,000	\$125,000	\$625,000
2028 (May 1, 2027, to April 30, 2028)	\$500,000	\$150,000	\$650,000
2029 (May 1, 2028, to April 30, 2029)	\$500,000	\$175,000	\$675,000

3. Article III.C., Other Compensation and Incentives, shall be amended to add the following as new subsections 8 and 9:

8. **One-Time Retention Incentive.** In the event that Coach is employed and rendering service to WVU Athletics pursuant to this agreement on August 1, 2024, Coach shall receive a one-time retention incentive of \$50,000, with the payment on or before September 1, 2024.

9. **Annual Retention Incentives.** In the event that Coach is employed and rendering service to WVU Athletics pursuant to this agreement on May 1 of each subsequent Agreement Year, Coach shall receive a retention incentive of \$50,000, with payment on or before June 1 of the given year. If the automatic extension described in amended Article I.A. is awarded, the aforementioned retention incentive will be awarded if Coach is employed and rendering service to WVU Athletics on May 1, 2029, and payment shall be made on or before June 1, 2029.

4. Article III.C.4., Annual Performance Incentives, shall be amended to delete and replace all references to “Exhibit A” with “Exhibit A – 2024,” which is attached to this Amendment and is incorporated into the Agreement by this reference.

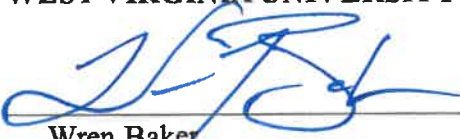
5. Except as set forth in this Amendment, the Agreement remains in full force and effect and is not amended.

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IN WITNESS WHEREOF, the parties hereto shall consider this Amendment to be effective on the date first written above.

**WEST VIRGINIA UNIVERSITY BOARD
OF GOVERNORS FOR AND ON BEHALF
OF WEST VIRGINIA UNIVERSITY**

By:



Wren Baker
Vice President and Director of Athletics



Mark Kellogg

**EXHIBIT A – 2024
ANNUAL PERFORMANCE INCENTIVES**

As set forth in the Agreement, Coach is entitled to the following annual performance incentives:

1. Conference regular season

a.	Regular season first place finish	\$25,000
b.	Regular season second place finish	\$20,000
c.	Regular season third place finish	\$15,000

2. Conference postseason tournament

a.	Tournament championship	\$25,000
b.	Tournament runner-up	\$20,000

3. NCAA Tournament (cumulative)

a.	Participation in NCAA Tournament	\$15,000
b.	Participation in Second Round	\$20,000
c.	Participation in Sweet Sixteen	\$30,000
d.	Participation in Elite Eight	\$40,000
e.	Participation in NCAA Final Four	\$65,000
f.	Participation in NCAA National Championship	\$75,000
g.	Win NCAA National Championship	\$100,000

4. Wins (cumulative)

a.	20 Wins	\$5,000
b.	25 Wins	\$10,000
c.	30 Wins	\$15,000

5. Coach of the Year Awards (cumulative)

a.	Conference Coach of the Year	\$30,000
b.	National Coach of the Year*	\$50,000

* As selected by WBCA and/or Associated Press. Selection by both will not increase incentive.

6. APR rating of 950 or above, as determined by the NCAA \$10,000

7. Season ticket sales (not cumulative)**

a.	Exceeds 1,000 season tickets sold	\$5,000 or
b.	Exceeds 2,000 season tickets sold	\$10,000

** Season ticket sales do not include complementary tickets

EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT (“Agreement”) is made this 5th day of January, 2024, by and between West Virginia University Board of Governors for and on behalf of West Virginia University (“University”) and Mark Kellogg (“Coach”).

WHEREAS, University and Coach entered into a Memorandum of Understanding, dated April 5, 2023;

WHEREAS, University and Coach enter into this Agreement for the purpose of restating, replacing, and superseding the Memorandum of Understanding.

As set forth below, University and Coach agree as follows:

I. EMPLOYMENT & TERM

Subject to the terms and conditions of this Agreement, University agrees to employ Coach as Head Women’s Basketball Coach and Coach agrees to perform in this capacity for a term that began on April 5, 2023 and terminating at 11:59 p.m. on April 30, 2028 (“Termination Date”). The one-year period beginning May 1 each year shall be deemed to be an “Agreement Year” as that term is used in this Agreement. Coach agrees and understands that he has no expectation of future or continued employment beyond the Termination Date. Coach shall be employed as a full-time, exempt employee, by and subject to the rules and policies adopted by the University’s Board of Governors and any other policies and procedures adopted by the University, all as they may be modified from time to time. Notwithstanding any University policy or rule to the contrary, for so long as Coach is employed at University, Coach will devote all of his working time and full professional effort to the duties required of his position, and Coach will have no gainful employment with any other person, firm, corporation or legal entity except upon prior written approval of the Vice President and Director of Athletics (“Director”). Furthermore, upon prior written approval of the Director, Coach may serve as a trustee, director, or officer to nonprofit, charitable, family, professional, and other organizations or entities only to the extent that such service does not interfere with and is not inconsistent with Coach’s duties to the University.

II. REPRESENTATIONS

Coach represents and warrants that he has not materially violated any of the rules and regulations of the National Collegiate Athletic Association (“NCAA”), and that he is not aware of any threatened or pending NCAA investigation involving his conduct at any other NCAA member institution; except, any NCAA infractions or investigation already disclosed to University by Coach. Coach also represents and warrants that he is not subject to any undisclosed criminal conviction or pending investigation. Further, Coach warrants that his resume and credentials are true and accurate.

III. **COMPENSATION AND BENEFITS**

A. Salary. In consideration of services and satisfactory performance of the terms and conditions of this Agreement by Coach, University agrees to pay Coach an annual base salary of Five Hundred Thousand Dollars (\$500,000) (the “Base Salary”) for performance of duties related to traditional coaching activities, and “Supplemental Compensation” for performance of duties related to promotional activities described herein. University agrees to compensate Coach according to the following schedule:

Agreement Year	Base Salary	Supplemental Compensation	Total Compensation
Effective Date to April 30, 2024	\$500,000.00	\$50,000.00	\$550,000.00
2025	\$500,000.00	\$75,000.00	\$575,000.00
2026	\$500,000.00	\$100,000.00	\$600,000.00
2027	\$500,000.00	\$125,000.00	\$625,000.00
2028	\$500,000.00	\$150,000.00	\$650,000.00

Increases in Supplemental Compensation illustrated above shall be effective on May 1 of the respective Agreement Years. Regardless of the amounts, all Base Salary and Supplemental Compensation (collectively the “Total Salary”) are stated on an annualized basis. Payment of all Total Salary shall be in accordance with the payroll policies of University and subject to such deductions as may be required by applicable state and federal laws and regulations, and such employee benefit plans in which Coach elects to participate.

B. Employee Benefits. Coach will be eligible to participate in all employee benefit programs available to other University employees of like status. Such benefits shall be governed by University policies and the laws of the State of West Virginia and will include, among others, health insurance, retirement, annual leave, sick leave and all other standard benefits. Importantly, Coach agrees that he will take leave in accordance with University policies and authorizes University to process leave accordingly.

C. Other Compensation and Incentives.

1. Courtesy Automobile: Coach shall receive one (1) courtesy vehicle; provided, however, that prior to receipt of the vehicle, Coach shall separately agree to the terms and conditions of the Department of Intercollegiate Athletics’ Wheels Club Driver Agreement.

2. Tickets: Coach may elect to receive twenty (20) tickets for each home women’s basketball game, four (4) tickets for each home football game, four (4) tickets for each home men’s basketball game, and, if applicable, ten (10) tickets for each Conference or NCAA Tournament game in which the University’s women’s basketball team participates. You may also receive parking passes, pending availability, for such events described. Tickets shall be distributed

to Coach as allowed by law and by the rules and regulations of the University, the athletic conference in which the University is a member and the NCAA, and are subject to applicable taxes.

3. Camps: Coach may be entitled to additional compensation for services performed related to youth camp(s) and/or clinic(s) held on campus as part of the Department of Intercollegiate Athletics’ operations consistent with the provisions of West Virginia University rules and policies, specifically West Virginia University Board of Governors’ Finance and Administration Rule 5.5, and other applicable state laws. Compensation will be dependent upon number of attendees, hours worked, or a percentage of net revenue generated by the camp and subject to the approval of the Director of Intercollegiate Athletics or designee. If entitled to additional compensation, Coach will be required to use vacation time while working the camp(s) and/or clinic(s).

4. Annual Performance Incentives: In addition to Base Salary, University shall pay Coach annual performance incentives within Sixty (60) consecutive days of the end of the season in which earned as set forth in Exhibit A. Coach is entitled to payment of annual performance incentives if the University reaches the goal set forth in the exhibit and, to the extent the goal is an event, Coach participates in the event. Provided, however, that payment of all annual performance incentives shall be contingent on the women’s basketball team achieving a 930 or higher multi-year Academic Progress Rate (APR). Accordingly, Coach will not receive any annual performance incentives for the upcoming year if the women’s basketball team does not achieve a 930 or higher APR. For the avoidance of doubt, if the women’s basketball team fails to achieve a 930 or higher APR, Coach will not receive any annual performance incentives until that mark is reached. By way of example, if the APR is below a 930 when it is announced in the Spring of 2023, the University will award no annual incentives to Coach in the upcoming 2023 season or any subsequent year until the APR is 930 or higher.

5. Athletic Apparel: Coach is entitled to an allocation of Five Thousand Dollars (\$5,000.00) retail value from the University’s team apparel supplier, which is subject to applicable taxes, if any.

6. Club Membership: University shall provide a family membership to a golf club which will be subject to applicable taxes, if any. Coach shall be responsible for any food and beverage charges related to the membership and expenses.

7. Annual Dues: University will pay Coach’s annual membership dues to such professional organizations related to Coach’s duties as the Head Women’s Basketball Coach.

IV. PERFORMANCE

Coach shall report to and be supervised by the Director, further, Coach will work with the Director or Director’s designee to establish a work schedule consistent with University policies. Without limiting the foregoing, Coach shall fulfill all job responsibilities in a timely, thorough, constructive, cooperative, and positive manner, including responsibility for appraisals, administrative processes, and attendance at all meetings (including, but not limited to, a meeting

with the Vice President and Director of Intercollegiate Athletics at the conclusion of each season); further, at all times, Coach shall act as an instructor of students and present a positive representation of West Virginia University. The parties agree that, although this Agreement is athletics related, the primary purpose and priority of the University and this Agreement is to support the University’s educational mission.

Coach shall comply with all local, state or federal laws, ordinances, rules or regulations, or of any of the written rules, regulations, policies, procedures or standards of the University, the Big 12 Conference (or any other athletic conference of which the University may become a member) or the NCAA. Coach will use best efforts to avoid the intentional existence or appearance of a conflict of interest throughout the term of his employment and shall comply with the applicable provisions of the West Virginia Governmental Ethics Act, W. Va. Code §§ 6B-1-1 to 3-11. Further, Coach shall adhere to NCAA Bylaw 1.1 Conduct of Athletics Personnel in the performance of Coach’s duties as Head Women’s Basketball Coach. Pursuant to NCAA Bylaw 11.2.1, it is stipulated by the parties that if Coach is found in violation of NCAA regulations, he shall be subject to disciplinary or corrective action as set forth in the provisions of the NCAA enforcement procedures, including suspension without pay or termination of employment as set forth in Article VII herein.

Additionally, Coach shall not knowingly or negligently permit or condone, directly or indirectly, any student, employee or other individual subject to Coach’s direct control or supervision, to perform any act which reflects adversely on the University, its athletic programs, or otherwise affects the operations of the women’s basketball program or Coach’s responsibilities under this Agreement. In the event Coach violates the foregoing, Coach may be subject to disciplinary action, consistent with the terms of this Agreement, including, but not limited to, public or private reprimand, or, if appropriate, termination subject to Article VII herein.

Coach shall perform the duties of a campus security authority under the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (the “Clery Act”) and the duties of a responsible employee under the University’s policies and procedures adopted for purposes of compliance with Title IX of the Education Amendments of 1972, the Violence Against Women Act’s amendments to the Clery Act, and/or any similar state or local law, including without limitation BOG Rule 1.6 (collectively, “Title IX Policies”).

Coach shall, at all times, provide appropriate support, supervision and proper treatment of all student-athletes. If Coach is found by the University to have mistreated a student-athlete, violated NCAA rules and/or regulations, violated the Title IX Policies, or to have failed to report a violation that Coach knows about or to have failed to prevent or stop a violation that Coach knows about, Coach will be subject to disciplinary or corrective action pursuant to University guidelines, including suspension without pay, or termination of employment for cause with no further monetary obligations by the University.

Coach understands and agrees that in the course of his employment, Coach will receive and become aware of information, projects, and practices which are sensitive and confidential in nature. Coach agrees to keep all such information strictly confidential and further agree not to

communicate, disclose, divulge, or otherwise use – directly or indirectly – such confidential and/or sensitive information for any purpose other than the necessary and appropriate business use related to Coach’s position.

With respect to managing assistant coaches, Coach shall provide advanced notice to Director prior to entering into any substantive discussions or negotiations with assistant coaches, their agents or representatives, regarding other coaching positions or responsibilities.

V. UNIVERSITY’S RIGHT TO USE OR AUTHORIZE THE USE OF COACH’S NAME, IMAGE, AND LIKENESS

Notwithstanding anything to the contrary contained in this Agreement, Coach agrees that the University shall have the exclusive right, commercial or otherwise, to use Coach’s name, nickname(s), initials, autograph, image, photograph, picture and other likeness and other indicia of or closely identified with Coach (collectively referred to as “Personal Indicia”) for the benefit of the women’s basketball program, the Athletics Department, the University, and with respect to any contracts or sponsorship agreements entered into between the University and any sponsor, manufacturer, media rights company or vendor of athletic apparel, shoes and other products or services. Additionally, the University shall have the exclusive rights to authorize, license, or to grant any such sponsor, manufacturer, media rights company, vendor, or other party the right to use Coach’s Personal Indicia; provided, however, that any such use shall be in good taste and does not reflect negatively upon Coach.

To the extent necessary, Coach hereby assigns to University all rights, title and interest to the use of Coach’s Personal Indicia, and any derivatives thereof, during the term of this Agreement, which assignment will terminate or expire when Coach’s employment with University ends, except for uses related to Coach’s tenure and performance at University. Coach, subject to this Agreement, is, and will remain, the sole and exclusive owner of Coach’s name and likeness and all proprietary and potentially proprietary rights therein.

VI. PROMOTIONAL ACTIVITIES, PUBLIC APPEARANCES, & OUTSIDE INCOME

As part of Coach’s responsibilities under this Agreement, Coach shall from time to time attend and participate in certain promotional activities as directed by the Director or designees. University agrees to consult and coordinate with Coach before scheduling such promotional activities, which consent shall not be unreasonably withheld. Such promotional activities may include, but are not limited to appearances at events sponsored by the University, the Mountaineer Athletic Club, or any other University affiliated organizations; appearances and participation in radio, television and Internet programs produced by or on behalf of the University its affiliated organizations, or other such programs licensed by the University. Such appearances and participation may include, but shall not necessarily be limited to, radio talk shows, pregame/postgame radio shows, television shows, Internet audio programs and occasional Internet features. Coach recognizes that he does not own the rights to radio, television, Internet and other programs that are broadcast or otherwise disseminated to the public in which Coach serves as a

participant under this Agreement. University retains exclusive rights to services in the areas as specified herein.

Nothing contained herein shall be deemed to prevent Coach from arranging or participating in, and deriving income and/or benefits from sources outside of the University such as speaking engagements, camps, or clinics (“Outside Events”). Provided, however, Coach acknowledges and agrees that prior to committing to any Outside Events, he must notify the Director, or his designee, of the Outside Event and obtain approval. The Director may refuse to provide approval at his discretion but will not unreasonably withhold such approval. Coach may not participate in any Outside Events with businesses or corporations that compete with any of the University’s corporate sponsors. Further, in accordance with NCAA Bylaw 11.2.2 regarding athletically-related income, Coach agrees to provide a written detailed account to the Director or Director’s designee, at least once annually, for all athletically-related income, compensation, gratuities or benefits from any and all sources outside the institution.

Coach shall make no public appearance, either in person or by means of radio, television, Internet or other means or medium, or willingly allow the use of Coach’s name in connection with Coach’s relationship to the University, when Coach has knowledge that any such appearance or use of name will result in unfavorable reflection upon University or conflict with Coach’s duties or University’s rights under this Agreement.

VII. TERMINATION

A. Termination for Cause by University. The University specifically reserves the right to terminate this Agreement without further obligation at any time for cause, which shall be deemed to include, but is not limited to, the following:

1. The commission by Coach of a significant or severe Level I violations, or a pattern of secondary violations, of the written rules, regulations, policies, procedures or standards of the NCAA or the Big 12 Conference (or any other conference of which University may become a member), or the allowing or condoning, whether directly or by negligent supervision, of any such significant or severe violation by a student, coach or other individual subject to Coach’s direct control or supervision, or otherwise soliciting, directing or condoning such violation by any person;

2. Any conduct of Coach in violation of any federal, state, or local criminal statute (excluding minor traffic offenses), or any act of moral turpitude;

3. Substance abuse or habitual insobriety;

4. Material breach of Coach’s duties or any term of this Agreement by Coach;

5. Willful, negligent or intentional disregard in the performance of Coach’s duties or insubordination by Coach of the reasonable instruction of the Director of Intercollegiate Athletics or their designees;

6. Fraud or dishonesty of Coach in the performance of Coach's duties or responsibilities under this Agreement; or

7. Material misrepresentation of Coach's educational or other qualifications for employment of Coach under this Agreement; or

8. Conduct by Coach that is clearly contrary to the character and responsibilities of a person occupying Coach's position, offends the traditions of the University, or brings discredit to the University.

In the event that Coach is terminated for cause by University, Coach shall not be entitled to, nor shall University be required to provide, any portion of the compensation, benefits and/or incentives as set forth in Article III of this Agreement, or any other entitlements under this Agreement, except Base Salary, benefits and incentive compensation actually earned and accrued but unpaid, and all incurred but unreimbursed expenses through the date of termination, all of which shall be paid within thirty (30) consecutive days of termination less all applicable taxes and other withholdings.

B. Termination for Convenience by University. In addition to the provision set forth above, the University also reserves the right to terminate this Agreement without cause, at University's convenience. In the event that University terminates Coach without cause the following shall occur:

1. Within thirty (30) days following termination, University shall pay to Coach all salary and incentive compensation actually earned and accrued but unpaid under the terms of this Agreement and not paid as of the date of such termination, any business expense reimbursement otherwise due and the value of any accrued but unused leave less all applicable taxes and other appropriate withholdings; and

2. University shall pay to Coach a severance benefit in the amount of one hundred percent (100%) of the remaining Base Salary that would be paid to Coach pursuant to the Agreement if Coach remained employed through the Termination Date (the "Severance Benefit"). The Severance Benefit shall be paid by the University in regular bi-weekly installments over the period from the effective date of termination through the Termination Date (the "Payment Period"). Notwithstanding the preceding sentence, with respect to any portion of the Severance Benefit that is payable in a calendar year after the calendar year in which the effective date of termination occurs ("Future Severance Pay"), a portion of the Future Severance Pay will be accelerated in an amount equal to the federal and state income tax withholdings that would have been remitted by the University if there had been a payment of wages equal to the income includible by Employee under Section 457(f) of the Internal Revenue Code, as amended (the "Code") as of the effective date of termination (Future Severance Pay otherwise payable to Employee will be offset by any such Future Severance Pay accelerated) and such portion will be paid by the end of the calendar year in which the effective date of termination occurs. The acceleration described in the preceding sentence is intended to comply with the requirements of

Section 1.409A-3(j)(4)(iv) of the Code regulations (as it may be amended from time to time), and will be administered and construed in whatever manner is necessary to ensure such compliance.

3. Coach acknowledges and agrees that the University has no obligation to pay any Severance Benefit due to Coach as set forth above, unless and until the Coach executes and delivers to the University, and does not revoke within seven days thereafter, a Separation Agreement which shall include, at a minimum, a release by the Employee of any and all claims and causes of action against the University by reason of any act, omission, transaction, or event occurring up to the date of execution of the Separation Agreement. The University shall provide Employee with the Separation Agreement for execution immediately upon termination without cause. To the extent required by the Code, if the maximum period over which the Separation Agreement may become binding and irrevocable begins in one calendar year and ends in the following calendar year, payments pursuant to this Section VII.B. (if any) shall begin in the following calendar year.

4. Notwithstanding the foregoing, before the University is required to pay the Severance Benefit, Coach must diligently seek mitigation of this payment obligation by obtaining Other Employment. University shall be able to offset the Severance Benefit payment amount with any Compensation received by Coach from other employment during the Payment Period. University’s Severance Benefit payment obligation under this Section VII.B. shall be offset by any Compensation Coach earns from Other Employment during the Payment Period. If Coach engages in Other Employment during the Payment Period, the University may reduce the amounts otherwise due pursuant to this Section 20 by the amount of the Compensation earned by Coach from such Other Employment. Coach shall inform the University, on a regular and continuing basis and upon beginning Other Employment and upon the University’s request, as to whether Employee has obtained Other Employment during the Payment Period and Coach shall provide to University such documentation as may be necessary to confirm Coach’s Compensation during the Payment Period. For the avoidance of doubt, University’s obligation to pay the Severance Benefit shall cease if Coach earns more than that what is owed by the University. Coach shall not enter into any agreement with a successor employer or other third party payor with the intention or effect of evading the University’s right of offset under this subsection VII.B.3, including without limitation artificially deferring (in whole or in part) Compensation from Other Employment beyond the end of the Payment Period, unjustifiably agreeing to accept Compensation below fair market value, or otherwise intentionally structuring payment obligations to avoid or minimize application of this subsection VII.B.3.

5. For purposes of this subsection VII.B.3. “Other Employment” shall mean the provision of services by Coach for any school or organization that participates in, regulates, or oversees athletic competition, including, without limitation, working as an employee for another employer, as a consultant, as a self-employed person, or as an independent contractor, whether personally or through one or more business entities owned or controlled by Coach; and (ii) the term “Compensation” shall mean any and all gross income derived from Other Employment, whether as wages paid by an employer, as a dividend or other distribution from a business entity owned or controlled by Coach, or otherwise (but excluding reasonable and usual non-monetary

fringe benefits such as health and life insurance, club membership, courtesy tickets, and use of vehicles). For purposes of determining the Compensation payable to Employee during the Payment Period under circumstances in which Coach’s Other Employment is evidenced by one or more contractual agreements having a term greater than one year (without limiting inclusion of other types of Compensation), any periodically-rated salary, additional or supplemental compensation, or other compensation expressed as a periodic rate payable to Employee in any given year shall be deemed to be the average Compensation of such nature payable under said contractual agreement(s), determined by dividing the total such Compensation payable thereunder for all years (including periods occurring after the end of the Payment Period) by the total number of years occurring during the term thereof. In the event the term of such contractual agreement(s) includes one or more partial years, such Compensation payable in such partial year(s) shall be included in the aforementioned calculation, and each such partial year shall be considered part of the term as a fractional year based on the number of days in such partial year divided by 365, rounded to the nearest hundredth of a year. For example, a contractual agreement beginning on April 1, 2025 and ending on June 30, 2030 would be considered to have a term of 5.25 years.

C. Termination by Coach. Coach agrees not to personally or, directly or indirectly, through any agent or representative, interview for, negotiate for, or accept other full-time or part-time employment of any nature without first having provided notice to the Director of Intercollegiate Athletics.

In the event that Coach terminates this Agreement to take another position with any entity in any capacity, whether as an employee, an independent contractor, a consultant, or the like, Coach agrees to either pay to University or cause to be paid to the University, as liquidated damages, sixty percent (60%) of the remaining Base Salary of this Agreement if Agreement is terminated on or before April 30, 2024. If Agreement is terminated on or after May 1, 2024, then Coach shall either pay to University or cause to be paid to the University, as liquidated damages, fifty percent (50%) of the remaining Base Salary of this Agreement. Regardless, when this Agreement is terminated, the referenced percentage for calculating liquidated damages payable to the University shall increase to one hundred percent (100%) of the remaining Base Salary if Coach accepts employment from a member institution of the Big 12 Conference or an institution that was announced to be joining the Big 12 Conference as of April 5, 2023.

All payments made pursuant to this provision shall be payable within (30) days of the effective date of the termination by Coach.

For the avoidance of doubt, the parties affirm that they have bargained for and agreed to the foregoing liquidated damages provisions, giving consideration to the fact that University will incur administrative, recruiting, resettlement, and other costs in obtaining a replacement for Coach, in addition to potentially increased compensation costs if Coach terminates this Agreement prior to its expiration, which damages are extremely difficult or impracticable to determine with certainty. The payment of the liquidated damages shall constitute adequate and reasonable compensation to the University for the damages and injury suffered because of termination by convenience by Coach; it is not, nor be construed to be, a penalty.

Upon termination of this agreement, Coach shall, within thirty (30) consecutive days of termination, receive payment from University for all Base Salary, supplemental and incentive compensation actually earned and accrued but unpaid, and all incurred but unreimbursed expenses under the terms of this Agreement and not paid as of the date of such termination, less all applicable taxes and other withholdings.

Notwithstanding the foregoing, nothing in this provision, shall be interpreted to limit Coach’s career advancement; rather, University recognizes that unique opportunities for career advancement may occur. In the event that Coach receives an offer or notice of interest, Coach should immediately notify the Director of Intercollegiate Athletics in order for Coach and University to explore the possibility of Coach’s release from this Agreement.

D. Inability to Perform. In the event of the inability of Coach to continue to perform the essential functions of Coach’s position under this Agreement by reason of death, disability, or permanent retirement, this Agreement shall terminate and all future obligations between the parties shall cease. The parties further agree that in the event that Coach is unable to continue to perform Coach’s obligations under this Agreement and the Agreement is terminated pursuant to this Article VII (D), Coach shall be entitled to all earned and accrued Base Salary, benefits and incentive compensation earned but unpaid, and all incurred but unreimbursed expenses as of the date of Coach’s inability to perform. Such compensation shall be paid to Coach or Coach’s estate or beneficiaries, as the case may be, in addition to standard University benefits, if any.

E. Coach’s Obligation Upon Separation from University. All materials or articles of information, including without limitation, keys, keycards, cell phones, computers, equipment, parking passes, unused athletic event tickets and the like, the right to claim such tickets of the like, automobiles, personnel records, recruiting records, team information, video, statistics or any other material documents, correspondence, or other data furnished to the Coach by the University or developed by the Coach, whether directly or by others under Coach’s supervision and control, on behalf of the University for the University’s use or otherwise in connection with the Coach’s employment hereunder shall remain the sole property of the University. Coach shall cause any and all such materials in Coach’s possession or control to be delivered to the University by or before close of business on the date of Coach’s termination of employment. This provision shall apply equally to written and electronic materials and records. Coach understands that he will be responsible to pay for any lost, damaged, or unreturned University property. The foregoing provisions of this Section shall not apply to personal notes, personal play books, memorabilia, diaries and similar personal records of Coach, which Coach is entitled to retain.

VIII. GRIEVANCE PROCESS

Resolution of any employment grievance that Coach shall be governed by the West Virginia Public Employees Grievance Procedure (W. Va. Code §§ 6C-2-1 to -7).

IX. HEADINGS

The headings of the articles and sections contained in this Agreement are for reference purposes only and shall not be deemed to control or affect the meaning or construction of any provision of this Agreement.

X. ENTIRE AGREEMENT; AMENDMENT

It is mutually understood that this Agreement and the attached cover letter and exhibits contain all of the terms and conditions to which the parties have agreed and that no other understandings or representations, either oral or written, unless referenced in the preceding paragraphs, regarding the subject matter of this Agreement shall be deemed to exist or to bind the parties hereto. Any modification, amendment or addendum to this Agreement shall be effective only if made in writing and signed by both parties hereto.

XI. SEVERABILITY

If any provision of this Agreement is held invalid or otherwise unenforceable, the enforceability of the remaining provisions shall not be impaired thereby, and such remaining provisions shall remain in full force and effect.

XII. APPLICABLE LAW

This Agreement is made and entered in Monongalia County in the State of West Virginia, and the laws of West Virginia shall govern its validity, interpretation, performance, and enforcement by the parties of their respective duties and obligations hereunder.

XIII. VOLUNTARY AGREEMENT

This Agreement is the result of arm’s-length negotiation between the parties, and the parties have had the opportunity to be represented by counsel of their own choosing. Each party enters into this Agreement freely and voluntarily and with the full intent to be bound hereby.

XIV. NOTICE

Any and all notices required or permitted to be given under this Agreement will be sufficient if furnished in writing and sent by registered or certified mail to the other party at the address stated here:

COACH:	Last Address on File with the University
UNIVERSITY:	Director of Intercollegiate Athletics West Virginia University PO Box 0877, Morgantown, WV 26507-0877

With a Copy to:
General Counsel's Office
West Virginia University
105 Stewart Hall, PO Box 6204, Morgantown, WV 26506-6204

BY THEIR SIGNATURES BELOW, the parties have executed this Agreement as of the day and year first above written.

**WEST VIRGINIA UNIVERSITY BOARD
OF GOVERNORS FOR AND ON BEHALF
OF WEST VIRGINIA UNIVERSITY**

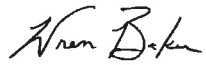

By: 
Wren Baker
Vice President and Director of Athletics

Mark Kellogg

EXHIBIT A
ANNUAL PERFORMANCE INCENTIVES

As set forth in the Agreement, Coach is entitled to the following annual performance incentives:

1. Conference regular season	
(a) Regular season first place finish	\$ 25,000.00
(b) Regular season second place finish	\$ 20,000.00
(c) Regular season third place finish	\$ 15,000.00
2. Conference postseason tournament	
(a) Tournament championship	\$ 25,000.00
(b) Tournament runner-up	\$ 20,000.00
3. NCAA Tournament (cumulative)	
(a) Participation in NCAA Tournament	\$ 15,000.00
(b) Participation in Second Round	\$ 20,000.00
(c) Participation in Sweet Sixteen	\$ 30,000.00
(d) Participation in Elite Eight	\$ 40,000.00
(e) Participation in NCAA Final Four	\$ 65,000.00
(f) Participation in NCAA National Championship	\$ 75,000.00
(g) Win NCAA National Championship	\$ 100,000.00
4. Conference Coach of the Year	\$ 30,000.00
5. National Coach of the Year	\$ 50,000.00
6. APR rating of 950 or above, as determined by the NCAA	\$ 10,000.00
7. Season ticket sales (not to include complimentary tickets)	
(a) Exceeds 1,000 season tickets sold	\$ 5,000.00
(b) Exceeds 2,000 season tickets sold	\$ 10,000.00