

**BOARD OF SUPERVISORS FOR THE
UNIVERSITY OF LOUISIANA SYSTEM**

ATHLETIC COMMITTEE

April 22, 2021

Item G.1. Louisiana Tech University's request for approval of a contract with Mr. David Mackie, Assistant Football Coach/Safeties Coach, between Louisiana Tech University, and Louisiana Tech University Foundation, effective March 1, 2021.

EXECUTIVE SUMMARY

This agreement is for the period from March 1, 2021 through February 28, 2022. During this period, Coach will receive an annual base salary of \$90,000 from the University.

If the University terminates this agreement without cause, the Foundation shall pay Assistant Coach the amount of the remainder of the term of the contract.

In the event Assistant Coach terminates the contract without cause, he will be liable to the Foundation as follows:

- If Assistant Coach has been employed by the University less than 12 months, he shall be liable to and shall pay the Foundation an amount equal to the greater of all moving expenses paid or reimbursed, or 5% of his base salary, or
- If Assistant Coach terminates within 60 days of his hire date, he shall be liable to and shall pay the Foundation an amount equal to 50% of his base salary.

RECOMMENDATION

It is recommended that the following resolution be adopted:

***NOW, THEREFORE, BE IT RESOLVED,** that the Board of Supervisors for the University of Louisiana System hereby approves Louisiana Tech University's request for approval of a contract with Mr. David Mackie, Assistant Football Coach/Safeties Coach, between Louisiana Tech University, and Louisiana Tech University Foundation, effective March 1, 2021.*



G.1.

LOUISIANA TECH
UNIVERSITY.

OFFICE OF THE PRESIDENT

March 26, 2021

Dr. Jim Henderson, President
University of Louisiana System
1201 North Third Street
Suite 7-300
Baton Rouge, LA 70802

Dear Dr. Henderson:

Enclosed for your review is the Contract of Employment between David Mackie, Assistant Football Coach-Safeties Coach, and Louisiana Tech University. Also joining in the contract and consenting to the obligations incurred by it is the Louisiana Tech University Foundation. The effective date of the Contract of Employment is March 1, 2021, through February 28, 2022.

Please place this item on the ULS Board of Supervisors' agenda for consideration and approval at the April 2021 meeting.

Upon approval by the Board, please sign the on the last page of the contract indicating that the Board has approved the contract, and keep a scanned copy for the files of the Board of Supervisors and please email a copy of the signed document to me for distribution to Assistant Coach Mackie, the University, the Foundation, and Assistant Coach Mackie's attorney.

Thank you for your attention to this matter.

Sincerely,

Leslie K. Guice
President

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enclosures

**CONTRACT OF EMPLOYMENT:
ASSISTANT FOOTBALL COACH – SAFETIES COACH**

STATE OF LOUISIANA

PARISH OF LINCOLN

This agreement is made and entered into on this _____ day of _____, 2021, between Louisiana Tech University (“UNIVERSITY”), through its President, Dr. Les Guice, and **DAVID MACKIE** (“ASSISTANT COACH”). Except where expressly stated otherwise herein, including Sections 10.2 and 10.3, the terms and conditions set forth in this Contract of Employment (“AGREEMENT”) are not binding upon the parties until approval of the Board of Supervisors for the University of Louisiana System (hereinafter referred to as “BOARD”) is obtained. Louisiana Tech University Foundation, Inc. (“FOUNDATION”) joins in this AGREEMENT consenting to the obligations incurred by the FOUNDATION. This single AGREEMENT shall become the agreement between the parties supplanting all previous contracts and/or memoranda of understanding.

EMPLOYMENT OF ASSISTANT FOOTBALL COACH

1.0 Employment

The UNIVERSITY does hereby employ ASSISTANT COACH as **SAFETIES COACH**, and ASSISTANT COACH does hereby accept employment and agrees to perform all of the services pertaining to the position outlined herein which are reasonably required of COACH, as well as, other services as may be reasonably contemplated hereunder, all as reasonably prescribed by the UNIVERSITY through its President and Director of Athletics and assigned by the Head Football Coach (“HEAD COACH”). ASSISTANT COACH shall be responsible and shall report directly to the HEAD COACH.

2.0 Duties

ASSISTANT COACH shall perform such duties in the University athletic program as the HEAD COACH may reasonably assign. Duties shall include but not be limited to the following:

2.1. Faithfully and conscientiously perform the duties reasonably assigned by the HEAD COACH and maintain the high moral and ethical standards commonly expected of the ASSISTANT COACH as a highly visible representative of the Department of Intercollegiate Athletics at the UNIVERSITY.

2.2. Devote such professional time, attention and energy to his duties as are required, in UNIVERSITY's reasonable judgment, to faithfully discharge the duties as set forth herein and to avoid any business or professional activities or pursuits that will unreasonably conflict with his performance of his duties or will otherwise unreasonably interfere with the UNIVERSITY's interests.

2.3. Recognize and comply with the applicable laws, policies, rules and regulations of the UNIVERSITY, the National Collegiate Athletic Association ("NCAA"), and Conference USA (or any other conference which the UNIVERSITY may become a member during the Term), as now constituted or as may be amended during the Term hereof. ASSISTANT COACH shall immediately inform HEAD COACH of any suspected violation and assist the investigation and reporting thereof.

2.4. Carry himself in a professional and sportsman-like manner. ASSISTANT COACH recognized he is a highly visible representative of the UNIVERSITY, whose conduct, both on and off the field, affects the reputation of the institution, the viability of its athletic programs and contracts, and the well-being of its student-athletes.

2.5. ASSISTANT COACH agrees that academic achievement of student-athletes is of the highest importance. ASSISTANT COACH agrees to carry himself in a manner that supports academic integrity.

2.6. ASSISTANT COACH agrees to make himself reasonably available for media or other public appearances at such times as the University, through the Department of Intercollegiate Athletics, or FOUNDATION may reasonable designate. Such appearances shall not unreasonably conflict with ASSISTANT COACH's primary duties as **SAFETIES COACH**.

2.7. ASSISTANT COACH agrees to conscientiously observe all UNIVERSITY and NCAA rules pertaining to outside income. ASSISTANT COACH will notify the Director of Athletics and obtain approval, such approval not to be unreasonably withheld, before negotiation for or receiving any athletically-related income or benefits from sources outside UNIVERSITY and will report annually any outside income in compliance with NCAA and UNIVERSITY regulations.

3.0 Term

The term of this AGREEMENT commences March 1, 2021, and ends February 28, 2022. This AGREEMENT shall be automatically renewable for a one-year term on March 1st of each year. (the initial term and any and all renewals hereinafter referred to individually and collectively as the "Term") Either UNIVERSITY or ASSISTANT COACH may deliver written notice to the other party at any time prior to the expiration of the current term electing not to renew the AGREEMENT for an additional term.

4.0 Base Salary

UNIVERSITY agrees to pay ASSISTANT COACH an annual salary of Ninety-Thousand Dollars (\$90,000.00) payable in biweekly installments through UNIVERSITY payroll.

5.0 Employee Benefits

UNIVERSITY will provide ASSISTANT COACH the opportunity to participate in benefit plans for health insurance, dental insurance, retirement, disability, and life insurance on a basis consistent with other UNIVERSITY employees of a similar status. Such benefits will be based upon COACH's base annual salary as provided by UNIVERSITY. Additionally, UNIVERSITY will provide ASSISTANT COACH with up to six (6) tickets per home football game for personal use. As available and in UNIVERSITY's discretion, ASSISTANT COACH is also eligible to use an automobile supplied by an automobile dealership. Coach shall be responsible for any and all income tax liabilities, interest, and/or penalties related to any benefits he receives pursuant to this AGREEMENT.

6.0 Performance Incentives – Athletic Performance Goals

6.1. In recognition of exemplary performance and the additional work that is required for post-season games and events and as an incentive for ASSISTANT COACH to achieve the goals described below, and since such additional work generally results in an influx of private gifts to the FOUNDATION, ASSISTANT COACH shall be eligible to receive, **but is not guaranteed to receive**, a supplemental payment in an amount to be determined by the Head Football Coach and in the Head Football Coach's discretion, with approval from the Director of Athletics and the FOUNDATION.

6.2. Any supplemental payment awarded to ASSISTANT COACH pursuant to this section shall be payable within 60 days of the Head Football Coach awarding the supplemental

payment from the FOUNDATION, solely from the athletic funds held by the FOUNDATION. Supplemental payments made to ASSISTANT COACH from FOUNDATION shall not be considered earned income for the purpose of computation of retirement benefits. No withholdings will be made from these payments, and ASSISTANT COACH shall be responsible for all applicable taxes. The FOUNDATION will issue the appropriate informational return to ASSISTANT COACH and to the Internal Revenue Service and provide a copy to the UNIVERSITY.

7.0 Outside Income

7.1. ASSISTANT COACH shall be prohibited from receiving athletically related benefits or compensation other than as previously described herein from any other source without prior written consent of UNIVERSITY, such consent not to be unreasonably withheld.

7.2. ASSISTANT COACH shall be authorized to earn other revenue while employed by the UNIVERSITY, but such activities are independent of his UNIVERSITY employment, and the UNIVERSITY shall have no responsibility for any claims arising therefrom. All outside income will be subject to approval in accordance with the Board of Supervisors for the University of Louisiana System policies, such approval not to be unreasonably withheld.

7.3. ASSISTANT COACH shall report annually in writing to the President on or before July 1st all athletically related income from sources outside the UNIVERSITY including, but not limited to, income or benefits from (1) endorsement or consultation contracts with apparel companies, equipment manufacturers, or television or radio programs; (2) ownership, control, or management of a foundation, organization, or other entity; and (3) participation in athletic camps outside of those offered by Employer, and the UNIVERSITY shall have reasonable access to all records of ASSISTANT COACH to verify this report (NCAA Bylaw 11.2.2).

8.0 Compliance with NCAA, Conference and University Rules

8.1. ASSISTANT COACH shall abide by the applicable rules and regulations of the NCAA, Conference and UNIVERSITY. If ASSISTANT COACH is personally found to be in violation of NCAA regulations, ASSISTANT COACH shall be subject to disciplinary or corrective action as set forth in the NCAA enforcement procedures (NCAA Constitution 11.2.1). ASSISTANT COACH may be suspended for a period of time, without pay, or the employment of ASSISTANT COACH may be terminated if ASSISTANT COACH is found to be involved in major, deliberate or serious violations of NCAA, Conference and UNIVERSITY regulations.

8.2 . ASSISTANT COACH shall also abide by state and federal laws, the State of Louisiana Code of Governmental Ethics, applicable UNIVERSITY policies and regulations, and the applicable policies and regulations of the University of Louisiana System. In public appearances he shall at all times conduct himself in a manner that befits a UNIVERSITY official and shall always attempt to create goodwill and a good image for UNIVERSITY.

8.3. ASSISTANT COACH acknowledges and agrees that (1) ASSISTANT COACH has an affirmative obligation to cooperate fully in the NCAA infractions process, including the investigation and adjudication of a case (see NCAA Bylaw 19.2.3 for examples of full cooperation), and (2) an individual who is found in violation of NCAA regulations shall be subject to disciplinary or corrective action as set forth in the provisions of the NCAA infractions process (see NCAA Bylaw 19), including suspension without pay or termination of employment.

9.0 Title IX and Sexual Misconduct Policy Reporting and Compliance:

ASSISTANT COACH shall promptly report to the University's Title IX Coordinator or Deputy Title IX Coordinator any Known Violation(s) of the University or the University of Louisiana System's Sexual Misconduct Policy (including, but not limited to sexual harassment, sexual assault, sexual exploitation, domestic violence and stalking) that involve any student, faculty, or staff or that is in connection with a University sponsored activity or event. Any emergency situation shall be immediately reported to 911 and/or law enforcement. For purposes of this paragraph, a "Known Violation" shall mean a violation or an allegation of a violation of Title IX and/or the University's or the University of Louisiana System's Sexual Misconduct Policy that **ASSISTANT COACH** is aware of or has reasonable cause to believe is taking place or may have taken place.

The University may terminate this Agreement for cause pursuant to the for-cause-termination provisions of this Agreement for any determined violation by **ASSISTANT COACH** for failure to report a Known Violation of:

- (1) Title IX of the Education Amendments of 1972;
- (2) the University's Sexual Misconduct Policy; or
- (3) the University of Louisiana System's Sexual Misconduct Policy.

10.0 Termination Without Cause

10.1. Either party may terminate this AGREEMENT without cause by providing written notice to the other party specifying the effective date of termination. Should UNIVERSITY terminate the AGREEMENT without cause prior to the expiration of its current Term, it shall be liable to **ASSISTANT COACH** for liquidated damages which shall include all amounts of Base Salary which would have been owed to **ASSISTANT COACH** had he completed the current Term.

Such damages shall be paid by FOUNDATION in regularly scheduled installments from the date of termination to the end of the current Term.

10.2. Should ASSISTANT COACH terminate this AGREEMENT without cause prior to the expiration of its Term, and ASSISTANT COACH has been employed by UNIVERSITY as an ASSISTANT COACH for less than twelve (12) months, ASSISTANT COACH shall be liable to and shall pay the FOUNDATION an amount equal to **the greater of** all moving expenses paid or reimbursed **or** five percent (5%) of ASSISTANT COACH's Base Salary. ASSISTANT COACH agrees and understands that this provision shall become binding and enforceable upon ASSISTANT COACH's sole signature below regardless of the presence or lack thereof of any other signatories to this AGREEMENT.

10.3. Should ASSISTANT COACH terminate this AGREEMENT without cause within sixty (60) days of ASSISTANT COACH's hire date, ASSISTANT COACH shall pay the FOUNDATION an amount equal to fifty percent (50%) of ASSISTANT COACH's Base Salary. ASSISTANT COACH agrees and understands that this provision shall become binding and enforceable upon ASSISTANT COACH's sole signature below regardless of the presence or lack thereof of any other signatories to this AGREEMENT.

10.4. Any payments due from ASSISTANT COACH under this section shall be due and paid in full to FOUNDATION within thirty (30) days of ASSISTANT COACH's notice of termination.

10.5. Payment by UNIVERSITY and/or FOUNDATION of the amount under this section will constitute a full release of any claim that ASSISTANT COACH might otherwise assert against the UNIVERSITY and FOUNDATION, or any of its representatives, agents or employees. In consideration of this payment, ASSISTANT COACH shall, and does hereby, release and

discharge UNIVERSITY and FOUNDATION, its officers and employees, from and against any liability of any nature whatsoever related to or arising out of this AGREEMENT and ASSISTANT COACH's employment at UNIVERSITY, including, but not limited to, any and all claims arising under or relating to and federal or state constitutions, laws, regulations, or other provision of law.

10.6. Except for the obligation to pay ASSISTANT COACH the amount set forth in Section 10.1, all obligations of UNIVERSITY and FOUNDATION (to the extent not already accrued or vested) to ASSISTANT COACH shall cease as of the effective date of such termination.

10.7. In lieu of terminating employee without cause, UNIVERSITY may reassign ASSISTANT COACH to other duties within UNIVERSITY commensurate with his attained educational level and skill set. Such reassignment shall run commensurate with the duration remaining under the current Term and shall cease at the end of the current Term.

10.8. UNIVERSITY's and/or FOUNDATION'S obligation to pay liquidated damages to ASSISTANT COACH, as described in Section 10.1, shall be subject to ASSISTANT COACH's duty to mitigate his damages. ASSISTANT COACH hereby agrees to mitigate such damages by making reasonable and diligent efforts to obtain employment commensurate with his qualifications and experience, as soon as reasonably possible after termination of this Contract of Employment. If ASSISTANT COACH should obtain such new employment prior to the last installment payment of liquidated damages, ASSISTANT COACH shall notify the Director of Athletics of such new employment. Any further obligation of UNIVERSITY or FOUNDATION to ASSISTANT COACH shall be reduced by amount of salary or payment from new employment. Employment for purposes of this paragraph shall include any form of employment, including a contract of employment, employment at-will, or employment as an independent contractor.

11.0 Termination With Cause

UNIVERSITY shall have the right to terminate ASSISTANT COACH's employment and this AGREEMENT for cause prior to expiration of the Term. In the event this AGREEMENT is terminated for cause, all obligations of UNIVERSITY to make further payment or provide any other consideration hereunder shall cease as of the date of termination, with the exception of any amounts earned but not yet paid. In addition to its normally understood meaning in employment contracts, the term "cause" shall include, without limitation, any of the following:

11.1. Failure or refusal by ASSISTANT COACH to perform any of the material duties required by this AGREEMENT or reasonably required of a Division I Football Assistant Coach, neglect by ASSISTANT COACH of any of the material duties required by this Contract of Employment or reasonably required of a Division I Football Assistant Coach, ASSISTANT COACH's unwillingness to perform such required material duties to the best of his ability, or any other material breach of this AGREEMENT; or

11.2. Insubordination, including but not limited to, deliberate and serious failure to follow reasonable instructions from the Director of Athletics or Football Head Coach or deliberate and serious failure to comply with applicable Athletics Department policies and procedures; or

11.3. A serious or major violation or a pattern of violations, whether intentional or negligent, by ASSISTANT COACH of any Rules or Regulations, which violation may reflect adversely upon UNIVERSITY or its athletics program, including, but not limited to, any violation which may result in UNIVERSITY being investigated, placed on probation, or otherwise sanctioned by the NCAA or its Conference; or

11.4. A serious or major violation or a pattern of violations of any Rules and Regulations, whether intentional or negligent, 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 ASSISTANT COACH's supervision and direction, including student-athletes in the program, which violation was known by ASSISTANT COACH in the course of his normal duties, and which may, reflect adversely upon UNIVERSITY or its athletics program; or

11.5. Failure by ASSISTANT COACH to report immediately to the Football Head Coach and Athletic Director any violations of Rules or Regulations known by ASSISTANT COACH; or

11.6. Failing or refusing to provide information or documents in response to any reasonable requests or inquiries by the NCAA, the Conference, or any other governing body concerning or related to the supervision of the program or directing or otherwise instructing any coach, student-athlete or any other individual to fail or to refuse to provide such information or documents; or

11.7. Any fraud or dishonesty of ASSISTANT 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 Louisiana System, Louisiana Tech University, the NCAA, or the Conference pertaining to the Program, recruits or student-athletes, transcripts eligibility forms, compliance reports, or expense reports, or any other document pertaining or related to any sanction of the Program; or

11.8. 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; or

11.9. 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 Rules or Regulations, 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 Rules or Regulations, or failure or refusal to fully participate and cooperate in UNIVERSITY's implementation and enforcement of any narcotic, drug, alcohol, controlled substance, steroid or other chemical testing programs(s); or

11.10. Conduct of the ASSISTANT COACH which, in the reasonable judgment of the UNIVERSITY as determined by the Director of Athletics with concurrence of the President, is seriously prejudicial to the best interests of the UNIVERSITY or its athletic program; would tend to bring public disrespect, embarrassment, contempt, scandal, or ridicule on ASSISTANT COACH or UNIVERSITY; which otherwise fails to follow the moral and ethical standard reasonably expected of ASSISTANT COACH as a leading representative of the Department of Athletics and UNIVERSITY; or which violates the UNIVERSITY's mission; or being charged or arrested for any crime involving theft, dishonesty, or moral turpitude.

11.11. ASSISTANT COACH being charged or arrested for violation of a criminal statute or regulation, excluding minor traffic violations, provided that an arrest for DUI, DWI, or materially similar charges shall not be considered an arrest or charge for a minor traffic violation.

11.12. Engaging in a consensual sexual relationship with any individual over whom he exercises direct or significant academic, administrative, supervisory, evaluative, counseling or extracurricular authority or influence (Louisiana Tech Policy 1450).

11.13. Prolonged absence from duty without the consent of ASSISTANT COACH's reporting superior; or

11.14. Any cause adequate to sustain termination of any regular staff employee of UNIVERSITY, including but not limited to a violation of the Louisiana Code of Governmental

Ethics (Louisiana Tech Policy 1410), a harassment violation (Louisiana Tech Policy 1438), or a sexual harassment violation (Louisiana Tech Policy 1436).

12.0 Automatic Termination Upon Death or Disability of Coach

This AGREEMENT shall terminate automatically if ASSISTANT COACH dies or becomes physically or mentally disabled to such an extent that, in the judgment of the Head Football Coach with concurrence of the Director of Athletics, he is unable to satisfactorily perform all duties of a NCAA Division I Football Assistant Coach. If this AGREEMENT is terminated pursuant to this section, UNIVERSITY shall be relieved of all liabilities and/or obligations under this AGREEMENT as of the date of death or disability.

13.0 Termination – General Provisions

13.1. If ASSISTANT COACH terminates the AGREEMENT, or if the AGREEMENT is terminated for cause, UNIVERSITY shall not be liable for any payments or benefits after the date of termination, except for amounts previously earned (including supplemental payment) but not yet paid.

13.2. In the event any dispute arises between the parties concerning this AGREEMENT, the party alleging a breach by the other must give written notice to the other detailing the alleged dispute or breach 60 days prior to initiating legal action. If a lawsuit is filed concerning a dispute over this AGREEMENT, such suit must be filed in Lincoln Parish, Louisiana, and the prevailing party is entitled to recover attorney's fees in addition to any other relief awarded by the court.

13.3. Prior to termination of ASSISTANT COACH, UNIVERSITY will obtain approval from the President of the University of Louisiana System.

13.4. ASSISTANT COACH may be terminated at any time due to financial circumstances in which the UNIVERSITY or the University of Louisiana System has declaration

of financial exigency. In the event of such termination, ASSISTANT COACH will receive as liquidated damages sums payable to ASSISTANT COACH pursuant to paragraphs 4.0 for the remainder of the current Term. Such sum shall be payable by the FOUNDATION solely through its athletic funds. The liquidated damages payment for the current AGREEMENT year shall be paid within 60 days of termination. All compensation, including salary, benefits, and other remuneration incidental to employment, ceases upon termination.

14.0 Invalid Provisions

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

15.0 Notice Provision

Any notice provided for herein shall be in writing and shall be deemed to have been given when delivered personally to the party who is to receive such notice or three (3) days after it is mailed by U.S. registered, certified, or first-class mail to such party.

Unless hereinafter changed by written notice to ASSISTANT COACH, any notice to the UNIVERSITY shall be sent to:

Dr. Eric Wood
Vice President and
Director of Athletics
Louisiana Tech University
1650 West Alabama
Ruston, LA 71272

With copy to:
Justin Kavalir
Legal Counsel
Louisiana Tech University
P.O. Box 3168
Ruston, LA 71272

Bill Hogan, President
Louisiana Tech University
Foundation, Inc.
207 W. Alabama Avenue
Ruston, LA 71270

Unless hereinafter changed by written notice to the UNIVERSITY, any notice to ASSISTANT COACH shall be sent to:

DAVID MACKIE_____

16.0 Merger Clause/No Oral Modification

This AGREEMENT constitutes and expresses the entire agreement and understanding of the parties regarding any employment of ASSISTANT COACH by the UNIVERSITY and regarding any of the matters or things therein provided or previously discussed or mentioned in reference to such employment. There are no oral, written or other contracts, understandings, letter agreements, promises or representations between the parties regarding the subject matter of this AGREEMENT. This AGREEMENT cannot be changed, modified or amended except by written instrument signed by both parties.

17.0 Sole Remedy

ASSISTANT COACH agrees his sole and exclusive remedy against UNIVERSITY and FOUNDATION in the event of termination of this AGREEMENT by UNIVERSITY for any reason shall be in accordance with the provisions set forth in this AGREEMENT. To the maximum extent permitted by law, in no event shall either UNIVERSITY or FOUNDATION be liable for direct, indirect, special, incidental, consequential damages, or punitive damages regardless of the form of action (whether in contract, tort, or otherwise) except as specified in this AGREEMENT.

18.0 Governing Law

This AGREEMENT shall be governed by and construed and interpreted by the laws of the State of Louisiana, without giving effect to any choice of law rules or other conflicting provision or rule that would cause the laws of any other jurisdiction to be applied.

19.0 Agreement Freely and Voluntarily Entered Into

This AGREEMENT is voluntarily entered into by the parties and ASSISTANT COACH acknowledges that he: (a) has consulted with or had the opportunity to consult with independent counsel of his own choosing concerning this AGREEMENT and (b) has read and understands this AGREEMENT, is competent and of sound mind to execute this AGREEMENT and is fully aware of its legal effect.

SIGNATURE PAGE TO FOLLOW

**CONTRACT OF EMPLOYMENT:
ASSISTANT FOOTBALL COACH – SAFETIES COACH**

SIGNATURE PAGE

LOUISIANA TECH UNIVERSITY

DAVID MACKIE

By: **LESLIE K. GUICE**
PRESIDENT

ASSISTANT FOOTBALL COACH

By: **DR. ERIC WOOD**
VICE PRESIDENT AND
DIRECTOR OF ATHLETICS

LOUISIANA TECH UNIVERSITY FOUNDATION, INC.

By: **BROOKS HULL**
VICE PRESIDENT FOR UNIVERSITY ADVANCEMENT

Approved by the Board of Supervisors of the University of Louisiana System at its meeting
on the _____ day of _____, 2021.

SECRETARY
BOARD OF SUPERVISORS

**BOARD OF SUPERVISORS FOR THE
UNIVERSITY OF LOUISIANA SYSTEM**

ATHLETIC COMMITTEE

April 22, 2021

- Item G.2.** Louisiana Tech University's request for approval of a contract with Mr. Perry Lee Carter, Assistant Football Coach/Cornerbacks Coach, between Louisiana Tech University, and Louisiana Tech University Foundation, effective April 1, 2021.

EXECUTIVE SUMMARY

This agreement is for the period from April 1, 2021 through February 28, 2022. During this period, Coach will receive an annual base salary of \$95,000 from the University and \$20,000 from the Foundation for fundraising and public appearance services to the Foundation.

If the University terminates this agreement without cause, the Foundation shall pay Assistant Coach the amount of the remainder of the term of the contract.

In the event Assistant Coach terminates the contract without cause, he will be liable to the Foundation as follows:

- If Assistant Coach has been employed by the University less than 12 months, he shall be liable to and shall pay the Foundation an amount equal to the greater of all moving expenses paid or reimbursed, or 5% of his base salary, or
- If Assistant Coach terminates within 60 days of his hire date, he shall be liable to and shall pay the Foundation an amount equal to 50% of his base salary.

RECOMMENDATION

It is recommended that the following resolution be adopted:

***NOW, THEREFORE, BE IT RESOLVED,** that the Board of Supervisors for the University of Louisiana System hereby approves Louisiana Tech University's request for approval of a contract with Mr. Perry Lee Carter, Assistant Football Coach/Cornerbacks Coach, between Louisiana Tech University, and Louisiana Tech University Foundation, effective April 1, 2021.*



G.2.

LOUISIANA TECH
UNIVERSITY.

OFFICE OF THE PRESIDENT

March 26, 2021

Dr. Jim Henderson, President
University of Louisiana System
1201 North Third Street
Suite 7-300
Baton Rouge, LA 70802

Dear Dr. Henderson:

Enclosed for your review is the Contract of Employment between Perry Lee Carter, Assistant Football Coach-Cornerbacks Coach, and Louisiana Tech University. Also joining in the contract and consenting to the obligations incurred by it is the Louisiana Tech University Foundation. The effective date of the Contract of Employment is March 1, 2021, through February 28, 2022.

Please place this item on the ULS Board of Supervisors' agenda for consideration and approval at the April 2021 meeting.

Upon approval by the Board, please sign the on the last page of the contract indicating that the Board has approved the contract, and keep a scanned copy for the files of the Board of Supervisors and please email a copy of the signed document to me for distribution to Assistant Coach Carter, the University, the Foundation, and Assistant Coach Carter's attorney.

Thank you for your attention to this matter.

Sincerely,

Leslie K. Guice
President

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enclosures

**CONTRACT OF EMPLOYMENT:
ASSISTANT FOOTBALL COACH – CORNERBACKS COACH**

STATE OF LOUISIANA

PARISH OF LINCOLN

This agreement is made and entered into on this _____ day of _____, 2021, between Louisiana Tech University (“UNIVERSITY”), through its President, Dr. Les Guice, and **PERRY LEE CARTER** (“ASSISTANT COACH”). Except where expressly stated otherwise herein, including Sections 10.2 and 10.3, the terms and conditions set forth in this Contract of Employment (“AGREEMENT”) are not binding upon the parties until approval of the Board of Supervisors for the University of Louisiana System (hereinafter referred to as “BOARD”) is obtained. Louisiana Tech University Foundation, Inc. (“FOUNDATION”) joins in this AGREEMENT consenting to the obligations incurred by the FOUNDATION. This single AGREEMENT shall become the agreement between the parties supplanting all previous contracts and/or memoranda of understanding.

EMPLOYMENT OF ASSISTANT FOOTBALL COACH

1.0 Employment

The UNIVERSITY does hereby employ ASSISTANT COACH as **CORNERBACKS COACH**, and ASSISTANT COACH does hereby accept employment and agrees to perform all of the services pertaining to the position outlined herein which are reasonably required of COACH, as well as, other services as may be reasonably contemplated hereunder, all as reasonably prescribed by the UNIVERSITY through its President and Director of Athletics and assigned by the Head Football Coach (“HEAD COACH”). ASSISTANT COACH shall be responsible and shall report directly to the HEAD COACH.

2.0 Duties

ASSISTANT COACH shall perform such duties in the University athletic program as the HEAD COACH may reasonably assign. Duties shall include but not be limited to the following:

2.1. Faithfully and conscientiously perform the duties reasonably assigned by the HEAD COACH and maintain the high moral and ethical standards commonly expected of the ASSISTANT COACH as a highly visible representative of the Department of Intercollegiate Athletics at the UNIVERSITY.

2.2. Devote such professional time, attention and energy to his duties as are required, in UNIVERSITY's reasonable judgment, to faithfully discharge the duties as set forth herein and to avoid any business or professional activities or pursuits that will unreasonably conflict with his performance of his duties or will otherwise unreasonably interfere with the UNIVERSITY's interests.

2.3. Recognize and comply with the applicable laws, policies, rules and regulations of the UNIVERSITY, the National Collegiate Athletic Association ("NCAA"), and Conference USA (or any other conference which the UNIVERSITY may become a member during the Term), as now constituted or as may be amended during the Term hereof. ASSISTANT COACH shall immediately inform HEAD COACH of any suspected violation and assist the investigation and reporting thereof.

2.4. Carry himself in a professional and sportsman-like manner. ASSISTANT COACH recognized he is a highly visible representative of the UNIVERSITY, whose conduct, both on and off the field, affects the reputation of the institution, the viability of its athletic programs and contracts, and the well-being of its student-athletes.

2.5. ASSISTANT COACH agrees that academic achievement of student-athletes is of the highest importance. ASSISTANT COACH agrees to carry himself in a manner that supports academic integrity.

2.6. ASSISTANT COACH agrees to make himself reasonably available for media or other public appearances at such times as the University, through the Department of Intercollegiate Athletics, or FOUNDATION may reasonable designate. Such appearances shall not unreasonably conflict with ASSISTANT COACH's primary duties as **CORNERBACKS COACH**.

2.7. ASSISTANT COACH agrees to conscientiously observe all UNIVERSITY and NCAA rules pertaining to outside income. ASSISTANT COACH will notify the Director of Athletics and obtain approval, such approval not to be unreasonably withheld, before negotiation for or receiving any athletically-related income or benefits from sources outside UNIVERSITY and will report annually any outside income in compliance with NCAA and UNIVERSITY regulations.

3.0 Term

The term of this AGREEMENT commences April 1, 2021, and ends February 28, 2022. This AGREEMENT shall be automatically renewable for a one-year term on March 1st of each year. (the initial term and any and all renewals hereinafter referred to individually and collectively as the "Term") Either UNIVERSITY or ASSISTANT COACH may deliver written notice to the other party at any time prior to the expiration of the current term electing not to renew the AGREEMENT for an additional term.

4.0 Base Salary

4.1. UNIVERSITY agrees to pay ASSISTANT COACH an annual salary of Ninety-five thousand dollars (\$95,000.00) payable in biweekly installments through UNIVERSITY payroll.

4.2. Beginning March 1, 2021, FOUNDATION, through its athletic funds shall pay ASSISTANT COACH Twenty-thousand (\$20,000) payable in equal monthly installments of One Thousand, Six Hundred, Sixty-six dollars and sixty-six cents (\$1,666.66) during the Term for ASSISTANT COACH's fundraising and public appearance services to the FOUNDATION.

5.0 Employee Benefits

UNIVERSITY will provide ASSISTANT COACH the opportunity to participate in benefit plans for health insurance, dental insurance, retirement, disability, and life insurance on a basis consistent with other UNIVERSITY employees of a similar status. Such benefits will be based upon COACH's base annual salary as provided by UNIVERSITY. Additionally, UNIVERSITY will provide ASSISTANT COACH with up to six (6) tickets per home football game for personal use. As available and in UNIVERSITY's discretion, ASSISTANT COACH is also eligible to use an automobile supplied by an automobile dealership. Coach shall be responsible for any and all income tax liabilities, interest, and/or penalties related to any benefits he receives pursuant to this AGREEMENT.

6.0 Performance Incentives – Athletic Performance Goals

6.1. In recognition of exemplary performance and the additional work that is required for post-season games and events and as an incentive for ASSISTANT COACH to achieve the goals described below, and since such additional work generally results in an influx of private gifts

to the FOUNDATION, ASSISTANT COACH shall be eligible to receive, **but is not guaranteed to receive**, a supplemental payment in an amount to be determined by the Head Football Coach and in the Head Football Coach's discretion, with approval from the Director of Athletics and the FOUNDATION.

6.2. Any supplemental payment awarded to ASSISTANT COACH pursuant to this section shall be payable within 60 days of the Head Football Coach awarding the supplemental payment from the FOUNDATION, solely from the athletic funds held by the FOUNDATION. Supplemental payments made to ASSISTANT COACH from FOUNDATION shall not be considered earned income for the purpose of computation of retirement benefits. No withholdings will be made from these payments, and ASSISTANT COACH shall be responsible for all applicable taxes. The FOUNDATION will issue the appropriate informational return to ASSISTANT COACH and to the Internal Revenue Service and provide a copy to the UNIVERSITY.

7.0 Outside Income

7.1. ASSISTANT COACH shall be prohibited from receiving athletically related benefits or compensation other than as previously described herein from any other source without prior written consent of UNIVERSITY, such consent not to be unreasonably withheld.

7.2. ASSISTANT COACH shall be authorized to earn other revenue while employed by the UNIVERSITY, but such activities are independent of his UNIVERSITY employment, and the UNIVERSITY shall have no responsibility for any claims arising therefrom. All outside income will be subject to approval in accordance with the Board of Supervisors for the University of Louisiana System policies, such approval not to be unreasonably withheld.

7.3. ASSISTANT COACH shall report annually in writing to the President on or before July 1st all athletically related income from sources outside the UNIVERSITY including, but not limited to, income or benefits from (1) endorsement or consultation contracts with apparel companies, equipment manufacturers, or television or radio programs; (2) ownership, control, or management of a foundation, organization, or other entity; and (3) participation in athletic camps outside of those offered by Employer, and the UNIVERSITY shall have reasonable access to all records of ASSISTANT COACH to verify this report (NCAA Bylaw 11.2.2).

8.0 Compliance with NCAA, Conference and University Rules

8.1. ASSISTANT COACH shall abide by the applicable rules and regulations of the NCAA, Conference and UNIVERSITY. If ASSISTANT COACH is personally found to be in violation of NCAA regulations, ASSISTANT COACH shall be subject to disciplinary or corrective action as set forth in the NCAA enforcement procedures (NCAA Constitution 11.2.1). ASSISTANT COACH may be suspended for a period of time, without pay, or the employment of ASSISTANT COACH may be terminated if ASSISTANT COACH is found to be involved in major, deliberate or serious violations of NCAA, Conference and UNIVERSITY regulations.

8.2 . ASSISTANT COACH shall also abide by state and federal laws, the State of Louisiana Code of Governmental Ethics, applicable UNIVERSITY policies and regulations, and the applicable policies and regulations of the University of Louisiana System. In public appearances he shall at all times conduct himself in a manner that befits a UNIVERSITY official and shall always attempt to create goodwill and a good image for UNIVERSITY.

8.3. ASSISTANT COACH acknowledges and agrees that (1) ASSISTANT COACH has an affirmative obligation to cooperate fully in the NCAA infractions process, including the investigation and adjudication of a case (see NCAA Bylaw 19.2.3 for examples of full

cooperation), and (2) an individual who is found in violation of NCAA regulations shall be subject to disciplinary or corrective action as set forth in the provisions of the NCAA infractions process (see NCAA Bylaw 19), including suspension without pay or termination of employment.

9.0 Title IX and Sexual Misconduct Policy Reporting and Compliance:

ASSISTANT COACH shall promptly report to the University's Title IX Coordinator or Deputy Title IX Coordinator any Known Violation(s) of the University or the University of Louisiana System's Sexual Misconduct Policy (including, but not limited to sexual harassment, sexual assault, sexual exploitation, domestic violence and stalking) that involve any student, faculty, or staff or that is in connection with a University sponsored activity or event. Any emergency situation shall be immediately reported to 911 and/or law enforcement. For purposes of this paragraph, a "Known Violation" shall mean a violation or an allegation of a violation of Title IX and/or the University's or the University of Louisiana System's Sexual Misconduct Policy that **ASSISTANT COACH** is aware of or has reasonable cause to believe is taking place or may have taken place.

The University may terminate this Agreement for cause pursuant to the for-cause-termination provisions of this Agreement for any determined violation by **ASSISTANT COACH** for failure to report a Known Violation of:

- (1) Title IX of the Education Amendments of 1972;
- (2) the University's Sexual Misconduct Policy; or
- (3) the University of Louisiana System's Sexual Misconduct Policy.

10.0 Termination Without Cause

10.1. Either party may terminate this AGREEMENT without cause by providing written notice to the other party specifying the effective date of termination. Should UNIVERSITY terminate the AGREEMENT without cause prior to the expiration of its current Term, it shall be liable to ASSISTANT COACH for liquidated damages which shall include all amounts of Base Salary which would have been owed to ASSISTANT COACH had he completed the current Term. Such damages shall be paid by FOUNDATION in regularly scheduled installments from the date of termination to the end of the current Term.

10.2. Should ASSISTANT COACH terminate this AGREEMENT without cause prior to the expiration of its Term, and ASSISTANT COACH has been employed by UNIVERSITY as an ASSISTANT COACH for less than twelve (12) months, ASSISTANT COACH shall be liable to and shall pay the FOUNDATION an amount equal to **the greater of** all moving expenses paid or reimbursed **or** five percent (5%) of ASSISTANT COACH's Base Salary with Base Salary calculated as the sum of the amounts in Section 4.1. and 4.2. for purposes of Article 10. ASSISTANT COACH agrees and understands that this provision shall become binding and enforceable upon ASSISTANT COACH's sole signature below regardless of the presence or lack thereof of any other signatories to this AGREEMENT.

10.3. Should ASSISTANT COACH terminate this AGREEMENT without cause within sixty (60) days of ASSISTANT COACH's hire date, ASSISTANT COACH shall pay the FOUNDATION an amount equal to fifty percent (50%) of ASSISTANT COACH's Base Salary. ASSISTANT COACH agrees and understands that this provision shall become binding and enforceable upon ASSISTANT COACH's sole signature below regardless of the presence or lack thereof of any other signatories to this AGREEMENT.

10.4. Any payments due from ASSISTANT COACH under this section shall be due and paid in full to FOUNDATION within thirty (30) days of ASSISTANT COACH's notice of termination.

10.5. Payment by UNIVERSITY and/or FOUNDATION of the amount under this section will constitute a full release of any claim that ASSISTANT COACH might otherwise assert against the UNIVERSITY and FOUNDATION, or any of its representatives, agents or employees. In consideration of this payment, ASSISTANT COACH shall, and does hereby, release and discharge UNIVERSITY and FOUNDATION, its officers and employees, from and against any liability of any nature whatsoever related to or arising out of this AGREEMENT and ASSISTANT COACH's employment at UNIVERSITY, including, but not limited to, any and all claims arising under or relating to and federal or state constitutions, laws, regulations, or other provision of law.

10.6. Except for the obligation to pay ASSISTANT COACH the amount set forth in Section 10.1, all obligations of UNIVERSITY and FOUNDATION (to the extent not already accrued or vested) to ASSISTANT COACH shall cease as of the effective date of such termination.

10.7. In lieu of terminating employee without cause, UNIVERSITY may reassign ASSISTANT COACH to other duties within UNIVERSITY commensurate with his attained educational level and skill set. Such reassignment shall run commensurate with the duration remaining under the current Term and shall cease at the end of the current Term.

10.8. UNIVERSITY's and/or FOUNDATION'S obligation to pay liquidated damages to ASSISTANT COACH, as described in Section 10.1, shall be subject to ASSISTANT COACH's duty to mitigate his damages. ASSISTANT COACH hereby agrees to mitigate such damages by making reasonable and diligent efforts to obtain employment commensurate with his qualifications and experience, as soon as reasonably possible after termination of this Contract of Employment.

If ASSISTANT COACH should obtain such new employment prior to the last installment payment of liquidated damages, ASSISTANT COACH shall notify the Director of Athletics of such new employment. Any further obligation of UNIVERSITY or FOUNDATION to ASSISTANT COACH shall be reduced by amount of salary or payment from new employment. Employment for purposes of this paragraph shall include any form of employment, including a contract of employment, employment at-will, or employment as an independent contractor.

11.0 Termination With Cause

UNIVERSITY shall have the right to terminate ASSISTANT COACH's employment and this AGREEMENT for cause prior to expiration of the Term. In the event this AGREEMENT is terminated for cause, all obligations of UNIVERSITY or FOUNDATION to make further payment or provide any other consideration hereunder shall cease as of the date of termination, with the exception of any amounts earned but not yet paid. In addition to its normally understood meaning in employment contracts, the term "cause" shall include, without limitation, any of the following:

11.1. Failure or refusal by ASSISTANT COACH to perform any of the material duties required by this AGREEMENT or reasonably required of a Division I Football Assistant Coach, neglect by ASSISTANT COACH of any of the material duties required by this Contract of Employment or reasonably required of a Division I Football Assistant Coach, ASSISTANT COACH's unwillingness to perform such required material duties to the best of his ability, or any other material breach of this AGREEMENT; or

11.2. Insubordination, including but not limited to, deliberate and serious failure to follow reasonable instructions from the Director of Athletics or Football Head Coach or deliberate and serious failure to comply with applicable Athletics Department policies and procedures; or

11.3. A serious or major violation or a pattern of violations, whether intentional or negligent, by ASSISTANT COACH of any Rules or Regulations, which violation may reflect adversely upon UNIVERSITY or its athletics program, including, but not limited to, any violation which may result in UNIVERSITY being investigated, placed on probation, or otherwise sanctioned by the NCAA or its Conference; or

11.4. A serious or major violation or a pattern of violations of any Rules and Regulations, whether intentional or negligent, 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 ASSISTANT COACH's supervision and direction, including student-athletes in the program, which violation was known by ASSISTANT COACH in the course of his normal duties, and which may, reflect adversely upon UNIVERSITY or its athletics program; or

11.5. Failure by ASSISTANT COACH to report immediately to the Football Head Coach and Athletic Director any violations of Rules or Regulations known by ASSISTANT COACH; or

11.6. Failing or refusing to provide information or documents in response to any reasonable requests or inquiries by the NCAA, the Conference, or any other governing body concerning or related to the supervision of the program or directing or otherwise instructing any coach, student-athlete or any other individual to fail or to refuse to provide such information or documents; or

11.7. Any fraud or dishonesty of ASSISTANT 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 Louisiana System, Louisiana Tech University, the NCAA, or the Conference pertaining to the Program,

recruits or student-athletes, transcripts eligibility forms, compliance reports, or expense reports, or any other document pertaining or related to any sanction of the Program; or

11.8. 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; or

11.9. 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 Rules or Regulations, 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 Rules or Regulations, or failure or refusal to fully participate and cooperate in UNIVERSITY's implementation and enforcement of any narcotic, drug, alcohol, controlled substance, steroid or other chemical testing programs(s); or

11.10. Conduct of the ASSISTANT COACH which, in the reasonable judgment of the UNIVERSITY as determined by the Director of Athletics with concurrence of the President, is seriously prejudicial to the best interests of the UNIVERSITY or its athletic program; would tend to bring public disrespect, embarrassment, contempt, scandal, or ridicule on ASSISTANT COACH or UNIVERSITY; which otherwise fails to follow the moral and ethical standard reasonably expected of ASSISTANT COACH as a leading representative of the Department of Athletics and UNIVERSITY; or which violates the UNIVERSITY's mission; or being charged or arrested for any crime involving theft, dishonesty, or moral turpitude.

11.11. ASSISTANT COACH being charged or arrested for violation of a criminal statute or regulation, excluding minor traffic violations, provided that an arrest for DUI, DWI, or materially similar charges shall not be considered an arrest or charge for a minor traffic violation.

11.12. Engaging in a consensual sexual relationship with any individual over whom he exercises direct or significant academic, administrative, supervisory, evaluative, counseling or extracurricular authority or influence (Louisiana Tech Policy 1450).

11.13. Prolonged absence from duty without the consent of ASSISTANT COACH's reporting superior; or

11.14. Any cause adequate to sustain termination of any regular staff employee of UNIVERSITY, including but not limited to a violation of the Louisiana Code of Governmental Ethics (Louisiana Tech Policy 1410); a harassment violation (Louisiana Tech Policy 1438), or a sexual harassment violation (Louisiana Tech Policy 1436).

12.0 Automatic Termination Upon Death or Disability of Coach

This AGREEMENT shall terminate automatically if ASSISTANT COACH dies or becomes physically or mentally disabled to such an extent that, in the judgment of the Head Football Coach with concurrence of the Director of Athletics, he is unable to satisfactorily perform all duties of a NCAA Division I Football Assistant Coach. If this AGREEMENT is terminated pursuant to this section, UNIVERSITY shall be relieved of all liabilities and/or obligations under this AGREEMENT as of the date of death or disability.

13.0 Termination – General Provisions

13.1. If ASSISTANT COACH terminates the AGREEMENT, or if the AGREEMENT is terminated for cause, UNIVERSITY or FOUNDATION shall not be liable for any payments or benefits after the date of termination, except for amounts previously earned (including supplemental payment) but not yet paid.

13.2. In the event any dispute arises between the parties concerning this AGREEMENT, the party alleging a breach by the other must give written notice to the other detailing the alleged

dispute or breach 60 days prior to initiating legal action. If a lawsuit is filed concerning a dispute over this AGREEMENT, such suit must be filed in Lincoln Parish, Louisiana, and the prevailing party is entitled to recover attorney's fees in addition to any other relief awarded by the court.

13.3. Prior to termination of ASSISTANT COACH, UNIVERSITY will obtain approval from the President of the University of Louisiana System.

13.4. ASSISTANT COACH may be terminated at any time due to financial circumstances in which the UNIVERSITY or the University of Louisiana System has declaration of financial exigency. In the event of such termination, ASSISTANT COACH will receive as liquidated damages sums payable to ASSISTANT COACH pursuant to paragraphs 4.0 for the remainder of the current Term. Such sum shall be payable by the FOUNDATION solely through its athletic funds. The liquidated damages payment for the current AGREEMENT year shall be paid within 60 days of termination. All compensation, including salary, benefits, and other remuneration incidental to employment, ceases upon termination.

14.0 Invalid Provisions

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

15.0 Notice Provision

Any notice provided for herein shall be in writing and shall be deemed to have been given when delivered personally to the party who is to receive such notice or three (3) days after it is mailed by U.S. registered, certified, or first-class mail to such party.

Unless hereinafter changed by written notice to ASSISTANT COACH, any notice to the UNIVERSITY shall be sent to:

Dr. Eric Wood
Vice President and
Director of Athletics
Louisiana Tech University
1650 West Alabama
Ruston, LA 71272

With copy to:
Justin Kavalir
Legal Counsel
Louisiana Tech University
P.O. Box 3168
Ruston, LA 71272

Bill Hogan, President
Louisiana Tech University
Foundation, Inc.
207 W. Alabama Avenue
Ruston, LA 71270

Unless hereinafter changed by written notice to the UNIVERSITY, any notice to ASSISTANT COACH shall be sent to:

PERRY LEE CARTER

16.0 Merger Clause/No Oral Modification

This AGREEMENT constitutes and expresses the entire agreement and understanding of the parties regarding any employment of ASSISTANT COACH by the UNIVERSITY and regarding any of the matters or things therein provided or previously discussed or mentioned in reference to such employment. There are no oral, written or other contracts, understandings, letter agreements, promises or representations between the parties regarding the subject matter of this

AGREEMENT. This AGREEMENT cannot be changed, modified or amended except by written instrument signed by both parties.

17.0 Sole Remedy

ASSISTANT COACH agrees his sole and exclusive remedy against UNIVERSITY and FOUNDATION in the event of termination of this AGREEMENT by UNIVERSITY for any reason shall be in accordance with the provisions set forth in this AGREEMENT. To the maximum extent permitted by law, in no event shall either UNIVERSITY or FOUNDATION be liable for direct, indirect, special, incidental, consequential damages, or punitive damages regardless of the form of action (whether in contract, tort, or otherwise) except as specified in this AGREEMENT.

18.0 Governing Law

This AGREEMENT shall be governed by and construed and interpreted by the laws of the State of Louisiana, without giving effect to any choice of law rules or other conflicting provision or rule that would cause the laws of any other jurisdiction to be applied.

19.0 Agreement Freely and Voluntarily Entered Into

This AGREEMENT is voluntarily entered into by the parties and ASSISTANT COACH acknowledges that he: (a) has consulted with or had the opportunity to consult with independent counsel of his own choosing concerning this AGREEMENT and (b) has read and understands this AGREEMENT, is competent and of sound mind to execute this AGREEMENT and is fully aware of its legal effect.

SIGNATURE PAGE TO FOLLOW

**CONTRACT OF EMPLOYMENT:
ASSISTANT FOOTBALL COACH – CORNERBACKS COACH**

SIGNATURE PAGE

LOUISIANA TECH UNIVERSITY

PERRY LEE CARTER

By: **LESLIE K. GUICE**
PRESIDENT

ASSISTANT FOOTBALL COACH

By: **DR. ERIC WOOD**
VICE PRESIDENT AND
DIRECTOR OF ATHLETICS

LOUISIANA TECH UNIVERSITY FOUNDATION, INC.

By: **BROOKS HULL**
VICE PRESIDENT FOR UNIVERSITY ADVANCEMENT

Approved by the Board of Supervisors of the University of Louisiana System at its meeting
on the _____ day of _____, 2021.

SECRETARY
BOARD OF SUPERVISORS

**BOARD OF SUPERVISORS FOR THE
UNIVERSITY OF LOUISIANA SYSTEM**

ATHLETIC COMMITTEE

April 22, 2021

- Item G.3.** Louisiana Tech University's request for approval of a contract with Mr. Louis Lee Holtz III, Assistant Football Coach/Inside Receivers Coach, between Louisiana Tech University, and Louisiana Tech University Foundation, effective March 1, 2021.

EXECUTIVE SUMMARY

This agreement is for the period from March 1, 2021 through February 28, 2022. During this period, Coach will receive an annual base salary of \$80,000 from the University.

If the University terminates this agreement without cause, the Foundation shall pay Assistant Coach the amount of the remainder of the term of the contract.

In the event Assistant Coach terminates the contract without cause, he will be liable to the Foundation as follows:

- If Assistant Coach has been employed by the University less than 12 months, he shall be liable to and shall pay the Foundation an amount equal to the greater of all moving expenses paid or reimbursed, or 5% of his base salary, or
- If Assistant Coach terminates within 60 days of his hire date, he shall be liable to and shall pay the Foundation an amount equal to 50% of his base salary.

RECOMMENDATION

It is recommended that the following resolution be adopted:

***NOW, THEREFORE, BE IT RESOLVED,** that the Board of Supervisors for the University of Louisiana System hereby approves Louisiana Tech University's request for approval of a contract with Mr. Louis Lee Holtz III, Assistant Football Coach/Inside Receivers Coach, between Louisiana Tech University, and Louisiana Tech University Foundation, effective March 1, 2021.*



G.3.

LOUISIANA TECH
UNIVERSITY.

OFFICE OF THE PRESIDENT

March 26, 2021

Dr. Jim Henderson, President
University of Louisiana System
1201 North Third Street
Suite 7-300
Baton Rouge, LA 70802

Dear Dr. Henderson:

Enclosed for your review is the Contract of Employment between Louis Leo Holtz, III, Assistant Football Coach-Inside Receivers Coach, and Louisiana Tech University. Also joining in the contract and consenting to the obligations incurred by it is the Louisiana Tech University Foundation. The effective date of the Contract of Employment is March 1, 2021, through February 28, 2022.

Please place this item on the ULS Board of Supervisors' agenda for consideration and approval at the April 2021 meeting.

Upon approval by the Board, please sign the on the last page of the contract indicating that the Board has approved the contract, and keep a scanned copy for the files of the Board of Supervisors and please email a copy of the signed document to me for distribution to Assistant Coach Holtz, the University, the Foundation, and Assistant Coach Holtz's attorney.

Thank you for your attention to this matter.

Sincerely,

Leslie K. Guice
President

mol
enclosures

**CONTRACT OF EMPLOYMENT:
ASSISTANT FOOTBALL COACH – INSIDE RECEIVERS COACH**

STATE OF LOUISIANA

PARISH OF LINCOLN

This agreement is made and entered into on this _____ day of _____, 2021, between Louisiana Tech University (“UNIVERSITY”), through its President, Dr. Les Guice, and **LOUIS LEO HOLTZ III** (“ASSISTANT COACH”). Except where expressly stated otherwise herein, including Sections 10.2 and 10.3, the terms and conditions set forth in this Contract of Employment (“AGREEMENT”) are not binding upon the parties until approval of the Board of Supervisors for the University of Louisiana System (hereinafter referred to as “BOARD”) is obtained. Louisiana Tech University Foundation, Inc. (“FOUNDATION”) joins in this AGREEMENT consenting to the obligations incurred by the FOUNDATION. This single AGREEMENT shall become the agreement between the parties supplanting all previous contracts and/or memoranda of understanding.

EMPLOYMENT OF ASSISTANT FOOTBALL COACH

1.0 Employment

The UNIVERSITY does hereby employ ASSISTANT COACH as **INSIDE RECEIVERS COACH**, and ASSISTANT COACH does hereby accept employment and agrees to perform all of the services pertaining to the position outlined herein which are reasonably required of COACH, as well as, other services as may be reasonably contemplated hereunder, all as reasonably prescribed by the UNIVERSITY through its President and Director of Athletics and assigned by the Head Football Coach (“HEAD COACH”). ASSISTANT COACH shall be responsible and shall report directly to the HEAD COACH.

2.0 Duties

ASSISTANT COACH shall perform such duties in the University athletic program as the HEAD COACH may reasonably assign. Duties shall include but not be limited to the following:

2.1. Faithfully and conscientiously perform the duties reasonably assigned by the HEAD COACH and maintain the high moral and ethical standards commonly expected of the ASSISTANT COACH as a highly visible representative of the Department of Intercollegiate Athletics at the UNIVERSITY.

2.2. Devote such professional time, attention and energy to his duties as are required, in UNIVERSITY's reasonable judgment, to faithfully discharge the duties as set forth herein and to avoid any business or professional activities or pursuits that will unreasonably conflict with his performance of his duties or will otherwise unreasonably interfere with the UNIVERSITY's interests.

2.3. Recognize and comply with the applicable laws, policies, rules and regulations of the UNIVERSITY, the National Collegiate Athletic Association ("NCAA"), and Conference USA (or any other conference which the UNIVERSITY may become a member during the Term), as now constituted or as may be amended during the Term hereof. ASSISTANT COACH shall immediately inform HEAD COACH of any suspected violation and assist the investigation and reporting thereof.

2.4. Carry himself in a professional and sportsman-like manner. ASSISTANT COACH recognized he is a highly visible representative of the UNIVERSITY, whose conduct, both on and off the field, affects the reputation of the institution, the viability of its athletic programs and contracts, and the well-being of its student-athletes.

2.5. ASSISTANT COACH agrees that academic achievement of student-athletes is of the highest importance. ASSISTANT COACH agrees to carry himself in a manner that supports academic integrity.

2.6. ASSISTANT COACH agrees to make himself reasonably available for media or other public appearances at such times as the University, through the Department of Intercollegiate Athletics, or FOUNDATION may reasonable designate. Such appearances shall not unreasonably conflict with ASSISTANT COACH's primary duties as **INSIDE RECEIVERS COACH**.

2.7. ASSISTANT COACH agrees to conscientiously observe all UNIVERSITY and NCAA rules pertaining to outside income. ASSISTANT COACH will notify the Director of Athletics and obtain approval, such approval not to be unreasonably withheld, before negotiation for or receiving any athletically-related income or benefits from sources outside UNIVERSITY and will report annually any outside income in compliance with NCAA and UNIVERSITY regulations.

3.0 Term

The term of this AGREEMENT commences March 1, 2021, and ends February 28, 2022. This AGREEMENT shall be automatically renewable for a one-year term on March 1st of each year. (the initial term and any and all renewals hereinafter referred to individually and collectively as the "Term") Either UNIVERSITY or ASSISTANT COACH may deliver written notice to the other party at any time prior to the expiration of the current term electing not to renew the AGREEMENT for an additional term.

4.0 Base Salary

UNIVERSITY agrees to pay ASSISTANT COACH an annual salary of Eighty-Thousand Dollars (\$80,000.00) payable in biweekly installments through UNIVERSITY payroll.

5.0 Employee Benefits

UNIVERSITY will provide ASSISTANT COACH the opportunity to participate in benefit plans for health insurance, dental insurance, retirement, disability, and life insurance on a basis consistent with other UNIVERSITY employees of a similar status. Such benefits will be based upon COACH's base annual salary as provided by UNIVERSITY. Additionally, UNIVERSITY will provide ASSISTANT COACH with up to six (6) tickets per home football game for personal use. As available and in UNIVERSITY's discretion, ASSISTANT COACH is also eligible to use an automobile supplied by an automobile dealership. Coach shall be responsible for any and all income tax liabilities, interest, and/or penalties related to any benefits he receives pursuant to this AGREEMENT.

6.0 Performance Incentives – Athletic Performance Goals

6.1. In recognition of exemplary performance and the additional work that is required for post-season games and events and as an incentive for ASSISTANT COACH to achieve the goals described below, and since such additional work generally results in an influx of private gifts to the FOUNDATION, ASSISTANT COACH shall be eligible to receive, **but is not guaranteed to receive**, a supplemental payment in an amount to be determined by the Head Football Coach and in the Head Football Coach's discretion, with approval from the Director of Athletics and the FOUNDATION.

6.2. Any supplemental payment awarded to ASSISTANT COACH pursuant to this section shall be payable within 60 days of the Head Football Coach awarding the supplemental

payment from the FOUNDATION, solely from the athletic funds held by the FOUNDATION. Supplemental payments made to ASSISTANT COACH from FOUNDATION shall not be considered earned income for the purpose of computation of retirement benefits. No withholdings will be made from these payments, and ASSISTANT COACH shall be responsible for all applicable taxes. The FOUNDATION will issue the appropriate informational return to ASSISTANT COACH and to the Internal Revenue Service and provide a copy to the UNIVERSITY.

7.0 Outside Income

7.1. ASSISTANT COACH shall be prohibited from receiving athletically related benefits or compensation other than as previously described herein from any other source without prior written consent of UNIVERSITY, such consent not to be unreasonably withheld.

7.2. ASSISTANT COACH shall be authorized to earn other revenue while employed by the UNIVERSITY, but such activities are independent of his UNIVERSITY employment, and the UNIVERSITY shall have no responsibility for any claims arising therefrom. All outside income will be subject to approval in accordance with the Board of Supervisors for the University of Louisiana System policies, such approval not to be unreasonably withheld.

7.3. ASSISTANT COACH shall report annually in writing to the President on or before July 1st all athletically related income from sources outside the UNIVERSITY including, but not limited to, income or benefits from (1) endorsement or consultation contracts with apparel companies, equipment manufacturers, or television or radio programs; (2) ownership, control, or management of a foundation, organization, or other entity; and (3) participation in athletic camps outside of those offered by Employer, and the UNIVERSITY shall have reasonable access to all records of ASSISTANT COACH to verify this report (NCAA Bylaw 11.2.2).

8.0 Compliance with NCAA, Conference and University Rules

8.1. ASSISTANT COACH shall abide by the applicable rules and regulations of the NCAA, Conference and UNIVERSITY. If ASSISTANT COACH is personally found to be in violation of NCAA regulations, ASSISTANT COACH shall be subject to disciplinary or corrective action as set forth in the NCAA enforcement procedures (NCAA Constitution 11.2.1). ASSISTANT COACH may be suspended for a period of time, without pay, or the employment of ASSISTANT COACH may be terminated if ASSISTANT COACH is found to be involved in major, deliberate or serious violations of NCAA, Conference and UNIVERSITY regulations.

8.2. ASSISTANT COACH shall also abide by state and federal laws, the State of Louisiana Code of Governmental Ethics, applicable UNIVERSITY policies and regulations, and the applicable policies and regulations of the University of Louisiana System. In public appearances he shall at all times conduct himself in a manner that befits a UNIVERSITY official and shall always attempt to create goodwill and a good image for UNIVERSITY.

8.3. ASSISTANT COACH acknowledges and agrees that (1) ASSISTANT COACH has an affirmative obligation to cooperate fully in the NCAA infractions process, including the investigation and adjudication of a case (see NCAA Bylaw 19.2.3 for examples of full cooperation), and (2) an individual who is found in violation of NCAA regulations shall be subject to disciplinary or corrective action as set forth in the provisions of the NCAA infractions process (see NCAA Bylaw 19), including suspension without pay or termination of employment.

9.0 Title IX and Sexual Misconduct Policy Reporting and Compliance:

ASSISTANT COACH shall promptly report to the University's Title IX Coordinator or Deputy Title IX Coordinator any Known Violation(s) of the University or the University of Louisiana System's Sexual Misconduct Policy (including, but not limited to sexual harassment, sexual assault, sexual exploitation, domestic violence and stalking) that involve any student, faculty, or staff or that is in connection with a University sponsored activity or event. Any emergency situation shall be immediately reported to 911 and/or law enforcement. For purposes of this paragraph, a "Known Violation" shall mean a violation or an allegation of a violation of Title IX and/or the University's or the University of Louisiana System's Sexual Misconduct Policy that **ASSISTANT COACH** is aware of or has reasonable cause to believe is taking place or may have taken place.

The University may terminate this Agreement for cause pursuant to the for-cause-termination provisions of this Agreement for any determined violation by **ASSISTANT COACH** for failure to report a Known Violation of:

- (1) Title IX of the Education Amendments of 1972;
- (2) the University's Sexual Misconduct Policy; or
- (3) the University of Louisiana System's Sexual Misconduct Policy.

10.0 Termination Without Cause

10.1. Either party may terminate this AGREEMENT without cause by providing written notice to the other party specifying the effective date of termination. Should UNIVERSITY terminate the AGREEMENT without cause prior to the expiration of its current Term, it shall be liable to **ASSISTANT COACH** for liquidated damages which shall include all amounts of Base Salary which would have been owed to **ASSISTANT COACH** had he completed the current Term.

Such damages shall be paid by FOUNDATION in regularly scheduled installments from the date of termination to the end of the current Term.

10.2. Should ASSISTANT COACH terminate this AGREEMENT without cause prior to the expiration of its Term, and ASSISTANT COACH has been employed by UNIVERSITY as an ASSISTANT COACH for less than twelve (12) months, ASSISTANT COACH shall be liable to and shall pay the FOUNDATION an amount equal to **the greater of** all moving expenses paid or reimbursed **or** five percent (5%) of ASSISTANT COACH's Base Salary. ASSISTANT COACH agrees and understands that this provision shall become binding and enforceable upon ASSISTANT COACH's sole signature below regardless of the presence or lack thereof of any other signatories to this AGREEMENT.

10.3. Should ASSISTANT COACH terminate this AGREEMENT without cause within sixty (60) days of ASSISTANT COACH's hire date, ASSISTANT COACH shall pay the FOUNDATION an amount equal to fifty percent (50%) of ASSISTANT COACH's Base Salary. ASSISTANT COACH agrees and understands that this provision shall become binding and enforceable upon ASSISTANT COACH's sole signature below regardless of the presence or lack thereof of any other signatories to this AGREEMENT.

10.4. Any payments due from ASSISTANT COACH under this section shall be due and paid in full to FOUNDATION within thirty (30) days of ASSISTANT COACH's notice of termination.

10.5. Payment by UNIVERSITY and/or FOUNDATION of the amount under this section will constitute a full release of any claim that ASSISTANT COACH might otherwise assert against the UNIVERSITY and FOUNDATION, or any of its representatives, agents or employees. In consideration of this payment, ASSISTANT COACH shall, and does hereby, release and

discharge UNIVERSITY and FOUNDATION, its officers and employees, from and against any liability of any nature whatsoever related to or arising out of this AGREEMENT and ASSISTANT COACH's employment at UNIVERSITY, including, but not limited to, any and all claims arising under or relating to and federal or state constitutions, laws, regulations, or other provision of law.

10.6. Except for the obligation to pay ASSISTANT COACH the amount set forth in Section 10.1, all obligations of UNIVERSITY and FOUNDATION (to the extent not already accrued or vested) to ASSISTANT COACH shall cease as of the effective date of such termination.

10.7. In lieu of terminating employee without cause, UNIVERSITY may reassign ASSISTANT COACH to other duties within UNIVERSITY commensurate with his attained educational level and skill set. Such reassignment shall run commensurate with the duration remaining under the current Term and shall cease at the end of the current Term.

10.8. UNIVERSITY's and/or FOUNDATION'S obligation to pay liquidated damages to ASSISTANT COACH, as described in Section 10.1, shall be subject to ASSISTANT COACH's duty to mitigate his damages. ASSISTANT COACH hereby agrees to mitigate such damages by making reasonable and diligent efforts to obtain employment commensurate with his qualifications and experience, as soon as reasonably possible after termination of this Contract of Employment. If ASSISTANT COACH should obtain such new employment prior to the last installment payment of liquidated damages, ASSISTANT COACH shall notify the Director of Athletics of such new employment. Any further obligation of UNIVERSITY or FOUNDATION to ASSISTANT COACH shall be reduced by amount of salary or payment from new employment. Employment for purposes of this paragraph shall include any form of employment, including a contract of employment, employment at-will, or employment as an independent contractor.

11.0 Termination With Cause

UNIVERSITY shall have the right to terminate ASSISTANT COACH's employment and this AGREEMENT for cause prior to expiration of the Term. In the event this AGREEMENT is terminated for cause, all obligations of UNIVERSITY to make further payment or provide any other consideration hereunder shall cease as of the date of termination, with the exception of any amounts earned but not yet paid. In addition to its normally understood meaning in employment contracts, the term "cause" shall include, without limitation, any of the following:

11.1. Failure or refusal by ASSISTANT COACH to perform any of the material duties required by this AGREEMENT or reasonably required of a Division I Football Assistant Coach, neglect by ASSISTANT COACH of any of the material duties required by this Contract of Employment or reasonably required of a Division I Football Assistant Coach, ASSISTANT COACH's unwillingness to perform such required material duties to the best of his ability, or any other material breach of this AGREEMENT; or

11.2. Insubordination, including but not limited to, deliberate and serious failure to follow reasonable instructions from the Director of Athletics or Football Head Coach or deliberate and serious failure to comply with applicable Athletics Department policies and procedures; or

11.3. A serious or major violation or a pattern of violations, whether intentional or negligent, by ASSISTANT COACH of any Rules or Regulations, which violation may reflect adversely upon UNIVERSITY or its athletics program, including, but not limited to, any violation which may result in UNIVERSITY being investigated, placed on probation, or otherwise sanctioned by the NCAA or its Conference; or

11.4. A serious or major violation or a pattern of violations of any Rules and Regulations, whether intentional or negligent, 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 ASSISTANT COACH's supervision and direction, including student-athletes in the program, which violation was known by ASSISTANT COACH in the course of his normal duties, and which may, reflect adversely upon UNIVERSITY or its athletics program; or

11.5. Failure by ASSISTANT COACH to report immediately to the Football Head Coach and Athletic Director any violations of Rules or Regulations known by ASSISTANT COACH; or

11.6. Failing or refusing to provide information or documents in response to any reasonable requests or inquiries by the NCAA, the Conference, or any other governing body concerning or related to the supervision of the program or directing or otherwise instructing any coach, student-athlete or any other individual to fail or to refuse to provide such information or documents; or

11.7. Any fraud or dishonesty of ASSISTANT 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 Louisiana System, Louisiana Tech University, the NCAA, or the Conference pertaining to the Program, recruits or student-athletes, transcripts eligibility forms, compliance reports, or expense reports, or any other document pertaining or related to any sanction of the Program; or

11.8. 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; or

11.9. 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 Rules or Regulations, 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 Rules or Regulations, or failure or refusal to fully participate and cooperate in UNIVERSITY's implementation and enforcement of any narcotic, drug, alcohol, controlled substance, steroid or other chemical testing programs(s); or

11.10. Conduct of the ASSISTANT COACH which, in the reasonable judgment of the UNIVERSITY as determined by the Director of Athletics with concurrence of the President, is seriously prejudicial to the best interests of the UNIVERSITY or its athletic program; would tend to bring public disrespect, embarrassment, contempt, scandal, or ridicule on ASSISTANT COACH or UNIVERSITY; which otherwise fails to follow the moral and ethical standard reasonably expected of ASSISTANT COACH as a leading representative of the Department of Athletics and UNIVERSITY; or which violates the UNIVERSITY's mission; or being charged or arrested for any crime involving theft, dishonesty, or moral turpitude.

11.11. ASSISTANT COACH being charged or arrested for violation of a criminal statute or regulation, excluding minor traffic violations, provided that an arrest for DUI, DWI, or materially similar charges shall not be considered an arrest or charge for a minor traffic violation.

11.12. Engaging in a consensual sexual relationship with any individual over whom he exercises direct or significant academic, administrative, supervisory, evaluative, counseling or extracurricular authority or influence (Louisiana Tech Policy 1450).

11.13. Prolonged absence from duty without the consent of ASSISTANT COACH's reporting superior; or

11.14. Any cause adequate to sustain termination of any regular staff employee of UNIVERSITY, including but not limited to a violation of the Louisiana Code of Governmental

Ethics (Louisiana Tech Policy 1410), a harassment violation (Louisiana Tech Policy 1438), or a sexual harassment violation (Louisiana Tech Policy 1436).

12.0 Automatic Termination Upon Death or Disability of Coach

This AGREEMENT shall terminate automatically if ASSISTANT COACH dies or becomes physically or mentally disabled to such an extent that, in the judgment of the Head Football Coach with concurrence of the Director of Athletics, he is unable to satisfactorily perform all duties of a NCAA Division I Football Assistant Coach. If this AGREEMENT is terminated pursuant to this section, UNIVERSITY shall be relieved of all liabilities and/or obligations under this AGREEMENT as of the date of death or disability.

13.0 Termination – General Provisions

13.1. If ASSISTANT COACH terminates the AGREEMENT, or if the AGREEMENT is terminated for cause, UNIVERSITY shall not be liable for any payments or benefits after the date of termination, except for amounts previously earned (including supplemental payment) but not yet paid.

13.2. In the event any dispute arises between the parties concerning this AGREEMENT, the party alleging a breach by the other must give written notice to the other detailing the alleged dispute or breach 60 days prior to initiating legal action. If a lawsuit is filed concerning a dispute over this AGREEMENT, such suit must be filed in Lincoln Parish, Louisiana, and the prevailing party is entitled to recover attorney's fees in addition to any other relief awarded by the court.

13.3. Prior to termination of ASSISTANT COACH, UNIVERSITY will obtain approval from the President of the University of Louisiana System.

13.4. ASSISTANT COACH may be terminated at any time due to financial circumstances in which the UNIVERSITY or the University of Louisiana System has declaration

of financial exigency. In the event of such termination, ASSISTANT COACH will receive as liquidated damages sums payable to ASSISTANT COACH pursuant to paragraphs 4.0 for the remainder of the current Term. Such sum shall be payable by the FOUNDATION solely through its athletic funds. The liquidated damages payment for the current AGREEMENT year shall be paid within 60 days of termination. All compensation, including salary, benefits, and other remuneration incidental to employment, ceases upon termination.

14.0 Invalid Provisions

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

15.0 Notice Provision

Any notice provided for herein shall be in writing and shall be deemed to have been given when delivered personally to the party who is to receive such notice or three (3) days after it is mailed by U.S. registered, certified, or first-class mail to such party.

Unless hereinafter changed by written notice to ASSISTANT COACH, any notice to the UNIVERSITY shall be sent to:

Dr. Eric Wood
Vice President and
Director of Athletics
Louisiana Tech University
1650 West Alabama
Ruston, LA 71272

With copy to:
Justin Kavalir
Legal Counsel
Louisiana Tech University
P.O. Box 3168
Ruston, LA 71272

Bill Hogan, President
Louisiana Tech University
Foundation, Inc.
207 W. Alabama Avenue
Ruston, LA 71270

Unless hereinafter changed by written notice to the UNIVERSITY, any notice to ASSISTANT COACH shall be sent to:

Louis Leo Holtz III

1401 Manderia Street

Ruston, LA 71270

16.0 Merger Clause/No Oral Modification

This AGREEMENT constitutes and expresses the entire agreement and understanding of the parties regarding any employment of ASSISTANT COACH by the UNIVERSITY and regarding any of the matters or things therein provided or previously discussed or mentioned in reference to such employment. There are no oral, written or other contracts, understandings, letter agreements, promises or representations between the parties regarding the subject matter of this AGREEMENT. This AGREEMENT cannot be changed, modified or amended except by written instrument signed by both parties.

17.0 Sole Remedy

ASSISTANT COACH agrees his sole and exclusive remedy against UNIVERSITY and FOUNDATION in the event of termination of this AGREEMENT by UNIVERSITY for any reason shall be in accordance with the provisions set forth in this AGREEMENT. To the maximum extent permitted by law, in no event shall either UNIVERSITY or FOUNDATION be liable for direct, indirect, special, incidental, consequential damages, or punitive damages regardless of the form of action (whether in contract, tort, or otherwise) except as specified in this AGREEMENT.

18.0 Governing Law

This AGREEMENT shall be governed by and construed and interpreted by the laws of the State of Louisiana, without giving effect to any choice of law rules or other conflicting provision or rule that would cause the laws of any other jurisdiction to be applied.

19.0 Agreement Freely and Voluntarily Entered Into

This AGREEMENT is voluntarily entered into by the parties and ASSISTANT COACH acknowledges that he: (a) has consulted with or had the opportunity to consult with independent counsel of his own choosing concerning this AGREEMENT and (b) has read and understands this AGREEMENT, is competent and of sound mind to execute this AGREEMENT and is fully aware of its legal effect.

SIGNATURE PAGE TO FOLLOW

**CONTRACT OF EMPLOYMENT:
ASSISTANT FOOTBALL COACH – INSIDE RECEIVERS COACH**

SIGNATURE PAGE

LOUISIANA TECH UNIVERSITY

LOUIS LEO HOLTZ III

By: LESLIE K. GUICE
PRESIDENT

ASSISTANT FOOTBALL COACH

By: DR. ERIC WOOD
VICE PRESIDENT AND
DIRECTOR OF ATHLETICS

LOUISIANA TECH UNIVERSITY FOUNDATION, INC.

By: BROOKS HULL
VICE PRESIDENT FOR UNIVERSITY ADVANCEMENT

Approved by the Board of Supervisors of the University of Louisiana System at its meeting
on the _____ day of _____, 2021.

SECRETARY
BOARD OF SUPERVISORS

**BOARD OF SUPERVISORS FOR THE
UNIVERSITY OF LOUISIANA SYSTEM**

ATHLETIC COMMITTEE

April 22, 2021

Item G.4. Louisiana Tech University's request for approval of a contract with Mr. Pacifico David DeGuglielmo, Assistant Football Coach/Offensive Line Coach, between Louisiana Tech University, and Louisiana Tech University Foundation, effective March 1, 2021.

EXECUTIVE SUMMARY

This agreement is for the period from March 1, 2021 through February 28, 2022. During this period, Coach will receive an annual base salary of \$95,000 from the University and \$40,000 from the Foundation for fundraising and public appearance services to the Foundation.

If the University terminates this agreement without cause, the Foundation shall pay Assistant Coach the amount of the remainder of the term of the contract.

In the event Assistant Coach terminates the contract without cause, he will be liable to the Foundation as follows:

- If Assistant Coach has been employed by the University less than 12 months, he shall be liable to and shall pay the Foundation an amount equal to the greater of all moving expenses paid or reimbursed, or 5% of his base salary, or
- If Assistant Coach terminates within 60 days of his hire date, he shall be liable to and shall pay the Foundation an amount equal to 50% of his base salary.

RECOMMENDATION

It is recommended that the following resolution be adopted:

***NOW, THEREFORE, BE IT RESOLVED,** that the Board of Supervisors for the University of Louisiana System hereby approves Louisiana Tech University's request for approval of a contract with Mr. Pacifico David DeGuglielmo, Assistant Football Coach – Offensive Line Coach, between Louisiana Tech University, and Louisiana Tech University Foundation, effective March 1, 2021.*



LOUISIANA TECH UNIVERSITY

OFFICE OF THE PRESIDENT

March 26, 2021

Dr. Jim Henderson, President
University of Louisiana System
1201 North Third Street
Suite 7-300
Baton Rouge, LA 70802

Dear Dr. Henderson:

Enclosed for your review is the Contract of Employment between Pacifico David DeGuglielmo, Assistant Football Coach-Offensive Line Coach, and Louisiana Tech University. Also joining in the contract and consenting to the obligations incurred by it is the Louisiana Tech University Foundation. The effective date of the Contract of Employment is March 1, 2021, through February 28, 2022.

Please place this item on the ULS Board of Supervisors' agenda for consideration and approval at the April 2021 meeting.

Upon approval by the Board, please sign the on the last page of the contract indicating that the Board has approved the contract, and keep a scanned copy for the files of the Board of Supervisors and please email a copy of the signed document to me for distribution to Assistant Coach DeGuglielmo, the University, the Foundation, and Assistant Coach DeGuglielmo's attorney.

Thank you for your attention to this matter.

Sincerely,

Leslie K. Guice
President

mol
enclosures

**CONTRACT OF EMPLOYMENT:
ASSISTANT FOOTBALL COACH – OFFENSIVE LINE COACH**

STATE OF LOUISIANA

PARISH OF LINCOLN

This agreement is made and entered into on this _____ day of _____, 2021, between Louisiana Tech University (“UNIVERSITY”), through its President, Dr. Les Guice, and **PACIFICO DAVID DEGUGLIELMO** (“ASSISTANT COACH”). Except where expressly stated otherwise herein, including Sections 10.2 and 10.3, the terms and conditions set forth in this Contract of Employment (“AGREEMENT”) are not binding upon the parties until approval of the Board of Supervisors for the University of Louisiana System (hereinafter referred to as “BOARD”) is obtained. Louisiana Tech University Foundation, Inc. (“FOUNDATION”) joins in this AGREEMENT consenting to the obligations incurred by the FOUNDATION. This single AGREEMENT shall become the agreement between the parties supplanting all previous contracts and/or memoranda of understanding.

EMPLOYMENT OF ASSISTANT FOOTBALL COACH

1.0 Employment

The UNIVERSITY does hereby employ ASSISTANT COACH as **OFFENSIVE LINE COACH**, and ASSISTANT COACH does hereby accept employment and agrees to perform all of the services pertaining to the position outlined herein which are reasonably required of COACH, as well as, other services as may be reasonably contemplated hereunder, all as reasonably prescribed by the UNIVERSITY through its President and Director of Athletics and assigned by the Head Football Coach (“HEAD COACH”). ASSISTANT COACH shall be responsible and shall report directly to the HEAD COACH.

2.0 Duties

ASSISTANT COACH shall perform such duties in the University athletic program as the HEAD COACH may reasonably assign. Duties shall include but not be limited to the following:

2.1. Faithfully and conscientiously perform the duties reasonably assigned by the HEAD COACH and maintain the high moral and ethical standards commonly expected of the ASSISTANT COACH as a highly visible representative of the Department of Intercollegiate Athletics at the UNIVERSITY.

2.2. Devote such professional time, attention and energy to his duties as are required, in UNIVERSITY's reasonable judgment, to faithfully discharge the duties as set forth herein and to avoid any business or professional activities or pursuits that will unreasonably conflict with his performance of his duties or will otherwise unreasonably interfere with the UNIVERSITY's interests.

2.3. Recognize and comply with the applicable laws, policies, rules and regulations of the UNIVERSITY, the National Collegiate Athletic Association ("NCAA"), and Conference USA (or any other conference which the UNIVERSITY may become a member during the Term), as now constituted or as may be amended during the Term hereof. ASSISTANT COACH shall immediately inform HEAD COACH of any suspected violation and assist the investigation and reporting thereof.

2.4. Carry himself in a professional and sportsman-like manner. ASSISTANT COACH recognized he is a highly visible representative of the UNIVERSITY, whose conduct, both on and off the field, affects the reputation of the institution, the viability of its athletic programs and contracts, and the well-being of its student-athletes.

2.5. ASSISTANT COACH agrees that academic achievement of student-athletes is of the highest importance. ASSISTANT COACH agrees to carry himself in a manner that supports academic integrity.

2.6. ASSISTANT COACH agrees to make himself reasonably available for media or other public appearances at such times as the University, through the Department of Intercollegiate Athletics, or FOUNDATION may reasonable designate. Such appearances shall not unreasonably conflict with ASSISTANT COACH's primary duties as **OFFENSIVE LINE COACH**.

2.7. ASSISTANT COACH agrees to conscientiously observe all UNIVERSITY and NCAA rules pertaining to outside income. ASSISTANT COACH will notify the Director of Athletics and obtain approval, such approval not to be unreasonably withheld, before negotiation for or receiving any athletically-related income or benefits from sources outside UNIVERSITY and will report annually any outside income in compliance with NCAA and UNIVERSITY regulations.

3.0 Term

The term of this AGREEMENT commences March 1, 2021, and ends February 28, 2022. This AGREEMENT shall be automatically renewable for a one-year term on March 1st of each year. (the initial term and any and all renewals hereinafter referred to individually and collectively as the "Term") Either UNIVERSITY or ASSISTANT COACH may deliver written notice to the other party at any time prior to the expiration of the current term electing not to renew the AGREEMENT for an additional term.

4.0 Base Salary

4.1. UNIVERSITY agrees to pay ASSISTANT COACH an annual salary of Ninety-thousand (\$90,000.00) payable in biweekly installments through UNIVERSITY payroll.

4.2. Beginning March 1, 2021, FOUNDATION, through its athletic funds shall pay ASSISTANT COACH Forty-thousand (\$40,000) payable in equal monthly installments of Three Thousand, Three Hundred, Thirty-Three dollars and Thirty-Three Cents (\$3,333.33) during the Term for ASSISTANT COACH's fundraising and public appearance services to the FOUNDATION.

5.0 Employee Benefits

UNIVERSITY will provide ASSISTANT COACH the opportunity to participate in benefit plans for health insurance, dental insurance, retirement, disability, and life insurance on a basis consistent with other UNIVERSITY employees of a similar status. Such benefits will be based upon COACH's base annual salary as provided by UNIVERSITY. Additionally, UNIVERSITY will provide ASSISTANT COACH with up to six (6) tickets per home football game for personal use. As available and in UNIVERSITY's discretion, ASSISTANT COACH is also eligible to use an automobile supplied by an automobile dealership. Coach shall be responsible for any and all income tax liabilities, interest, and/or penalties related to any benefits he receives pursuant to this AGREEMENT.

6.0 Performance Incentives – Athletic Performance Goals

6.1. In recognition of exemplary performance and the additional work that is required for post-season games and events and as an incentive for ASSISTANT COACH to achieve the goals described below, and since such additional work generally results in an influx of private gifts

to the FOUNDATION, ASSISTANT COACH shall be eligible to receive, **but is not guaranteed to receive**, a supplemental payment in an amount to be determined by the Head Football Coach and in the Head Football Coach's discretion, with approval from the Director of Athletics and the FOUNDATION.

6.2. Any supplemental payment awarded to ASSISTANT COACH pursuant to this section shall be payable within 60 days of the Head Football Coach awarding the supplemental payment from the FOUNDATION, solely from the athletic funds held by the FOUNDATION. Supplemental payments made to ASSISTANT COACH from FOUNDATION shall not be considered earned income for the purpose of computation of retirement benefits. No withholdings will be made from these payments, and ASSISTANT COACH shall be responsible for all applicable taxes. The FOUNDATION will issue the appropriate informational return to ASSISTANT COACH and to the Internal Revenue Service and provide a copy to the UNIVERSITY.

7.0 Outside Income

7.1. ASSISTANT COACH shall be prohibited from receiving athletically related benefits or compensation other than as previously described herein from any other source without prior written consent of UNIVERSITY, such consent not to be unreasonably withheld.

7.2. ASSISTANT COACH shall be authorized to earn other revenue while employed by the UNIVERSITY, but such activities are independent of his UNIVERSITY employment, and the UNIVERSITY shall have no responsibility for any claims arising therefrom. All outside income will be subject to approval in accordance with the Board of Supervisors for the University of Louisiana System policies, such approval not to be unreasonably withheld.

7.3. ASSISTANT COACH shall report annually in writing to the President on or before July 1st all athletically related income from sources outside the UNIVERSITY including, but not limited to, income or benefits from (1) endorsement or consultation contracts with apparel companies, equipment manufacturers, or television or radio programs; (2) ownership, control, or management of a foundation, organization, or other entity; and (3) participation in athletic camps outside of those offered by Employer, and the UNIVERSITY shall have reasonable access to all records of ASSISTANT COACH to verify this report (NCAA Bylaw 11.2.2).

8.0 Compliance with NCAA, Conference and University Rules

8.1. ASSISTANT COACH shall abide by the applicable rules and regulations of the NCAA, Conference and UNIVERSITY. If ASSISTANT COACH is personally found to be in violation of NCAA regulations, ASSISTANT COACH shall be subject to disciplinary or corrective action as set forth in the NCAA enforcement procedures (NCAA Constitution 11.2.1). ASSISTANT COACH may be suspended for a period of time, without pay, or the employment of ASSISTANT COACH may be terminated if ASSISTANT COACH is found to be involved in major, deliberate or serious violations of NCAA, Conference and UNIVERSITY regulations.

8.2 . ASSISTANT COACH shall also abide by state and federal laws, the State of Louisiana Code of Governmental Ethics, applicable UNIVERSITY policies and regulations, and the applicable policies and regulations of the University of Louisiana System. In public appearances he shall at all times conduct himself in a manner that befits a UNIVERSITY official and shall always attempt to create goodwill and a good image for UNIVERSITY.

8.3. ASSISTANT COACH acknowledges and agrees that (1) ASSISTANT COACH has an affirmative obligation to cooperate fully in the NCAA infractions process, including the investigation and adjudication of a case (see NCAA Bylaw 19.2.3 for examples of full

cooperation), and (2) an individual who is found in violation of NCAA regulations shall be subject to disciplinary or corrective action as set forth in the provisions of the NCAA infractions process (see NCAA Bylaw 19), including suspension without pay or termination of employment.

9.0 Title IX and Sexual Misconduct Policy Reporting and Compliance:

ASSISTANT COACH shall promptly report to the University's Title IX Coordinator or Deputy Title IX Coordinator any Known Violation(s) of the University or the University of Louisiana System's Sexual Misconduct Policy (including, but not limited to sexual harassment, sexual assault, sexual exploitation, domestic violence and stalking) that involve any student, faculty, or staff or that is in connection with a University sponsored activity or event. Any emergency situation shall be immediately reported to 911 and/or law enforcement. For purposes of this paragraph, a "Known Violation" shall mean a violation or an allegation of a violation of Title IX and/or the University's or the University of Louisiana System's Sexual Misconduct Policy that ASSISTANT COACH is aware of or has reasonable cause to believe is taking place or may have taken place.

The University may terminate this Agreement for cause pursuant to the for-cause-termination provisions of this Agreement for any determined violation by ASSISTANT COACH for failure to report a Known Violation of:

- (1) Title IX of the Education Amendments of 1972;
- (2) the University's Sexual Misconduct Policy; or
- (3) the University of Louisiana System's Sexual Misconduct Policy.

10.0 Termination Without Cause

10.1. Either party may terminate this AGREEMENT without cause by providing written notice to the other party specifying the effective date of termination. Should UNIVERSITY terminate the AGREEMENT without cause prior to the expiration of its current Term, it shall be liable to ASSISTANT COACH for liquidated damages which shall include all amounts of Base Salary which would have been owed to ASSISTANT COACH had he completed the current Term. Such damages shall be paid by FOUNDATION in regularly scheduled installments from the date of termination to the end of the current Term.

10.2. Should ASSISTANT COACH terminate this AGREEMENT without cause prior to the expiration of its Term, and ASSISTANT COACH has been employed by UNIVERSITY as an ASSISTANT COACH for less than twelve (12) months, ASSISTANT COACH shall be liable to and shall pay the FOUNDATION an amount equal to **the greater of** all moving expenses paid or reimbursed **or** five percent (5%) of ASSISTANT COACH's Base Salary with Base Salary calculated as the sum of the amounts in Section 4.1. and 4.2. for purposes of Article 10. ASSISTANT COACH agrees and understands that this provision shall become binding and enforceable upon ASSISTANT COACH's sole signature below regardless of the presence or lack thereof of any other signatories to this AGREEMENT.

10.3. Should ASSISTANT COACH terminate this AGREEMENT without cause within sixty (60) days of ASSISTANT COACH's hire date, ASSISTANT COACH shall pay the FOUNDATION an amount equal to fifty percent (50%) of ASSISTANT COACH's Base Salary. ASSISTANT COACH agrees and understands that this provision shall become binding and enforceable upon ASSISTANT COACH's sole signature below regardless of the presence or lack thereof of any other signatories to this AGREEMENT.

10.4. Any payments due from ASSISTANT COACH under this section shall be due and paid in full to FOUNDATION within thirty (30) days of ASSISTANT COACH's notice of termination.

10.5. Payment by UNIVERSITY and/or FOUNDATION of the amount under this section will constitute a full release of any claim that ASSISTANT COACH might otherwise assert against the UNIVERSITY and FOUNDATION, or any of its representatives, agents or employees. In consideration of this payment, ASSISTANT COACH shall, and does hereby, release and discharge UNIVERSITY and FOUNDATION, its officers and employees, from and against any liability of any nature whatsoever related to or arising out of this AGREEMENT and ASSISTANT COACH's employment at UNIVERSITY, including, but not limited to, any and all claims arising under or relating to and federal or state constitutions, laws, regulations, or other provision of law.

10.6. Except for the obligation to pay ASSISTANT COACH the amount set forth in Section 10.1, all obligations of UNIVERSITY and FOUNDATION (to the extent not already accrued or vested) to ASSISTANT COACH shall cease as of the effective date of such termination.

10.7. In lieu of terminating employee without cause, UNIVERSITY may reassign ASSISTANT COACH to other duties within UNIVERSITY commensurate with his attained educational level and skill set. Such reassignment shall run commensurate with the duration remaining under the current Term and shall cease at the end of the current Term.

10.8. UNIVERSITY's and/or FOUNDATION'S obligation to pay liquidated damages to ASSISTANT COACH, as described in Section 10.1, shall be subject to ASSISTANT COACH's duty to mitigate his damages. ASSISTANT COACH hereby agrees to mitigate such damages by making reasonable and diligent efforts to obtain employment commensurate with his qualifications and experience, as soon as reasonably possible after termination of this Contract of Employment.

If ASSISTANT COACH should obtain such new employment prior to the last installment payment of liquidated damages, ASSISTANT COACH shall notify the Director of Athletics of such new employment. Any further obligation of UNIVERSITY or FOUNDATION to ASSISTANT COACH shall be reduced by amount of salary or payment from new employment. Employment for purposes of this paragraph shall include any form of employment, including a contract of employment, employment at-will, or employment as an independent contractor.

11.0 Termination With Cause

UNIVERSITY shall have the right to terminate ASSISTANT COACH's employment and this AGREEMENT for cause prior to expiration of the Term. In the event this AGREEMENT is terminated for cause, all obligations of UNIVERSITY or FOUNDATION to make further payment or provide any other consideration hereunder shall cease as of the date of termination, with the exception of any amounts earned but not yet paid. In addition to its normally understood meaning in employment contracts, the term "cause" shall include, without limitation, any of the following:

11.1. Failure or refusal by ASSISTANT COACH to perform any of the material duties required by this AGREEMENT or reasonably required of a Division I Football Assistant Coach, neglect by ASSISTANT COACH of any of the material duties required by this Contract of Employment or reasonably required of a Division I Football Assistant Coach, ASSISTANT COACH's unwillingness to perform such required material duties to the best of his ability, or any other material breach of this AGREEMENT; or

11.2. Insubordination, including but not limited to, deliberate and serious failure to follow reasonable instructions from the Director of Athletics or Football Head Coach or deliberate and serious failure to comply with applicable Athletics Department policies and procedures; or

11.3. A serious or major violation or a pattern of violations, whether intentional or negligent, by ASSISTANT COACH of any Rules or Regulations, which violation may reflect adversely upon UNIVERSITY or its athletics program, including, but not limited to, any violation which may result in UNIVERSITY being investigated, placed on probation, or otherwise sanctioned by the NCAA or its Conference; or

11.4. A serious or major violation or a pattern of violations of any Rules and Regulations, whether intentional or negligent, 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 ASSISTANT COACH's supervision and direction, including student-athletes in the program, which violation was known by ASSISTANT COACH in the course of his normal duties, and which may, reflect adversely upon UNIVERSITY or its athletics program; or

11.5. Failure by ASSISTANT COACH to report immediately to the Football Head Coach and Athletic Director any violations of Rules or Regulations known by ASSISTANT COACH; or

11.6. Failing or refusing to provide information or documents in response to any reasonable requests or inquiries by the NCAA, the Conference, or any other governing body concerning or related to the supervision of the program or directing or otherwise instructing any coach, student-athlete or any other individual to fail or to refuse to provide such information or documents; or

11.7. Any fraud or dishonesty of ASSISTANT 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 Louisiana System, Louisiana Tech University, the NCAA, or the Conference pertaining to the Program,

recruits or student-athletes, transcripts eligibility forms, compliance reports, or expense reports, or any other document pertaining or related to any sanction of the Program; or

11.8. 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; or

11.9. 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 Rules or Regulations, 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 Rules or Regulations, or failure or refusal to fully participate and cooperate in UNIVERSITY's implementation and enforcement of any narcotic, drug, alcohol, controlled substance, steroid or other chemical testing programs(s); or

11.10. Conduct of the ASSISTANT COACH which, in the reasonable judgment of the UNIVERSITY as determined by the Director of Athletics with concurrence of the President, is seriously prejudicial to the best interests of the UNIVERSITY or its athletic program; would tend to bring public disrespect, embarrassment, contempt, scandal, or ridicule on ASSISTANT COACH or UNIVERSITY; which otherwise fails to follow the moral and ethical standard reasonably expected of ASSISTANT COACH as a leading representative of the Department of Athletics and UNIVERSITY; or which violates the UNIVERSITY's mission; or being charged or arrested for any crime involving theft, dishonesty, or moral turpitude.

11.11. ASSISTANT COACH being charged or arrested for violation of a criminal statute or regulation, excluding minor traffic violations, provided that an arrest for DUI, DWI, or materially similar charges shall not be considered an arrest or charge for a minor traffic violation.

11.12. Engaging in a consensual sexual relationship with any individual over whom he exercises direct or significant academic, administrative, supervisory, evaluative, counseling or extracurricular authority or influence (Louisiana Tech Policy 1450).

11.13. Prolonged absence from duty without the consent of ASSISTANT COACH's reporting superior; or

11.14. Any cause adequate to sustain termination of any regular staff employee of UNIVERSITY, including but not limited to a violation of the Louisiana Code of Governmental Ethics (Louisiana Tech Policy 1410), a harassment violation (Louisiana Tech Policy 1438), or a sexual harassment violation (Louisiana Tech Policy 1436).

12.0 Automatic Termination Upon Death or Disability of Coach

This AGREEMENT shall terminate automatically if ASSISTANT COACH dies or becomes physically or mentally disabled to such an extent that, in the judgment of the Head Football Coach with concurrence of the Director of Athletics, he is unable to satisfactorily perform all duties of a NCAA Division I Football Assistant Coach. If this AGREEMENT is terminated pursuant to this section, UNIVERSITY shall be relieved of all liabilities and/or obligations under this AGREEMENT as of the date of death or disability.

13.0 Termination – General Provisions

13.1. If ASSISTANT COACH terminates the AGREEMENT, or if the AGREEMENT is terminated for cause, UNIVERSITY or FOUNDATION shall not be liable for any payments or benefits after the date of termination, except for amounts previously earned (including supplemental payment) but not yet paid.

13.2. In the event any dispute arises between the parties concerning this AGREEMENT, the party alleging a breach by the other must give written notice to the other detailing the alleged

dispute or breach 60 days prior to initiating legal action. If a lawsuit is filed concerning a dispute over this AGREEMENT, such suit must be filed in Lincoln Parish, Louisiana, and the prevailing party is entitled to recover attorney's fees in addition to any other relief awarded by the court.

13.3. Prior to termination of ASSISTANT COACH, UNIVERSITY will obtain approval from the President of the University of Louisiana System.

13.4. ASSISTANT COACH may be terminated at any time due to financial circumstances in which the UNIVERSITY or the University of Louisiana System has declaration of financial exigency. In the event of such termination, ASSISTANT COACH will receive as liquidated damages sums payable to ASSISTANT COACH pursuant to paragraphs 4.0 for the remainder of the current Term. Such sum shall be payable by the FOUNDATION solely through its athletic funds. The liquidated damages payment for the current AGREEMENT year shall be paid within 60 days of termination. All compensation, including salary, benefits, and other remuneration incidental to employment, ceases upon termination.

14.0 Invalid Provisions

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

15.0 Notice Provision

Any notice provided for herein shall be in writing and shall be deemed to have been given when delivered personally to the party who is to receive such notice or three (3) days after it is mailed by U.S. registered, certified, or first-class mail to such party.

Unless hereinafter changed by written notice to ASSISTANT COACH, any notice to the UNIVERSITY shall be sent to:

Dr. Eric Wood
Vice President and
Director of Athletics
Louisiana Tech University
1650 West Alabama
Ruston, LA 71272

With copy to:
Justin Kavalir
Legal Counsel
Louisiana Tech University
P.O. Box 3168
Ruston, LA 71272

Bill Hogan, President
Louisiana Tech University
Foundation, Inc.
207 W. Alabama Avenue
Ruston, LA 71270

Unless hereinafter changed by written notice to the UNIVERSITY, any notice to ASSISTANT COACH shall be sent to:

PACIFICO DAVID DEGUGLIELMO

Ruston, LA 71270

16.0 Merger Clause/No Oral Modification

This AGREEMENT constitutes and expresses the entire agreement and understanding of the parties regarding any employment of ASSISTANT COACH by the UNIVERSITY and regarding any of the matters or things therein provided or previously discussed or mentioned in reference to such employment. There are no oral, written or other contracts, understandings, letter agreements, promises or representations between the parties regarding the subject matter of this

AGREEMENT. This AGREEMENT cannot be changed, modified or amended except by written instrument signed by both parties.

17.0 Sole Remedy

ASSISTANT COACH agrees his sole and exclusive remedy against UNIVERSITY and FOUNDATION in the event of termination of this AGREEMENT by UNIVERSITY for any reason shall be in accordance with the provisions set forth in this AGREEMENT. To the maximum extent permitted by law, in no event shall either UNIVERSITY or FOUNDATION be liable for direct, indirect, special, incidental, consequential damages, or punitive damages regardless of the form of action (whether in contract, tort, or otherwise) except as specified in this AGREEMENT.

18.0 Governing Law

This AGREEMENT shall be governed by and construed and interpreted by the laws of the State of Louisiana, without giving effect to any choice of law rules or other conflicting provision or rule that would cause the laws of any other jurisdiction to be applied.

19.0 Agreement Freely and Voluntarily Entered Into

This AGREEMENT is voluntarily entered into by the parties and ASSISTANT COACH acknowledges that he: (a) has consulted with or had the opportunity to consult with independent counsel of his own choosing concerning this AGREEMENT and (b) has read and understands this AGREEMENT, is competent and of sound mind to execute this AGREEMENT and is fully aware of its legal effect.

SIGNATURE PAGE TO FOLLOW

**CONTRACT OF EMPLOYMENT:
ASSISTANT FOOTBALL COACH – OFFENSIVE LINE COACH**

SIGNATURE PAGE

LOUISIANA TECH UNIVERSITY

PACIFICO DAVID DEGUGLIELMO

By: **LESLIE K. GUICE**
PRESIDENT

ASSISTANT FOOTBALL COACH

By: **DR. ERIC WOOD**
VICE PRESIDENT AND
DIRECTOR OF ATHLETICS

LOUISIANA TECH UNIVERSITY FOUNDATION, INC.

By: **BROOKS HULL**
VICE PRESIDENT FOR UNIVERSITY ADVANCEMENT

Approved by the Board of Supervisors of the University of Louisiana System at its meeting
on the _____ day of _____, 2021.

SECRETARY
BOARD OF SUPERVISORS

**BOARD OF SUPERVISORS FOR THE
UNIVERSITY OF LOUISIANA SYSTEM**

ATHLETIC COMMITTEE

April 22, 2021

Item G.5. **McNeese State University's** request for approval of a contract with Mr. John Aiken, Head Men's Basketball Coach, effective July 1, 2021.

EXECUTIVE SUMMARY

Under this three-year agreement, through April 14, 2024, Coach will earn \$90,000 annually from the University. In addition to the salary, the McNeese State University Foundation shall pay Coach a premium benefit of \$40,000 for the first year of the contract, and increasing by \$10,000 each year thereafter for the term of the contract. In addition, Coach is eligible to receive the following incentive compensation from the Foundation:

Basketball Incentives:

- \$1,000 – Top 3 finish in Conference Regular Season
- \$1,500 – Regular Season Championship/NIT appearance
- \$1,000 – Semi-Final Appearance in Conference Tournament
- \$1,000 – Conference Tournament Championship Game Appearance
- \$3,000 – Conference Tournament Championship
- \$10,000 – Each NCAA Tournament Win
- \$1,000 – Conference Coach of The Year

Academic Incentives:

- \$1,000 – 985 or higher Single-year Academic Progress Rate
- \$1,000 – 975 or higher Multi-year Academic Progress Rate

If the University terminates the agreement without cause, the Coach shall be entitled to remainder of the compensation that he would have earned from the effective date of termination to the expiration of the contracted term. The parties agree that any amounts due beyond the current fiscal year shall be funded solely by the McNeese State University Foundation athletic related accounts.

In the event Coach terminates this contract without cause to accept a position as a head or assistant basketball coach at a different University or Community College or other educational organization or any professional athletic organization, Coach or third party shall pay University the following liquidated damages:

- If Coach terminates the contract between July 1, 2021 and June 30, 2022, University shall be entitled to receive 100% of base salary from that year (\$90,000), from Coach or from third party.
- If Coach terminates the contract between July 1, 2022 and June 30, 2023, University shall be entitled to receive 75% of base salary from that year (\$71,200), from Coach or from third party.
- If Coach terminates the contract between July 1, 2023 and April 14, 2024, University shall be entitled to receive 50% of base salary from that year (\$50,000), from Coach or from third party.

The University and the McNeese State University Foundation have combined this agreement into one joint employment agreement.

RECOMMENDATION

It is recommended that the following resolution be adopted:

***NOW, THEREFORE, BE IT RESOLVED,** that the Board of Supervisors for the University of Louisiana System hereby approves McNeese State University's request for approval of a contract with Mr. John Aiken, Head Men's Basketball Coach, effective July 1, 2021.*

McNEESE STATE UNIVERSITY

HEAD MEN'S BASKETBALL COACH CONTRACT OF EMPLOYMENT

STATE OF LOUISIANA

PARISH OF CALCASIEU

This contract is made and entered into between McNeese State University through its President, Dr. Daryl V. Burckel, McNeese State University Foundation represented by Dr. Wade Rousse, and **JOHN AIKEN** (hereinafter referred to as "COACH"). This agreement is subject to the approval of the Board of Supervisors of the University of Louisiana System, the management board for McNeese State University (the "Board"). Therefore, the terms and conditions set forth in this agreement should not be considered a valid contract until approval is provided by the Board.

1.0 Employment

- 1.1 McNeese State University (the "University") does hereby employ COACH as **Head Men's Basketball Coach** and COACH does hereby accept employment and agrees to perform all of the services pertaining to Men's Basketball which are required of COACH, as well as, other services as may be contemplated hereunder, all as prescribed by the University through its President and Athletics Director.
- 1.2 COACH shall be responsible, and shall report, directly to the University's Director of Athletics (the "Director") and shall confer with the Director or the Director's designee on all administrative and technical matters. COACH shall also be under the general supervision of McNeese State University's President.
- 1.3 COACH shall manage and supervise the team and shall perform such other duties in McNeese State University's athletic program as the Director may assign.
- 1.4 COACH agrees to represent McNeese State University positively in public and private forums and shall not engage in conduct that reflects adversely on McNeese State University or its athletic programs.

2.0 Term

- 2.1 The term of this contract is for a fixed period of thirty-six (36) months, commencing on the **1st day of July 2021**, and terminating without further notice to COACH on the **14th day of April 2024**, with the option of one (1) additional one (1) year extension, without re-negotiation, conditioned upon both the Coach, and the University agreeing in writing to either option to extend. The parties will mutually agree as to whether to exercise the option for the contract year beginning on April 15, 2024 and ending on April 14, 2025 no later than April 1, 2024.
- 2.2 After April 14, 2026, this contract is renewable solely upon an offer from McNeese State University and an acceptance by COACH, both of which must be in writing, signed by the parties, and approved by the Board. This contract in no way grants COACH a claim to tenure in employment, nor shall COACH'S service pursuant to this contract count in any way toward tenure at McNeese State University.
- 2.3 This contract may be amended or extended at any time during the period of this contract by mutual agreement of all parties.

3.0 Compensation

- 3.1 In consideration of COACH'S services and satisfactory performance, McNeese State University shall pay COACH a base annual (12-month) salary in the amounts below, payable on a monthly basis.
 1. July 1, 2021 to June 30, 2022 -- \$130,000
 2. July 1, 2022 to June 30, 2023 -- \$140,000
 3. July 1, 2023 to April 14, 2024 -- \$150,000
 4. April 15, 2024 to April 14, 2025 -- \$150,000 (if optioned)
- 3.2 The University does not guarantee amounts due under this contract beyond the current year of performance. Should the contract be terminated for any reason, amounts due shall be determined in accordance with section 14 of this contract.
- 3.3 The University may permit additional (non-recurring) supplemental pay to COACH for specific and extraordinary achievement in accordance and as stipulated by the University policy entitled Bonuses for Specific and Extraordinary Achievement and as allowed by NCAA Division I bylaw 11.3.2.3.
- 3.4 In this appointment, in accordance with ULS Policy Number FS.111.XXI.-1, COACH will not accrue Compensatory Leave and COACH will be exempt from taking leave when the University is officially closed at holiday breaks.

- 3.5 COACH may be eligible for cost of living or merit pay increases in addition to the stated base salary. COACH is also subject to pay adjustment according to economic circumstances that affect all employees in the unclassified state service.
- 3.6 The above annual salary in 3.1 shall be comprised of a McNeese State University base salary amount of \$90,000 the remaining will be paid from the McNeese Foundation. The funds shall be transferred from the Foundation to the University and paid to the COACH through the University's normal payroll process. The Foundation is also responsible for increased related benefit payments associated with the supplement.
- 3.7 During the Term, COACH shall have the opportunity to earn Bonus Compensation as follows:

Basketball Incentives:

- \$1,000 – Top 3 finish in Conference Regular Season
- \$1,500 – Regular Season Championship/NIT appearance
- \$1,000 – Semi-Final Appearance in Conference Tournament
- \$1,000 – Conference Tournament Championship Game Appearance
- \$3,000 – Conference Tournament Championship
- \$10,000 – Each NCAA Tournament Win
- \$1,000 – Conference Coach of The Year

Academic Incentives:

- \$1,000 – 985 or higher single year APR
- \$1,000 – 975 or higher Multi year APR

All Bonus Compensation for Basketball Incentives shall be paid on the last University payroll date of June, in the same calendar year following the events for which the Bonus Compensation for Basketball Incentives is earned.

All Bonus Compensation for Academic Incentives shall be paid on the last University payroll date of June of the following Calendar year.

4.0 Contracts for Broadcast and/or Telecast

- 4.1 COACH may host a radio or television show to promote the McNeese State University Men's Basketball Team, with approval from the Athletic Director and Sport Supervisor.
- 4.2 It is specifically agreed that in the filming or producing of such shows, COACH acts for himself/herself in his/her private capacity and not as an agent or employee of the University and that this contract constitutes merely a license to use the property and facilities subject to the conditions hereafter stated:
 - (a) The COACH agrees to pay the University all out-of-pocket costs incurred by the University in the filming or production of the show.
 - (b) Long distance phone calls, University supplies, printing, postage, University vehicles, etc., will be utilized on a complete University cost recovery basis.
 - (c) Complete records will be maintained regarding income and expenditures associated with said show and available for verification by University auditors.
 - (d) The COACH agrees to protect, indemnify and save harmless the University from and against any and all expenses, damages, claims, suits, actions, judgments, and costs whatsoever, including reasonable attorney's fees, arising out of or in any way connected with any claim or action for property loss, personal injury or death resulting from said show.
 - (e) The COACH is an independent contractor during said radio or television activities and, as a University employee, will undertake to observe all general rules and policies of the University. This paragraph is designated to assure that nothing be done which is inconsistent with the maintenance of an educational campus environment and the character of a State institution which makes its facilities open to persons without discrimination.
 - (f) The Director of Intercollegiate Athletics will be the administrative officer of the University who will be advised by the COACH of any problems or questions which may arise out of the radio or television show.
- 4.3 Any compensation received by COACH for the participation in the radio or television show shall be solely for the benefit of COACH and not the University, except for reimbursements as otherwise provided for herein and in accordance with University policy relating to camps or clinics conducted by Athletic Department personnel.

5.0 Camps and Clinics

- 5.1 COACH may operate a camp for the teaching of athletic pursuits on the University property to the end of better utilization of the facilities and with suitable compensation paid to the University for the use of such facilities. The use

of University facilities will be determined by the availability of those facilities as established by the University. COACH must adhere to the Policy for Use of Campus Facilities.

- 5.2 It is specifically agreed that in the operation of such camps, COACH acts for himself/herself in his/her private capacity and not as an agent or employee of the University and that this contract constitutes merely a license to use the property and facilities subject to the conditions hereafter stated:
- (a) Special set-ups or changes in original set-up of facilities will be taken care of by the COACH with no cost to the University.
 - (b) The COACH agrees to pay the University all out-of-pocket costs incurred by the University in making the facilities available for the camps.
 - (c) The COACH agrees to secure a policy of insurance in a company approved by the University's Risk Management Office under which the Board of Supervisors of the University of Louisiana System, the University, its agents and servants, are named as the insured (or as an additional insured) which provides:
 1. Workers' Compensation and Employers Liability: Workers' Compensation limits as required by the Labor Code of the State of Louisiana and Employers Liability coverage if COACH hires any employees to work at such camps or clinics;
 2. Comprehensive General Liability: \$1,000,000 combined single limit per occurrence for bodily injury, personal injury, and property damage;
 3. Other Insurance Requirements: provided in the Policy for Use of Campus Facilities.
 - (d) Annual leave must be requested to cover the dates of the camp operation for all University personnel involved.
 - (e) Complete records will be maintained regarding income and expenditures associated with said camp and available for verification by University auditors.
 - (f) The COACH agrees to protect, indemnify and save harmless the University from and against any and all expenses, damages, claims, suits, actions, judgments, and costs whatsoever, including reasonable attorney's fees, arising out of or in any way connected with any claim or action for property loss, personal injury or death during the operation of said camp activities.
 - (g) The COACH is an independent contractor during said camp activities and, as such, is licensed to use certain facilities of the University. The COACH, as a University employee, will undertake to observe and require campers and its staff to conform to the general rules applicable to the use of University facilities. This paragraph is designated to assure that nothing be done which is inconsistent with the maintenance of an educational campus environment and the character of a State institution which makes its facilities open to persons without discrimination.
 - (h) The Director of Intercollegiate Athletics will be the administrative officer of the University who will be advised by the COACH of any problems or questions which may arise out of the operation of summer camps.

6.0 Courtesy / Leased Vehicle Benefit

- 6.1 The COACH may receive a courtesy/leased vehicle if an arrangement can be made through a local dealership. The benefit shall not be considered earned income for the purpose of computation of retirement benefits, and COACH shall be responsible for all applicable taxes. The University has no obligation to furnish a vehicle to COACH. The arrangements for a vehicle may be made by either the Athletics Director or COACH.
- 6.2 Insurance on any courtesy / leased vehicle must be paid for by the dealership, the COACH, or some other arrangement agreed to by the Athletics Director.
- 6.3 The COACH may be reimbursed for miles driving the courtesy / leased vehicle on school-sponsored business as authorized and approved following the University of Louisiana System Athletic Travel Policy No. IA-V.(2a).

7.0 Employee Benefits

- 7.1 The COACH shall participate in the mandatory employee benefit plans and be eligible for optional employee plans as would any other University unclassified employee. Such benefit will be based upon COACH's base annual salary as provided by University.

8.0 Outside Income and/or Benefits

- 8.1 With approval from the University President and in accordance with University and Board policies, COACH shall be authorized to earn other revenue while employed by the University, but such activities are independent of his/her University employment, and the University shall have no responsibility for any claims arising there from. COACH shall be entitled to retain revenue generated from his/her operation of **Men's Basketball** camps and/or **Men's Basketball** clinics in accordance with University policy relating to camps or clinics conducted by Athletic Department personnel. All outside income will be subject to approval in accordance with the Board of Supervisors for the University of Louisiana System policies (Adopted 2/24/95). Coach shall report annually in writing to President all athletically-related income, revenue, and/or benefits Coach receives from sources outside University, and Coach shall abide by all NCAA regulations regarding outside compensation. Examples of outside income include, without limitation, income or benefits from (1) Endorsement or consultation contracts with apparel companies, equipment manufacturers, or television or radio programs; (2) ownership, control, or management of a foundation, organization, or other entity; and (3) participation in athletic camps outside of those offered by the University. All outside compensation must also comply with the Louisiana Code of Governmental Ethics.

8.2 Notwithstanding the above or anything else herein to the contrary, if COACH receives athletically related income or benefits totaling more than \$600 per year from any source or combination of sources other than Employer, COACH must report all such income or benefits to the PRESIDENT in writing at least annually. Examples include, without limitation, income or benefits from (1) endorsement or consultation contracts with apparel companies, equipment manufacturers, or television or radio programs; (2) ownership, control, or management of a foundation, organization, or other entity; and (3) participation in athletic camps outside of those offered by Employer (see Bylaw 11.2.2.).

9.0 Apparel, Equipment Endorsements

9.1 The University shall pay to COACH any funds for which he/she is responsible in obtaining for the University through his/her endorsements of show, apparel, or equipment manufacturers. The benefits shall not be considered earned income for the purpose of computation of retirement benefits, and COACH shall be responsible for all applicable taxes.

10.0 Compliance with NCAA and Conference Rules and Regulations, and University Policies and Procedures

10.1 COACH shall abide by the NCAA and Conference rules and regulations and the policies and procedures of the University. Pursuant to NCAA Bylaw 11.2.1, Coach understands that Coach has an affirmative obligation to cooperate fully in the infractions process, including the investigation and adjudication of a case (see NCAA Bylaw 19.2.3). If found in violation of NCAA regulations, COACH shall be subject to disciplinary or corrective action as set forth in the NCAA enforcement procedures (NCAA Constitution 11.2.1). If found in violation of Conference rules and regulations, or University policies and procedures, COACH shall be subject to disciplinary or corrective action as set forth by Conference rules and regulations or University policies and procedures. COACH may be suspended for a period of time, without pay, or the employment of COACH may be terminated if COACH is found to be involved in deliberate and serious, or repetitive, violations of NCAA regulations (NCAA Constitution 11.2.1), Conference rules and regulations, or University policies and procedures.

10.2 COACH shall also abide by the State of Louisiana Code of Government Ethics, University Policy and Procedures, and the policies and procedures of the University of Louisiana System. In public appearances he/she shall at all times conduct himself/herself in a manner that befits a University official and shall always attempt to create goodwill and a good image for the University.

10.3 COACH shall promote an atmosphere for compliance within the program supervised by the COACH and shall monitor the activities regarding compliance of all assistant coaches and other administrators involved with the program who report directly or indirectly to the COACH (NCAA Division I Bylaw 11.1.2.1 Responsibility of Head Coach).

10.4 COACH and Employer acknowledge and agree that (1) COACH has an affirmative obligation to cooperate fully in the NCAA infractions process, including the investigation and adjudication of a case (see NCAA Bylaw 19.2.3 for examples of full cooperation), and (2) an individual who is found in violation of NCAA regulations shall be subject to disciplinary or corrective action as set forth in the provisions of the NCAA infractions process (see NCAA Bylaw 19), including suspension without pay or termination of employment

11.0 Compliance with Local, State and Federal Laws

11.1 COACH shall abide by the laws of the local, state and federal governments. COACH may be suspended for a period of time, without pay, or the employment of COACH may be terminated if COACH is found to be involved in violation or gross disregard of local, state or federal laws.

12.0 Financial Incentive for Academic Success

12.1 COACH shall be eligible to receive a financial incentive for academic success within the Men's Basketball program as defined in the University Athletic Department policy. The policy is as follows:

“A head coach whose team's NCAA Multi-Year (Four-Year Rolling Average) Academic Progress Rate (APR) exceeds the national average for Division I public institutions for the reported academic year shall receive a financial incentive award in the amount of \$1,000. In addition, the full-time academic support, athletic department staff members may receive a financial incentive award in the amount of \$200 for each team that surpasses the aforementioned national benchmark. In order for a coach or staff member to be eligible to receive this award, the coach or staff member must have been employed at McNeese State University in their current capacity for at least one full academic year and subsequently would be eligible for the award at the conclusion of their second year.”

13.0 Men's Basketball Staff and Scheduling

13.1 Adhering to the University hiring policies, COACH shall have the authority to select associate / assistant coaches upon approval by the Athletics Director, the President, and the Board of Supervisors for the University of Louisiana System. Associate / assistant coaches shall be appointed as University unclassified personnel.

13.2 COACH shall be required to earn \$420,000 in Guarantee Game revenues. All scheduling must be reviewed and have final approval from the Director of Athletics and/or Sr. Associate AD for Finance. The assistant Salary pool based on

the above-mentioned game revenue is set at \$200,000. The Director of Athletics reserves the right to increase the above mentioned amount in a given year at his/her discretion.

14.0 Termination

- 14.1 Either party may terminate this agreement without just cause prior to the expiration of its terms by giving five (5) days written notice to the other party. Prior to termination of COACH, the University will obtain approval from the President of the University of Louisiana System.
- 14.2 COACH may be terminated by the Athletic Director at any time for violation or gross disregard of state or federal laws (excluding minor offenses or those punishable by citation), or deliberate and serious violations of NCAA, conference, or university rules, regulations, policies or procedures, or engaging in conduct, which is clearly contrary to the character and responsibilities of a person occupying the position of **Head Men's Basketball Coach** or which substantially negatively or substantially adversely affects the reputation of the University or McNeese State University athletics or for any violation of this contract; provided, however, prior to termination, University shall meet with COACH to notify him of alleged offending behavior under this clause, following which COACH will have fourteen (14) days to cure alleged offending behavior or violation. University shall provide a good faith opportunity for COACH to cure alleged behavior or violation. In the event of such termination, COACH will receive thirty (30) calendar days notice of termination or thirty (30) calendar day's regular pay in lieu of such notice. All compensation, including salary, benefits and other remuneration incidental to employment, cease upon termination. The judgment as to whether the conduct of COACH constitutes cause under this provision shall not be exercised arbitrarily, capriciously or in a discriminatory manner by the University. No damages or other amounts than are specified in this section 14.2 shall be due if termination is for just cause.
- 14.3 The University may at any time, and in its sole discretion, terminate the employment of COACH for any reason.
- (a) In the event the University terminates the contract, without cause, University shall pay to Coach, within ninety (90) days and on a date mutually agreed upon by University and COACH, an amount equal to all remaining compensation, including, but not limited to Base Salary (including the University Foundation Premium) and Benefits that would have been due to COACH under this Agreement had COACH remained employed by University from the date of termination through the end of the Term. Any lump sum payments shall be paid in lump sum on the date the payment would have been due and payable had the COACH remained employed until the expiration of the Term. In addition, University will pay to COACH, within thirty (30) days in which University exercises its right to Terminate this Agreement without cause, any compensation or Bonus 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. The parties agree that any amounts due beyond the current fiscal year shall be funded solely by the McNeese State University Foundation athletic related accounts.
- 14.4 In the event COACH terminates this Contract without cause to accept a position as a head or assistant basketball coach at a different University or Community College or other educational organization or any professional athletic organization, COACH or third party shall pay University the following amounts which shall be deemed as agreed upon liquidated damages owed to McNeese State University because the costs the University will incur to search for and hire a new basketball head coach are difficult to determine. COACH shall have no further liability under this Agreement upon University's full reimbursement by a third party for the liquidated damages. Such liquidated damages shall be received by University within 90 days of termination. The amount of such reimbursements will be calculated as follows:
- If COACH terminates the contract between July 1, 2021 and June 30, 2022, University shall be entitled to receive 100% of base salary from that year (\$90,000), from COACH or from third party.
 - If COACH terminates the contract between July 1, 2022 and June 30, 2023, University shall be entitled to receive 75% of base salary from that year (\$71,200), from COACH or from third party.
 - If COACH terminates the contract between July 1, 2023 and April 14, 2024, University shall be entitled to receive 50% of base salary from that year (\$50,000), from COACH or from third party.
 - If COACH terminates the contract between April 15, 2024 and April 14, 2025, University shall be entitled to receive 0% of base salary from that year (\$0), from COACH or from third party.
- 14.5 COACH shall promptly report to the University's Title IX Coordinator or Deputy Title IX Coordinator any Known Violation(s) of the University or the University of Louisiana System's Sexual Misconduct Policy (including, but not limited to sexual harassment, sexual assault, sexual exploitation, domestic violence and stalking) that involve any student, faculty, or staff or that is in connection with a University sponsored activity or event. Any emergency situation shall be immediately reported to 911 and/or law enforcement. For purposes of this paragraph, a "Known Violation" shall mean a violation or an allegation of a violation of Title IX and/or the University's or the University of Louisiana System's Sexual Misconduct Policy that COACH is aware of or has reasonable cause to believe is taking place or may have taken place. The University may terminate this Agreement for cause pursuant to the for-cause-termination provisions of this Agreement for any determined violation by COACH for failure to report a Known Violation of: Title

IX of the Education Amendments of 1972; the University's Sexual Misconduct Policy; or the University of Louisiana System's Sexual Misconduct Policy.

14.6 Should COACH's contract be terminated for just cause, the University shall not be liable for any payments or benefits specified in this contract past the effective date of termination. Just cause for termination shall include, but not be limited to:

- (a) violation or gross disregard of local, state, or federal laws, NCAA or Conference rules or regulations, or University policies or procedures, as well as
- (b) engaging in conduct, as solely determined by the University, which is clearly contrary to the character and responsibilities of a person occupying the position of Head Men's Basketball Coach or which negatively or adversely affects the reputation of the University or McNeese State Athletics in any way.

15.0 Fundraising

15.1 All fundraising activities by COACH must be pre-approved by the Director, or his designee, and coordinated with the Vice President for University Advancement to ensure that such activities are in line with the mission of the department and in compliance with University policies.

16.0 Severability

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

17.0 Force Majeure



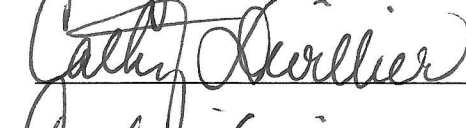

17.1 Neither party shall be considered in default performance of his or its obligations under this Contract if such performance is prevented or delayed by Force Majeure. "Force Majeure" shall be understood to be any cause which is beyond the reasonable control of the party affected and which is forthwith, by notice from the party affected, brought to the attention of the other party, including but not limited to war, hostilities, revolution, civil commotion, strike, lockout, epidemic, accident, fire, wind or flood or any requirements of law, or an act of God.

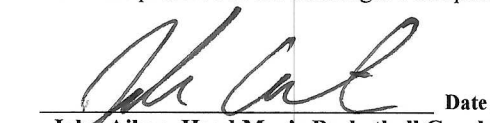
18.0 Previous Agreements


18.1 This employment contract shall supersede and replace any and all previous employment contracts that may have been entered between the parties to this agreement.

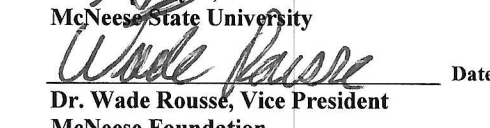
IN WITNESS WHEREOF, the parties have executed this act in the presence of the undersigned competent witness.

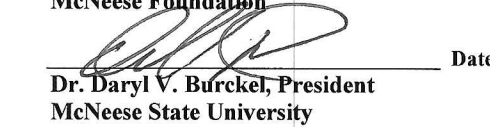
WITNESSES:

 Date 3/26/21
John Aiken, Head Men's Basketball Coach
McNeese State University

 Date 3-22-21
Heath Schroyer, Director of Athletics
McNeese State University

 Date 3/22/21
Dr. Wade Rouse, Vice President
McNeese Foundation

 Date 7-26-21
Dr. Daryl V. Burckel, President
McNeese State University

Approved by the Board of Supervisors of the University of Louisiana System at its meeting on the _____ day of _____, 20_____.

SECRETARY – Board of Supervisors

**BOARD OF SUPERVISORS FOR THE
UNIVERSITY OF LOUISIANA SYSTEM**

ATHLETIC COMMITTEE

April 22, 2021

Item G.6. **McNeese State University's** request for approval of a contract with Mr. Lynn Kennedy, Head Women's Basketball Coach, effective April 1, 2021.

EXECUTIVE SUMMARY

Under this three-year agreement, through April 14, 2024, Coach will earn \$100,000 annually from the University. In addition to the base salary, the McNeese State University Foundation shall pay Coach a premium benefit of \$10,000 annually for the term of the contract. In addition, Coach is eligible to receive the following incentive compensation from the Foundation:

Basketball Incentives:

- \$1,000 – Top 3 finish in Conference Regular Season
- \$1,500 – Regular Season Championship
- \$1,000 – Semi-Final Appearance in Conference Tournament
- \$1,000 – Conference Tournament Championship Game Appearance
- \$3,000 – Conference Tournament Championship
- \$10,000 – Each NCAA Tournament Win
- \$1,000 – Conference Coach of The Year

Academic Incentives:

- \$1,000 – 985 or higher Single-year Academic Progress Rate
- \$1,000 – 975 or higher Multi-year Academic Progress Rate

If the University terminates the agreement without cause, the Coach shall be entitled to remainder of the compensation that he would have earned from the effective date of termination to the expiration of the contracted term. The parties agree that any amounts due beyond the current fiscal year shall be funded solely by the McNeese State University Foundation athletic related accounts.

In the event Coach terminates this contract without cause to accept a position as a head or assistant basketball coach at a different University or Community College or other educational organization or any professional athletic organization, Coach or third party shall pay University the following liquidated damages:

- If Coach terminates the contract between July 1, 2021 and June 30, 2022, University shall be entitled to receive 100% of base salary from that year (\$90,000), from Coach or from third party.
- If Coach terminates the contract between July 1, 2022 and June 30, 2023, University shall be entitled to receive 75% of base salary from that year (\$71,200), from Coach or from third party.
- If Coach terminates the contract between July 1, 2023 and June 30, 2024, University shall be entitled to receive 50% of base salary from that year (\$50,000), from Coach or from third party.
- If Coach terminates the contract at any time to take the Head Women's Coaching Position at The University of New Mexico in Albuquerque, University shall be entitled to receive 0% of base salary from that year (\$0), from Coach or from third party.

The University and the McNeese State University Foundation have combined this agreement into one joint employment agreement.

RECOMMENDATION

It is recommended that the following resolution be adopted:

***NOW, THEREFORE, BE IT RESOLVED,** that the Board of Supervisors for the University of Louisiana System hereby approves McNeese State University's request for approval of a contract with Mr. Lynn Kennedy, Head Women's Basketball Coach, effective April 1, 2021.*

**HEAD WOMEN'S BASKETBALL COACH
CONTRACT OF EMPLOYMENT**

STATE OF LOUISIANA

PARISH OF CALCASIEU

This contract is made and entered into between McNeese State University through its President, Dr. Daryl V. Burckel, McNeese State University Foundation represented by Dr. Wade Rousse, and **LYNN KENNEDY** (hereinafter referred to as "COACH"). This agreement is subject to the approval of the Board of Supervisors of the University of Louisiana System, the management board for McNeese State University (the "Board"). Therefore, the terms and conditions set forth in this agreement should not be considered a valid contract until approval is provided by the Board.

1.0 Employment

- 1.1 McNeese State University (the "University") does hereby employ COACH as **Head Women's Basketball Coach** and COACH does hereby accept employment and agrees to perform all of the services pertaining to Women's Basketball which are required of COACH, as well as, other services as may be contemplated hereunder, all as prescribed by the University through its President and Athletics Director.
- 1.2 COACH shall be responsible, and shall report, directly to the University's Director of Athletics (the "Director") and shall confer with the Director or the Director's designee on all administrative and technical matters. COACH shall also be under the general supervision of McNeese State University's President.
- 1.3 COACH shall manage and supervise the team and shall perform such other duties in McNeese State University's athletic program as the Director may assign.
- 1.4 COACH agrees to represent McNeese State University positively in public and private forums and shall not engage in conduct that reflects adversely on McNeese State University or its athletic programs.

2.0 Term

- 2.1 The term of this contract is for a fixed period of thirty-six (36) months, commencing on the **1st day of April 2021**, and terminating without further notice to COACH on the **14th day of April 2024**, with the option of one (1) additional one (1) year extension, without re-negotiation, conditioned upon both the Coach, and the University agreeing in writing to either option to extend. The parties will mutually agree as to whether to exercise the option for the contract year beginning on April 15, 2024 and ending on April 14, 2025 no later than April 1, 2024.
- 2.2 After April 14, 2026, this contract is renewable solely upon an offer from McNeese State University and an acceptance by COACH, both of which must be in writing, signed by the parties, and approved by the Board. This contract in no way grants COACH a claim to tenure in employment, nor shall COACH'S service pursuant to this contract count in any way toward tenure at McNeese State University.
- 2.3 This contract may be amended or extended at any time during the period of this contract by mutual agreement of all parties.

3.0 Compensation

- 3.1 In consideration of COACH'S services and satisfactory performance, McNeese State University shall pay COACH a base annual (12-month) salary in the amounts below, payable on a monthly basis.
 1. April 1, 2021 to March 31, 2022 -- \$110,000
 2. April 1, 2022 to March 31, 2023 -- \$110,000
 3. April 1, 2023 to April 14, 2025 -- \$110,000
- 3.2 The University does not guarantee amounts due under this contract beyond the current year of performance. Should the contract be terminated for any reason, amounts due shall be determined in accordance with section 14 of this contract.
- 3.3 The University may permit additional (non-recurring) supplemental pay to COACH for specific and extraordinary achievement in accordance and as stipulated by the University policy entitled Bonuses for Specific and Extraordinary Achievement and as allowed by NCAA Division I bylaw 11.3.2.3.
- 3.4 In this appointment, in accordance with ULS Policy Number FS.111.XXI.-1, COACH will not accrue Compensatory Leave and COACH will be exempt from taking leave when the University is officially closed at holiday breaks.

- 3.5 COACH may be eligible for cost of living or merit pay increases in addition to the stated base salary. COACH is also subject to pay adjustment according to economic circumstances that affect all employees in the unclassified state service.
- 3.6 The above annual salary in 3.1 shall be comprised of a McNeese State University base salary amount of \$100,000 the remaining will be paid from the McNeese Foundation. The funds shall be transferred from the Foundation to the University and paid to the COACH through the University's normal payroll process. The Foundation is also responsible for increased related benefit payments associated with the supplement.
- 3.7 During the Term, COACH shall have the opportunity to earn Bonus Compensation as follows:

Basketball Incentives:

- \$1,000 – Top 3 finish in Conference Regular Season
- \$1,500 – Regular Season Championship
- \$1,000 – Semi-Final Appearance in Conference Tournament
- \$1,000 – Conference Tournament Championship Game Appearance
- \$3,000 – Conference Tournament Championship
- \$10,000 – Each NCAA Tournament Win
- \$1,000 – Conference Coach of The Year

Academic Incentives:

- \$1,000 – 985 or higher single year APR
- \$1,000 – 975 or higher Multi year APR

All Bonus Compensation for Basketball Incentives shall be paid on the last University payroll date of June, in the same calendar year following the events for which the Bonus Compensation for Basketball Incentives is earned.

All Bonus Compensation for Academic Incentives shall be paid on the last University payroll date of June of the following Calendar year.

4.0 Contracts for Broadcast and/or Telecast

- 4.1 COACH may host a radio or television show to promote the McNeese State University Men's Basketball Team, with approval from the Athletic Director and Sport Supervisor.
- 4.2 It is specifically agreed that in the filming or producing of such shows, COACH acts for himself/herself in his/her private capacity and not as an agent or employee of the University and that this contract constitutes merely a license to use the property and facilities subject to the conditions hereafter stated:
- (a) The COACH agrees to pay the University all out-of-pocket costs incurred by the University in the filming or production of the show.
 - (b) Long distance phone calls, University supplies, printing, postage, University vehicles, etc., will be utilized on a complete University cost recovery basis.
 - (c) Complete records will be maintained regarding income and expenditures associated with said show and available for verification by University auditors.
 - (d) The COACH agrees to protect, indemnify and save harmless the University from and against any and all expenses, damages, claims, suits, actions, judgments, and costs whatsoever, including reasonable attorney's fees, arising out of or in any way connected with any claim or action for property loss, personal injury or death resulting from said show.
 - (e) The COACH is an independent contractor during said radio or television activities and, as a University employee, will undertake to observe all general rules and policies of the University. This paragraph is designated to assure that nothing be done which is inconsistent with the maintenance of an educational campus environment and the character of a State institution which makes its facilities open to persons without discrimination.
 - (f) The Director of Intercollegiate Athletics will be the administrative officer of the University who will be advised by the COACH of any problems or questions which may arise out of the radio or television show.
- 4.3 Any compensation received by COACH for the participation in the radio or television show shall be solely for the benefit of COACH and not the University, except for reimbursements as otherwise provided for herein and in accordance with University policy relating to camps or clinics conducted by Athletic Department personnel.

5.0 Camps and Clinics

- 5.1 COACH may operate a camp for the teaching of athletic pursuits on the University property to the end of better utilization of the facilities and with suitable compensation paid to the University for the use of such facilities. The use of University facilities will be determined by the availability of those facilities as established by the University. COACH must adhere to the Policy for Use of Campus Facilities.
- 5.2 It is specifically agreed that in the operation of such camps, COACH acts for himself/herself in his/her private capacity and not as an agent or employee of the University and that this contract constitutes merely a license to use the property and facilities subject to the conditions hereafter stated:
- (a) Special set-ups or changes in original set-up of facilities will be taken care of by the COACH with no cost to the University.
 - (b) The COACH agrees to pay the University all out-of-pocket costs incurred by the University in making the facilities available for the camps.
 - (c) The COACH agrees to secure a policy of insurance in a company approved by the University's Risk Management Office under which the Board of Supervisors of the University of Louisiana System, the University, its agents and servants, are named as the insured (or as an additional insured) which provides:
 1. Workers' Compensation and Employers Liability: Workers' Compensation limits as required by the Labor Code of the State of Louisiana and Employers Liability coverage if COACH hires any employees to work at such camps or clinics;
 2. Comprehensive General Liability: \$1,000,000 combined single limit per occurrence for bodily injury, personal injury, and property damage;
 3. Other Insurance Requirements: provided in the Policy for Use of Campus Facilities.
 - (d) Annual leave must be requested to cover the dates of the camp operation for all University personnel involved.
 - (e) Complete records will be maintained regarding income and expenditures associated with said camp and available for verification by University auditors.
 - (f) The COACH agrees to protect, indemnify and save harmless the University from and against any and all expenses, damages, claims, suits, actions, judgments, and costs whatsoever, including reasonable attorney's fees, arising out of or in any way connected with any claim or action for property loss, personal injury or death during the operation of said camp activities.
 - (g) The COACH is an independent contractor during said camp activities and, as such, is licensed to use certain facilities of the University. The COACH, as a University employee, will undertake to observe and require campers and its staff to conform to the general rules applicable to the use of University facilities. This paragraph is designated to assure that nothing be done which is inconsistent with the maintenance of an educational campus environment and the character of a State institution which makes its facilities open to persons without discrimination.
 - (h) The Director of Intercollegiate Athletics will be the administrative officer of the University who will be advised by the COACH of any problems or questions which may arise out of the operation of summer camps.

6.0 Courtesy / Leased Vehicle Benefit

- 6.1 The COACH may receive a courtesy/leased vehicle if an arrangement can be made through a local dealership. The benefit shall not be considered earned income for the purpose of computation of retirement benefits, and COACH shall be responsible for all applicable taxes. The University has no obligation to furnish a vehicle to COACH. The arrangements for a vehicle may be made by either the Athletics Director or COACH.
- 6.2 Insurance on any courtesy / leased vehicle must be paid for by the dealership, the COACH, or some other arrangement agreed to by the Athletics Director.
- 6.3 The COACH may be reimbursed for miles driving the courtesy / leased vehicle on school-sponsored business as authorized and approved following the University of Louisiana System Athletic Travel Policy No. IA-V.(2a).

7.0 Employee Benefits

- 7.1 The COACH shall participate in the mandatory employee benefit plans and be eligible for optional employee plans as would any other University unclassified employee. Such benefit will be based upon COACH's base annual salary as provided by University.

8.0 Outside Income and/or Benefits

- 8.1 With approval from the University President and in accordance with University and Board policies, COACH shall be authorized to earn other revenue while employed by the University, but such activities are independent of his/her University employment, and the University shall have no responsibility for any claims arising there from. COACH shall be entitled to retain revenue generated from his/her operation of **Women's Basketball** camps and/or **Women's Basketball** clinics in accordance with University policy relating to camps or clinics conducted by Athletic Department personnel. All outside income will be subject to approval in accordance with the Board of Supervisors for the University of Louisiana System policies (Adopted 2/24/95). Coach shall report annually in writing to President all athletically-related income, revenue, and/or benefits Coach receives from sources outside University, and Coach shall abide by all NCAA regulations regarding outside compensation. Examples of outside income include, without limitation, income or benefits from (1) Endorsement or consultation contracts with apparel companies, equipment manufacturers, or television or radio programs; (2) ownership, control, or management of a foundation, organization, or

other entity; and (3) participation in athletic camps outside of those offered by the University. All outside compensation must also comply with the Louisiana Code of Governmental Ethics.

- 8.2 Notwithstanding the above or anything else herein to the contrary, if COACH receives athletically related income or benefits totaling more than \$600 per year from any source or combination of sources other than Employer, COACH must report all such income or benefits to the PRESIDENT in writing at least annually. Examples include, without limitation, income or benefits from (1) endorsement or consultation contracts with apparel companies, equipment manufacturers, or television or radio programs; (2) ownership, control, or management of a foundation, organization, or other entity; and (3) participation in athletic camps outside of those offered by Employer (see Bylaw 11.2.2.).

9.0 Apparel, Equipment Endorsements

- 9.1 The University shall pay to COACH any funds for which he/she is responsible in obtaining for the University through his/her endorsements of show, apparel, or equipment manufacturers. The benefits shall not be considered earned income for the purpose of computation of retirement benefits, and COACH shall be responsible for all applicable taxes.

10.0 Compliance with NCAA and Conference Rules and Regulations, and University Policies and Procedures

- 10.1 COACH shall abide by the NCAA and Conference rules and regulations and the policies and procedures of the University. Pursuant to NCAA Bylaw 11.2.1, Coach understands that Coach has an affirmative obligation to cooperate fully in the infractions process, including the investigation and adjudication of a case (see NCAA Bylaw 19.2.3). If found in violation of NCAA regulations, COACH shall be subject to disciplinary or corrective action as set forth in the NCAA enforcement procedures (NCAA Constitution 11.2.1). If found in violation of Conference rules and regulations, or University policies and procedures, COACH shall be subject to disciplinary or corrective action as set forth by Conference rules and regulations or University policies and procedures. COACH may be suspended for a period of time, without pay, or the employment of COACH may be terminated if COACH is found to be involved in deliberate and serious, or repetitive, violations of NCAA regulations (NCAA Constitution 11.2.1), Conference rules and regulations, or University policies and procedures.
- 10.2 COACH shall also abide by the State of Louisiana Code of Government Ethics, University Policy and Procedures, and the policies and procedures of the University of Louisiana System. In public appearances he/she shall at all times conduct himself/herself in a manner that befits a University official and shall always attempt to create goodwill and a good image for the University.
- 10.3 COACH shall promote an atmosphere for compliance within the program supervised by the COACH and shall monitor the activities regarding compliance of all assistant coaches and other administrators involved with the program who report directly or indirectly to the COACH (NCAA Division I Bylaw 11.1.2.1 Responsibility of Head Coach).
- 10.4 COACH and Employer acknowledge and agree that (1) COACH has an affirmative obligation to cooperate fully in the NCAA infractions process, including the investigation and adjudication of a case (see NCAA Bylaw 19.2.3 for examples of full cooperation), and (2) an individual who is found in violation of NCAA regulations shall be subject to disciplinary or corrective action as set forth in the provisions of the NCAA infractions process (see NCAA Bylaw 19), including suspension without pay or termination of employment

11.0 Compliance with Local, State and Federal Laws

- 11.1 COACH shall abide by the laws of the local, state and federal governments. COACH may be suspended for a period of time, without pay, or the employment of COACH may be terminated if COACH is found to be involved in violation or gross disregard of local, state or federal laws.

12.0 Financial Incentive for Academic Success

- 12.1 COACH shall be eligible to receive a financial incentive for academic success within the Women's Basketball program as defined in the University Athletic Department policy. The policy is as follows:

“A head coach whose team's NCAA Multi-Year (Four-Year Rolling Average) Academic Progress Rate (APR) exceeds the national average for Division I public institutions for the reported academic year shall receive a financial incentive award in the amount of \$1,000. In addition, the full-time academic support, athletic department staff members may receive a financial incentive award in the amount of \$200 for each team that surpasses the aforementioned national benchmark. In order for a coach or staff member to be eligible to receive this award, the coach or staff member must have been employed at McNeese State University in their current capacity for at least one full academic year and subsequently would be eligible for the award at the conclusion of their second year.”

13.0 Women's Basketball Staff and Scheduling

- 13.1 Adhering to the University hiring policies, COACH shall have the authority to select associate / assistant coaches upon approval by the Athletics Director, the President, and the Board of Supervisors for the University of Louisiana System. Associate / assistant coaches shall be appointed as University unclassified personnel.

- 13.2 COACH shall be required to earn \$100,000 in Guarantee Game revenues. All scheduling must be reviewed and have final approval from the Director of Athletics and/or Sr. Associate AD for Finance. The Director of Athletics reserves the right to increase the above mentioned amount in a given year at his/her discretion.

14.0 Termination

- 14.1 Either party may terminate this agreement without just cause prior to the expiration of its terms by giving five (5) days written notice to the other party. Prior to termination of COACH, the University will obtain approval from the President of the University of Louisiana System.
- 14.2 COACH may be terminated by the Athletic Director at any time for violation or gross disregard of state or federal laws (excluding minor offenses or those punishable by citation), or deliberate and serious violations of NCAA, conference, or university rules, regulations, policies or procedures, or engaging in conduct, which is clearly contrary to the character and responsibilities of a person occupying the position of **Head Women's Basketball Coach** or which substantially negatively or substantially adversely affects the reputation of the University or McNeese State University athletics or for any violation of this contract; provided, however, prior to termination, University shall meet with COACH to notify him of alleged offending behavior under this clause, following which COACH will have fourteen (14) days to cure alleged offending behavior or violation. University shall provide a good faith opportunity for COACH to cure alleged behavior or violation. In the event of such termination, COACH will receive thirty (30) calendar days notice of termination or thirty (30) calendar day's regular pay in lieu of such notice. All compensation, including salary, benefits and other remuneration incidental to employment, cease upon termination. The judgment as to whether the conduct of COACH constitutes cause under this provision shall not be exercised arbitrarily, capriciously or in a discriminatory manner by the University. No damages or other amounts than are specified in this section 14.2 shall be due if termination is for just cause.
- 14.3 The University may at any time, and in its sole discretion, terminate the employment of COACH for any reason.
- (a) In the event the University terminates the contract, without cause, University shall pay to Coach, within ninety (90) days and on a date mutually agreed upon by University and COACH, an amount equal to all remaining compensation, including, but not limited to Base Salary (including the University Foundation Premium) and Benefits that would have been due to COACH under this Agreement had COACH remained employed by University from the date of termination through the end of the Term. Any lump sum payments shall be paid in lump sum on the date the payment would have been due and payable had the COACH remained employed until the expiration of the Term. In addition, University will pay to COACH, within thirty (30) days in which University exercises its right to Terminate this Agreement without cause, any compensation or Bonus 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. The parties agree that any amounts due beyond the current fiscal year shall be funded solely by the McNeese State University Foundation athletic related accounts.
- 14.4 In the event COACH terminates this Contract without cause to accept a position as a head or assistant basketball coach at a different University or Community College or other educational organization or any professional athletic organization, COACH or third party shall pay University the following amounts which shall be deemed as agreed upon liquidated damages owed to McNeese State University because the costs the University will incur to search for and hire a new basketball head coach are difficult to determine. COACH shall have no further liability under this Agreement upon University's full reimbursement by a third party for the liquidated damages. Such liquidated damages shall be received by University within 90 days of termination. The amount of such reimbursements will be calculated as follows:
- If COACH terminates the contract between April 1, 2021 and March 31, 2022, University shall be entitled to receive 100% of base salary from that year (\$110,000), from COACH or from third party.
 - If COACH terminates the contract between April 1, 2022 and March 31, 2023, University shall be entitled to receive 75% of base salary from that year (\$82,500), from COACH or from third party.
 - If COACH terminates the contract between April 1, 2023 and April 14, 2024, University shall be entitled to receive 50% of base salary from that year (\$55,000), from COACH or from third party.
 - If COACH terminates the contract between April 15, 2024 and April 14, 2025, University shall be entitled to receive 0% of base salary from that year (\$0), from COACH or from third party.
 - If COACH terminates the contract at any time to take the Head Women's Coaching Position at The University of New Mexico in Albuquerque, University shall be entitled to receive 0% of base salary from that year (\$0), from COACH or from third party.

14.5 COACH shall promptly report to the University's Title IX Coordinator or Deputy Title IX Coordinator any Known Violation(s) of the University or the University of Louisiana System's Sexual Misconduct Policy (including, but not limited to sexual harassment, sexual assault, sexual exploitation, domestic violence and stalking) that involve any student, faculty, or staff or that is in connection with a University sponsored activity or event. Any emergency situation shall be immediately reported to 911 and/or law enforcement. For purposes of this paragraph, a "Known Violation" shall mean a violation or an allegation of a violation of Title IX and/or the University's or the University of Louisiana System's Sexual Misconduct Policy that COACH is aware of or has reasonable cause to believe is taking place or may have taken place.

The University may terminate this Agreement for cause pursuant to the for-cause-termination provisions of this Agreement for any determined violation by COACH for failure to report a Known Violation of: Title IX of the Education Amendments of 1972; the University's Sexual Misconduct Policy; or the University of Louisiana System's Sexual Misconduct Policy.

14.6 Should COACH's contract be terminated for just cause, the University shall not be liable for any payments or benefits specified in this contract past the effective date of termination. Just cause for termination shall include, but not be limited to:

- (a) violation or gross disregard of local, state, or federal laws, NCAA or Conference rules or regulations, or University policies or procedures, as well as
- (b) engaging in conduct, as solely determined by the University, which is clearly contrary to the character and responsibilities of a person occupying the position of Head Women's Basketball Coach or which negatively or adversely affects the reputation of the University or McNeese State Athletics in any way.

15.0 Fundraising

15.1 All fundraising activities by COACH must be pre-approved by the Director, or his designee, and coordinated with the Vice President for University Advancement to ensure that such activities are in line with the mission of the department and in compliance with University policies.

16.0 Severability

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

17.0 Force Majeure

17.1 Neither party shall be considered in default performance of his or its obligations under this Contract if such performance is prevented or delayed by Force Majeure. "Force Majeure" shall be understood to be any cause which is beyond the reasonable control of the party affected and which is forthwith, by notice from the party affected, brought to the attention of the other party, including but not limited to war, hostilities, revolution, civil commotion, strike, lockout, epidemic, accident, fire, wind or flood or any requirements of law, or an act of God.

18.0 Previous Agreements

18.1 This employment contract shall supersede and replace any and all previous employment contracts that may have been entered between the parties to this agreement.

IN WITNESS WHEREOF, the parties have executed this act in the presence of the undersigned competent witness.

WITNESSES:

Cathy Deville
Cathy Deville
Cathy Deville
Deb Kingrey

[Signature] Date 3/30/21
 LYNN KENNEDY, Head Women's Basketball Coach
 McNeese State University

[Signature] Date 3-29-21
 Heath Schroyer, Director of Athletics
 McNeese State University

Wade Rouse Date 3-30-21
 Dr. Wade Rouse, Vice President
 McNeese Foundation

[Signature] Date 3.30.21
 Dr. Daryl V. Burckel, President
 McNeese State University

Approved by the Board of Supervisors of the University of Louisiana System at its meeting on the _____ day of
_____, 20_____.

SECRETARY – Board of Supervisors