

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

ATHLETIC COMMITTEE

April 4, 2023

Item G.5. **McNeese State University's** request for approval of a contract with Mr. Frank William Wade, Head Men's Basketball Coach, effective March 10, 2023.

EXECUTIVE SUMMARY

Under this five-year agreement, through April 30, 2028, Coach will earn \$200,000 base salary in year one, and the McNeese State University Foundation will provide an annual premium benefit to the base pay as follows, year two \$25,000, year three \$50,000, year four \$50,000, and year five \$50,000. In addition, Coach is eligible to receive the following incentive compensation from the Foundation:

Basketball Incentives:

- \$5,000 – Conference Regular Season Championship
- \$5,000 – Conference Tournament-finals appearance
- \$15,000 – Conference Tournament Championship
- \$25,000 – Each win at the NCAA Tournament
- \$2,500 – NIT tournament appearance
- \$1,000 – Each win of the NIT tournament
- \$10,000 – Conference Coach of the Year
- \$20,000 – National Coach of the Year (limit of one)

Academic Incentives:

- \$1,500 – Coach shall receive a financial incentive award for each team with a NCAA Single Year Academic Progress Rate (APR) score that is at or above 985.
- \$1,500 – Coach shall receive a financial incentive for each team with a NCAA Multi Year Academic Progress Rate with a score at or above 975.

If the University terminates the agreement without cause, the Coach shall be entitled to remainder of the base salary and any bonus compensation actually earned or accrued. 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 March 10, 2023 and April 30, 2024, University shall be entitled to receive \$1,000,000 from Coach or from third party.
- If Coach terminates the contract between May 1, 2024 and April 30, 2025, University shall be entitled to receive \$500,000 from Coach or from third party.
- If Coach terminates the contract between May 1, 2025 and April 30, 2026, University shall be entitled to receive \$250,000 from Coach or from third party.
- If Coach terminates the contract between May 1, 2026 and April 20, 2027, University shall be entitled to receive \$250,000 from Coach or from third party.
- If Coach terminates the contract between May 1, 2027 and April 20, 2028, University shall be entitled to receive \$0 (zero) 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. Frank William Wade, Head Men's Basketball Coach, effective March 10, 2023.

CONTRACT OF EMPLOYMENT

STATE OF LOUISIANA

PARISH OF CALCASIEU

This contract is made and entered into between McNeese State University (the "University") through its President, Dr. Daryl V. Burckel, McNeese State University Foundation ("Foundation") represented by Dr. Wade Rouse, and Frank William Wade (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" or "McNeese State University") does hereby employ COACH as **Head Basketball Coach** and COACH does hereby accept employment and agrees to perform all of the services pertaining to 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 the University's Athletics Director.
- 1.2 COACH shall be responsible, and shall report, directly to McNeese State 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 program-related duties in McNeese State University's athletic program as the Director may reasonably assign.
- 1.4 COACH agrees to represent McNeese State University positively at all times and in public or in private. Further, at all times, COACH 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 sixty (60) months, commencing on the **10th day of March, 2023** and terminating without further notice to COACH on the **April 30, 2028**.
- 2.2 **After April 30, 2028**, 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 agreement may only be amended or extended at any time during the period of this contract by mutual written agreement of all parties.

3.0 Compensation

- 3.1 In consideration of COACH'S services and satisfactory performance of this contract, McNeese State University shall pay COACH an annualized salary ("Base Salary"), payable on a monthly basis, for the term of this contract as follows:
 - (a.) From March 10, 2023 through April 30, 2024- \$200,000.00
 - (b.) From May 1, 2024 through April 30, 2025- \$225,000.00
 - (c.) From May 1, 2025 through April 30, 2026- \$250,000.00
 - (d.) From May 1, 2026 through April 30, 2027- \$250,000.00
 - (e.) From May 1, 2027 through April 30, 2028- \$250,000.00
- 3.2 Should the contract be terminated for any reason, amounts due shall be determined in accordance with section 13 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.
- 3.6 The above Base Salary in 3.1 shall be comprised of a McNeese State University Base Salary amount of \$200,000.00 and a McNeese State University Foundation annual premium benefit of the balance of the Base Salary. The Foundation shall pay the annual premium benefit in equal monthly installments. 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 any increased related benefit payments or costs associated with the annual premium benefit and Foundation shall pay McNeese State University such payments or costs upon demand by McNeese State University.
- 3.7 During the Term, COACH shall have the opportunity to earn bonus compensation each contract year as follows (with such amounts payable to COACH within thirty (30) days of such achievement):

\$5,000	Conference Regular Season Championship
\$5,000	Conference Tournament- finals appearance
\$15,000	Conference Tournament Championship
\$25,000	Each win at the NCAA tournament
\$2,500	NIT tournament appearance
\$1,000	Each win at the NIT tournament
\$10,000	Conference Coach of the Year
\$20,000	National Coach of the Year (limit of one)
\$1,500	Coach shall receive a financial incentive award for each team with a NCAA Single Year Academic Progress Rate (APR) score that is at or above 985.
\$1,500	Coach shall receive a financial incentive for each team with a NCAA Multi Year Academic Progress Rate with a score at or above 975

4.0 Contracts for Broadcast and/or Telecast

- 4.1 COACH must receive approval from the Director to host a radio or television show to promote the McNeese State University Basketball Team.
- 4.2 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) COACH agrees to pay the University all out-of-pocket costs incurred by the University in making the facilities available for the camps.
 - (c) 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) 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) 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.
- 5.3 Any compensation received by COACH for the participation in camps or clinics 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.

6.0 Courtesy / Leased Vehicle and Miscellaneous Benefits

- 6.1 COACH may receive a courtesy/leased vehicle if an arrangement can be made through a mutually agreed upon 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; provided, however, in the event University is unable to furnish COACH a vehicle, it shall provide him with a monthly allowance as described in Section 6.1(a). The arrangements for a vehicle may be made by either the Athletics Director or COACH.
- (a) Should a courtesy/leased vehicle arrangement not be available with a local dealership COACH shall receive a monthly monetary allowance of \$500.00 toward the expense of a vehicle. Funding for the allowance must originate from sources outside of the University, and an amount equal to the annual sum of the allowance must be transferred to the University upon signature of this agreement. The University will disburse the allowance to COACH in equal monthly installments using University normal payroll procedures.
- 6.2 Insurance on any courtesy / leased vehicle must be paid for by the COACH.
- 6.3 COACH shall 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 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 Salary as provided by University.

- 7.2 Within thirty (30) days of the commencement date, COACH shall be provided a moving stipend in the amount of \$20,000, paid by Foundation. In addition, Foundation shall provide COACH with temporary housing for a period of up to sixty (60) days.
- 7.3 University shall provide COACH a reasonable number of priority-level tickets to all home and post-season games that the University participates in.
- 7.4 COACH's spouse and immediate family shall be permitted to travel to all post-season games at no additional cost to COACH, paid by Foundation.

8.0 Outside Income-Subject to Compliance with Board Rules

- 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 basketball camps and/or 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.

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

- 9.1 COACH shall abide by the NCAA and Conference rules and regulations and the policies and procedures of the University. COACH agrees that COACH has an affirmative obligation to cooperate fully in the NCAA infractions process, including the investigation and adjudication of a case as defined in NCAA Bylaw 19.2.3. If found in violation of NCAA regulations, COACH shall comply with any disciplinary or corrective action as set forth in the NCAA enforcement procedures (NCAA Constitution 11.2.1) or other settlements or agreements with the NCAA. If found in violation of Conference rules and regulations, or University policies and procedures, COACH shall comply with any 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.
- 9.2 If at any time Coach is prohibited for more than one (1) season from performing athletic related activities, as a result of any NCAA or Conference ruling, determination or settlement agreement related to NCAA or Conference rule violations by Coach at any time before the date of this agreement, this contract may, at the sole option of the University and upon notice by the University, immediately be renegotiated or terminated as of any such determination, ruling or settlement, regardless of any pending appeals or related litigation, and, in such event, Coach shall be owed nothing.

Notwithstanding the language contained herein, University acknowledges and agrees that Coach's employment shall not be terminable for cause in the event of a minor, technical, or otherwise immaterial violation of an applicable rule, regulation, or policy, or for an NCAA or Conference violation which does not entail the risk of major institutional penalties, or unless the presence of mitigating factors (as defined in NCAA Bylaw 19.9.4) is outweighed by the presence of aggravating factors (as defined in NCAA Bylaw 19.9.3) in the event of an NCAA Level II violation. University further acknowledges and agrees that prior to invoking its right to terminate Coach for cause, Coach will be afforded a reasonable opportunity to cure any default or breach in a timely manner, provided such default is of a nature that is capable of being cured (as determined in the University's reasonable discretion) and can reasonably be accomplished without significantly discrediting or damaging the University's reputation or standing in the community, or creating an unreasonable risk of harm to any student-athlete or staff-member.

- 9.3 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.

- 9.4 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).
- 9.5 In addition to the other provisions of this agreement and regardless of any NCAA or Conference rulings, determinations, enforcement actions or settlement agreements arising out of any prior employment at any time of COACH, COACH shall comply with the following provisions commencing as of the effective date of this agreement;
- COACH shall serve a five (5) game suspension in the 2023-2024 basketball season.
 - McNeese will hire, and COACH shall work with, an additional compliance officer to ensure the strict compliance of NCAA rules.
 - COACH shall submit a weekly report on all recruiting activities, which will include phone calls, texts etc... This weekly report will be submitted to Ms. Bridget Martin, Deputy Athletic Director for compliance or her replacement designated by Director. The Athletic Department will forward this weekly report to the Southland Conference league office.
 - COACH and his staff shall participate in mandatory weekly NCAA compliance education classes conducted by Ms. Bridget Martin, Deputy Athletic Director for compliance or her replacement designated by Director.
 - COACH shall not be permitted to have any off campus recruiting related activities from date of hire through July 31 of 2023.
 - COACH shall reduce official visits by 4 during the 2023/2024 academic years.
 - COACH shall be banned from all recruiting conversations between September 1 2023 through October 15 2023.
 - COACH shall be banned from having any unofficial visits from September 1 2023 through October 15 2023

10.0 Compliance with Local, State and Federal Laws

- 10.1 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.

11.0 Financial Incentive for Academic Success

- 11.1 COACH shall be eligible to receive a financial incentive for academic success within the basketball program as defined in the University Athletic Department policy.

12.0 Basketball Staff

- 12.1 Adhering to the University hiring policies, COACH shall have the authority to select, manage, discipline, and terminate associate / assistant coaches and other support staff who report directly to COACH, upon approval by the Director, the President, and the Board of Supervisors for the University of Louisiana System. Associate / assistant coaches shall be appointed as University unclassified personnel. University agrees that Coach may employ 3 full-time assistant coaches, and one (1) director of basketball operations. The assistant coach annual salary pool for the three (3) full-time assistant coaches shall be \$240,000. The director of basketball operations may earn up to \$30,000 per fiscal year. COACH will be allowed to hire a video coordinator with a \$15,000 stipend, and COACH will be allowed to hire a strength coach as part of the Athletic Department's strength and conditioning staff.

13.0 Termination

- 13.1 Either party may terminate this agreement without just cause prior to the expiration of its terms by giving prior 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.
- 13.2 As to conduct after the date of this contract, COACH may be terminated by the Director at any time for a material violation or intentional or gross disregard of state or federal laws (excluding misdemeanor criminal offenses or those punishable by citation), or deliberate or serious violations of NCAA, conference, or university rules, regulations, policies or procedures, or engaging in or refusing to engage in conduct, including that which is set

forth in section 10.4 above, which is clearly contrary to the character and responsibilities of a person occupying the position of Head 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 Base Salary in lieu of such notice. All compensation, including Base 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 13.2 shall be due if termination is for just cause.

13.3 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, Foundation shall pay to Coach, within ninety (90) days and on a date mutually agreed upon by Foundation and COACH, an amount in a lump sum (less any required tax withholdings) equal to all Base Salary 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. In addition, the Foundation 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.

13.4 In the event COACH terminates this Contract to accept employment in a basketball related position at a different public or private University, College or Community College or other educational organization or any professional athletic organization, COACH or third party shall pay University the following amount 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, except COACH shall be entitled to receive from the University any theretofore earned but unpaid compensation. Such liquidated damages shall be due and received by University as follows: (i) 50% of such amount within 90 days of the termination of this contract, and (ii) the remaining balance of such amount within one (1) year of the termination of this contract. If such amounts are not timely paid, the amount owed shall bear interest at the rate of eight percent per annum. The amount of such reimbursement will be calculated as follows:

- If COACH terminates the contract between March 10, 2023 and April 30, 2024, University shall be entitled to receive \$1,000,000, from COACH or from third party.
- If COACH terminates the contract between May 1, 2024 and April 30, 2025, University shall be entitled to receive \$500,000, from COACH or from third party.
- If COACH terminates the contract between May 1, 2025 and April 30, 2026, University shall be entitled to receive \$250,000, from COACH or from third party.
- If COACH terminates the contract between May 1, 2026 and April 20 2027, University shall be entitled to receive \$250,000, from COACH or from third party.
- If COACH terminates the contract between May 1, 2027 through April 20, 2028, University shall be entitled to receive \$0 (zero), from COACH or from third party.
- If Coach terminates this contract for any other reason than becoming employed in any position as described in this section 13.4, including without limitation, age or disability retirement, medically documented health reasons, medically documented disability, then COACH shall have no responsibility, obligation or liability for any liquidated damages to the University.

14.0 Fundraising

14.1 University agrees COACH may participate in fundraising activities that are in line with the mission of the department, in compliance with University policies, and approved by the Director. University recognizes COACH as a person who beholds strong relationships with individuals throughout the state of Louisiana, and will grant COACH every reasonable opportunity to raise funds for the betterment of the University basketball program and

its student-athletes by securing funds for the Basketball General Fund. No fundraising activities by COACH may be unreasonably withheld by University.

14.2 University acknowledges and agrees that COACH's primary responsibility is in coaching the team (to include, but not be limited to, recruiting players, managing COACH's staff, practicing the team, instructing members of the team, game planning, etc.), and any requests for additional services from COACH shall be reasonable in scope, limited, and subject to COACH's primary responsibility.

15.0 Severability

15.1 If any provision of the Agreement 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 to alter the bounds thereof in order to render it valid and enforceable.

16.0 Force Majeure

16.1 Neither party shall be considered in default performance of his or its obligations under this Agreement 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.

17.0 Previous Agreements

17.1 This employment contract shall supersede and replace any and all previous employment contracts or any previous oral or written communications that may have been entered into or undertaken between any of the parties to this agreement or their representatives.

18.0 Electronic Signature

Both parties agree that an electronic signature of a party, whether digital or encrypted, included in this Agreement is intended to authenticate this writing and to have the same force and effect as a manual signature. Delivery of a copy of this Agreement bearing an original or electronic signature by electronic mail in "portable document format" (".pdf") form, or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, will have the same effect as physical delivery of the paper document bearing an original or electronic signature.

19.0 Title IX and Sexual Misconduct Policy Reporting and Compliance:

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:

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.

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

WITNESSES:

John R. Boh Frank W. W... Date 3/10/23
Head Men's Basketball Coach
McNeese State University

John R. Boh [Signature] Date 3/10/23
Heath Schroyer, Director of Athletics
McNeese State University

John R. Boh Wade Rouse Date 3/10/23
Wade Rouse, Vice President
McNeese Foundation

Jessica Pousson [Signature] Date 3-10-23
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/OFFICER – Board of Supervisors

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

ATHLETIC COMMITTEE

April 27, 2023

Item G.6. **Nicholls State University's** request for approval of a contract with Ms. Jonea Rima, Head Volleyball Coach, effective March 15, 2023.

EXECUTIVE SUMMARY

Under the proposed new agreement, effective through December 1, 2028, Coach's annual salary is \$56,000 per year. The base salary funded by the University is \$50,020 and \$3,980 funded by the Colonel Athletic Association (CAA). During the time of employment, Coach will have the opportunity to receive the following earned salary supplements/incentives, funded by the CAA:

- (a) \$2,000 – Regular Season Conference Championship in the sport of volleyball or beach volleyball
- (b) \$2,000 – Southland Conference Tournament Championship (in a year where Coach wins regular season and tournament championship, only the tournament championship incentive would apply) in the sport of volleyball or beach volleyball
- (c) \$1,000 – Conference “Coach of the Year” honors as determined by the Southland Conference in the sport of volleyball or beach volleyball
- (d) \$2,000 – Per victory in the NCAA Tournament in the sport of volleyball or beach volleyball
- (e) \$500 – Any contract year in which the team's cumulative GPA is 3.4 or greater in the sport of volleyball or beach volleyball
- (f) \$500 – Any contract year in which the volleyball team's NCAA multiyear APR (academic performance rate) is 980 or above
- (g) \$500 – Any contract in year in which the volleyball team's GSR (graduation success rate) is 85% or above

Coach is also eligible to participate and receive incentives as outlined in the Nicholls State University Athletics Incentives for Head Coaches.

In the event University terminates the contract in any year without cause, Coach is entitled to the following: Year 1 - \$56,000; Year 2 - \$36,000; Year 3 - \$20,000; and in Year 4 - the remaining amount owed for the year, prorated to date of termination, up to \$20,000. Amounts due for the year, which come due during the current fiscal year ending June 30, shall be paid by the

University. The remaining amounts due, which come due beyond the current fiscal year, shall be funded solely by the Colonel Athletic Association.

If Coach terminates the agreement without cause to become employed as a volleyball coach or staff member of any rank or standing with another institution, Coach would be liable to the University for liquidated damages of \$5,000.

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 Nicholls State University's request for approval of a contract with Ms. Jonea Rima, Head Volleyball Coach, effective March 15, 2023.*



G.6.

Nicholls State University

Office of the President

P.O. Box 2001 | Thibodaux, LA 70310 | 985.448.4003 | 985.448.4920 [F]

April 5, 2023

Via Electronic Transmittal Only

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

Dear Dr. Henderson:

Nicholls State University requests consideration and approval of the following to be placed on the agenda for the April 27, 2023 meeting of the Board of Supervisors for the University of Louisiana System:

Employment Contract-Jonea Rima.

Thank you for your assistance in this matter.

Sincerely,

Jay Clune, PhD
President

JC/apf

Enclosures

- c: Dr. Sue Westbrook, Provost/Vice President for Academic Affairs
- Mr. Terry Braud, Vice President for Finance & Administration
- Mr. Jonathan Terrell, Athletic Director
- Dr. Michele Caruso, Vice President for Student Affairs
- Dr. Todd Keller, Vice Provost
- Ms. Alison Hadaway, Director of Human Resources
- Ms. Paulette Mayon, Internal Auditor
- Ms. Claire Bourgeois, Faculty Senate President
- Ms. Renee Hicks, Assistant Vice President of Institutional Effectiveness Access & Success
- Ms. Monique Crochet, Executive Director of External & Alumni Affairs

**CONTRACT OF EMPLOYMENT
HEAD VOLLEYBALL COACH**

STATE OF LOUISIANA

PARISH OF LAFOURCHE

This agreement is made and entered into on the 15th day of March 2023, between Nicholls State University through its President, Dr. John Clune, Jr., the Colonel Athletic Association (hereinafter "CAA") through its Executive Director, Mr. Jonathan Terrell, and Ms. Jonea Rima (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 Nicholls State University, and therefore the terms and conditions set forth in this agreement should not be considered a valid contract until approval is provided by the Board.

1.1 Employment

1.2 Nicholls State University (the "University") does hereby employ COACH as head volleyball coach and COACH does hereby accept employment and agrees to perform all of the services pertaining to volleyball (athletic program), 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.

1.3 COACH shall be responsible, and shall report, directly to Nicholls State 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 the Nicholls State University President.

- 1.4 COACH shall manage and supervise the team and shall perform such other duties related to the volleyball program and Nicholls State University's athletic program as the Director may reasonably assign (but in no event shall such other duties constitute a reassignment to another position at Nicholls State University).
- 1.5 COACH agrees to represent Nicholls State University positively in public and private forums. In public appearances COACH shall at all times conduct herself in a manner that benefits a University official and shall always attempt to create goodwill and a good image for the University. COACH shall not engage in conduct that reflects adversely on the University or its athletic programs.
- 1.6 Due to the nature of the position, the Board of Supervisors prohibits the earning of compensatory time. In lieu of compensatory time, COACH will be exempted from having to take leave when the university is officially closed.

2.1 Term

- 2.2 The "Term" of this Agreement is for a fixed period commencing on the 15th day of March 2023, and terminating without further notice to COACH on the 1st day of December, 2028, unless extended under the terms of this Agreement.
- 2.3 This Agreement is renewable solely upon an offer from the Nicholls State University president and an acceptance by COACH, both of which must be in writing, signed by the parties, and approved by the Board. This Agreement in no way grants COACH a claim to tenure in employment, nor shall COACH'S service pursuant to this Agreement count in any way toward tenure at Nicholls State University.

2.4 This Agreement may be amended or extended at any time during the Term of this Agreement by mutual signed agreement of both parties, and approved by the Board.

3.1 Compensation

3.2 In consideration of COACH'S services and satisfactory performance of this agreement, the University shall pay COACH an annual base salary of Fifty-Six Thousand Dollars (\$56,000.00) per year for the Term of this agreement, on a bi-weekly basis, as well as all related benefits, subject to applicable taxes. COACH's annual base salary shall be funded as follows: the sum of Fifty-Two Thousand Twenty Dollars (\$52,020.00) shall be funded directly by the University and the sum of Three Thousand Nine Hundred Eighty Dollars (\$3,980.00) shall be funded by the CAA and paid through the University to COACH.

3.3 COACH may be eligible for annual cost of living or merit pay increases in addition to the stated base salary. The COACH also may be subject to pay adjustments according to economic circumstances that affect all employees of the University in the unclassified staff service.

3.4 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 Paragraph 10.

4.0 Incentive Compensation

4.1 During the Term of this Agreement, COACH will have the opportunity to receive the following earned salary supplements/incentives. These salary supplements /

incentives are cumulative, unless otherwise stated, and shall be subject to all mandatory withholdings and are inclusive of employer matches for retirement and Medicare payments. The supplements shall be funded by the Colonel Athletic Association (CAA) and paid through University payroll.

- (a) \$2,000 – Regular Season Conference Championship in the sport of volleyball or beach volleyball
- (b) \$2,000 – Southland Conference Tournament Championship (in a year where COACH wins regular season and tournament championship, only the tournament championship incentive would apply) in the sport of volleyball or beach volleyball
- (c) \$1,000 - Conference “Coach of the Year” honors as determined by the Southland Conference in the sport of volleyball or beach volleyball
- (d) \$2,000 – Per victory in the NCAA Tournament in the sport of volleyball or beach volleyball
- (e) \$500 – Any contract year in which the team’s cumulative GPA is 3.4 or greater in the sport of volleyball or beach volleyball
- (f) \$500 – Any contract year in which the volleyball team’s NCAA multiyear APR (academic performance rate) is 980 or above
- (g) \$500 – Any contract in year in which the volleyball team’s GSR (graduation success rate) is 85% or above

4.2 Incentives for Head Coaches: COACH is eligible to participate and receive incentives in addition to and above the incentives in section 4.0 as outlined and according to the terms in the policy "Nicholls State University Athletics Incentives for Head Coaches" as long as said policy remains in existence and is active.

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, but in no event shall said suitable compensation reward University a profit. The use of University facilities will be determined by the availability of those facilities as established by the University. Any monies earned during said camp or camps in excess of compensation paid to the University and all expenses related to the camp or camps shall be fully retained by COACH.

5.2 It is specifically agreed that in the operation of any private camp (LLC), COACH acts in private capacity and not as an agent or employee of the University and such agreement constitutes merely a license to use the property and facilities subject to the conditions hereafter stated:

- a) 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:
 - A. 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.
 - B. Comprehensive General Liability: \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage.
- b) Annual leave must be requested to cover the dates of the camp operation for all University personnel involved.
- c) Complete records will be maintained regarding income and expenditures associated with said camp and available for verification by University auditors.
- d) 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 education campus environment and the character of a State institution which makes facilities open to persons without discrimination.

- e) 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 Employee Benefits

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

7.0 Outside Income-Subject to Compliance with Board Rules

- 7.1 The COACH shall be authorized to earn other revenue while employed by the University. Such activities are independent of COACH's University employment and the University shall have no responsibility for any claims arising there from. COACH shall be entitled to retain revenue generated from operation of volleyball camps and/or volleyball clinics in accordance with University policy relating to camps or clinics conducted by Athletic Department personnel and as noted in section 5.0. All outside employment and income will be subject to approval in accordance with the Board of Supervisors for the University of Louisiana System and University policies.
- 7.2 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 the University, COACH must report all such income or benefits to the University 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 the University.

8.0 Compliance with NCAA, Conference, University, System, and State Rules

8.1 In accordance with NCAA Constitution 11.2.1, COACH shall abide by the rules and regulations of the NCAA, Conference and University rules. If found in violation of NCAA regulations, COACH shall be subject to disciplinary or corrective action as set forth in the provisions of the NCAA infractions process, including suspension without pay or termination of employment for significant or repetitive violations; provided, however, COACH's employment may only be terminated under this Agreement if COACH is found, after the exhaustion of all appeals, to be in violation of a Level I or Level II violation as set forth more specifically below.

8.2 COACH bears the responsibility of using her best efforts to ensure that the Volleyball team maintains at least the minimum APR threshold of 930. Increasing APR scores is a product of recruiting academically ambitious student-athletes. It is the responsibility of COACH to ensure that student-athletes are maintaining their eligibility. Academic achievement and student-athlete graduation are of the highest priority for student-athletes. If the minimum APR threshold is increased by the NCAA during the Term of this Agreement, this paragraph will be amended to reflect the same.

8.3 COACH shall also abide by the State of Louisiana Code of Government Ethics, University Policy and Regulations, and the policies and regulations of the University of Louisiana System. In public appearances she shall at all times conduct herself in a manner that befits a University official and shall always attempt to create goodwill and a positive image for the University.

8.4 COACH and University 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.

9.0 Volleyball Staff

9.1 COACH shall have the authority to select unclassified volleyball personnel upon authorization by the Athletic Director and approval by the Board of Supervisors for the University of Louisiana System following the University hiring policies.

9.2 COACH is expected to supervise the volleyball staff in compliance with NCAA, Conference and University rules and regulations. Further as described in NCAA Constitution 11.1.1.1, Responsibility of Head Coach., COACH is responsible for the actions of all institutional staff members who report, directly or indirectly, to the COACH, and it is COACH's responsibility to promote an atmosphere of compliance within the volleyball program and to monitor the activities regarding compliance of all assistant coaches and other administrators involved with the program.

9.3 During the Term of this agreement, the aggregate salary pool for volleyball personnel shall be a minimum of Thirty-Four Thousand Six Hundred Twenty-Two Dollars (\$34,622.00) and up to Twelve Thousand Dollars (\$12,000.00) for an Intern or up to Five Thousand Dollars (\$5,000) plus tuition and fees up to nine credit hours per semester for a Graduate Assistant per University policies. Such compensation shall be allocated to the staff by COACH's discretion and subject to approval of the University President and Athletic Director whose approval shall not be unreasonably withheld. COACH and University will work in good faith to establish a reasonable incentive bonus pool for staff to be allocated by COACH's discretion and subject to approval of the University President and Athletic Director whose approval shall not be unreasonably withheld. The University shall pay these sums as they become due.

10.0 Termination

10.1 Either party may terminate this agreement without just cause prior to the expiration of its terms by giving (30) days written notice to the other party, and by fulfilling the termination obligations set forth in Section 10.3 or 10.4. Prior to the termination of COACH, UNIVERSITY will obtain approval from the President of the University of Louisiana System.

10.2 (a) COACH may be terminated by the Director at any time for misconduct, substantial and manifest incompetence, violation or gross disregard of state or federal laws constituting a felony, and deliberate, repetitive and serious violations of NCAA that rise to a Level I or Level II violation (as defined by the NCAA Rules as amended from time to time), conference, or university rules, regulations, policies, or procedures, or availability of sufficient funding as provided by the

Louisiana Legislature in its annual Appropriation of funds to the Institution (“Termination For Cause”). In the event of such Termination for Cause, COACH will receive thirty (30) calendar days’ notice of termination, and such Termination for Cause shall be subject to COACH’s Right to Remedy under 10.2(b). 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, and shall be subject to COACH’s Right to Remedy under Section 10.2(b). No damages shall be due if termination is for just “Cause”.

(b) Prior to issuing a notice of termination or suspension, University shall give COACH a written notice of a violation, detailing the reasons for such termination or suspension, and provide COACH the “Right to Remedy” it within thirty (30) days (“Cure Period”) unless the reasons for such termination or suspension are not susceptible to being cured. Notwithstanding the foregoing, COACH shall not be suspended or terminated, and pay shall not be withheld, during the Cure Period set forth in this Section 10.2(b), unless the reasons for such termination or suspension are not susceptible to being cured.

(c) COACH may be terminated with cause for failure to promptly report to the University’s Title IX Coordinator or the Athletic Department’s Senior Woman Administrator or law enforcement in the case of an emergency any illegal gender discrimination, sexual harassment, sexual assault, sexual exploitation, intimate partner violence, stalking, and/or related retaliation.

10.3 The University may at any time, and in its sole discretion, terminate the employment of COACH for any reason (“Termination Without Cause”). In the event the University terminates the Contract during any year as noted below, without cause, the COACH shall be entitled to the following payment as set forth below:

-Year 1 of the contract: \$56,000.00

-Year 2 of the contract: \$36,000.00

-Year 3 of the contract: \$20,000.00

-Year 4 of the contract: The remaining amount owed for the year, prorated to date of termination, up to \$20,000.

Amounts listed above are not cumulative and COACH shall only be entitled to the applicable amount noted above for the year in which an event of termination may occur. Amounts due as liquidated damages which come due during the University’s current fiscal year in which COACH is terminated without cause, ending June 30 shall be paid by the University, while all other amounts due shall be paid by the CAA. The liquidated damages shall be due and payable in the same manner as outlined in Section 3.1.

Notwithstanding anything to the contrary contained in this section 10, to the extent applicable, the parties acknowledge that Code section 457(f) may require some or all of the bi-weekly payments described above to be taxable to COACH before their scheduled payment dates. Therefore, unless in the reasonable opinion of the University’s counsel that Code section 457(f) does not apply, the University will pay the Applicable Portion (as defined below) of amounts due as set forth above before the scheduled payment dates to the extent permitted by

Treasury Regulation Section 1.409A-3(j)(4)(iv) (a “Tax Distribution”); each subsequent payment shall be reduced by a prorated portion of any Tax Distribution. The “Applicable Portion” means an amount, as determined by the University, equal to the federal, state, local, and foreign income tax withholding that would have been remitted by the University if there had been a payment of wages equal to the income includible by COACH under Code Section 457(f) at the relevant time.¹

10.4 In the event COACH terminates this Agreement without cause during the Term to become a volleyball coach or staff member of any rank or standing with another institution, then, COACH or a designee of COACH shall pay to the University, in lieu of all other legal remedies, liquidated damages of Five Thousand Dollars (\$5,000.00). The liquidated damages shall be due and payable within forty-five (45) days from the date of termination. If COACH terminates this Agreement for health or personal reasons, then COACH shall have no responsibility, obligation, or liability to the University. Notwithstanding anything to the contrary contained in this Agreement, University agrees that COACH’s obligations as contained in this Section 10.4 shall be waived by the University if the University’s volleyball program is no longer a participating member of the Southland Conference or another Division-I conference.

10.5 COACH may be terminated by the Athletic Director at any time for just cause. Just cause for termination of COACH shall include, but is not limited to, a knowing or willful violation or gross disregard of state or federal laws, NCAA or Conference regulations or University policies or procedures; COACH’s

¹ Language is intended to track language in 409A regulations that permits deferred compensation to be accelerated upon a Code 457(f) income inclusion event.

unreasonable failure to utilize her best efforts in the fulfillment of her duties as may be reasonably required hereunder; behavior that brings the employee into public disrepute, contempt, scandal, ridicule, or that reflects unfavorably on the reputation or the high moral or ethical standards of the University; or the financial circumstances of the University as discussed in Section 11.6 herein below.

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 shall be due if termination is for just cause.

10.6 COACH may be terminated at any time due to financial circumstances in which the University and/or the University of Louisiana System has declaration of financial exigency. Such a termination can be based on consideration of budgetary restrictions, and priorities for maintenance of program and services. In the event of such termination, COACH will receive six (6) month notice of termination or six (6) months regular pay in lieu of such notice. All compensation, including salary, benefits, and other remuneration incidental to employment, cease upon termination.

11.0 Fundraising

11.1 All fundraising activities by COACH must be pre-approved by the Athletic Director or designee to ensure that such activities are in compliance with University policies.

12.0 Section 409A

- 12.1** The Intent of the parties is that payments and benefits under this Employment Agreement comply with or be exempt from Section 409A of the Internal Revenue Code and the regulations and guidance promulgated thereunder (collectively, “Section 409A”) and, accordingly, to the maximum extent permitted, this Employment Agreement shall be interpreted to be in compliance therewith. If COACH notifies the University (with specificity as to the reason therefore) that COACH believes that any provision of this Agreement (or any award of compensation, including benefits) would cause COACH to incur an additional tax or interest under Section 409A or the University independently makes such determination, the University shall, with consent of COACH, reform such provision to attempt to comply with or be exempt from Section 409A. To the extent that any provision hereof is modified in order to comply with Section 409A, such modification shall be made in good faith and shall, to the maximum extent reasonably possible, maintain the original intent and economic benefit to COACH and the University of the applicable provision without violating the provisions of Section 409A.
- 12.2** Solely to the extent necessary to comply with Section 409A, a termination of employment shall not be deemed to have occurred for purposes of the applicable provisions of this Agreement providing for the payment of amounts or benefits subject to Section 409A upon or following a termination of employment unless such termination is also a “separation from service” within the meaning of Section 409A and, for purposes of any such provision of this Agreement, references to a “termination,” “termination of employment” or like terms shall mean “separation from service.”

- 12.3** All expenses or other reimbursements paid under this Agreement or otherwise hereunder that are taxable income to COACH shall be paid promptly upon submission of appropriate documentation, but in no event later than the end of the calendar year next following the calendar year in which COACH incurs such expense or pays such related tax. With regard to any provision herein that provides for reimbursement of costs and expenses or in-kind benefits, except as permitted by Section 409A, (i) the right to reimbursement or in-kind benefits shall not be subject to liquidation or exchange or another benefit, (ii) the amount of expenses eligible for reimbursement, or in-kind benefits to be provided, during any calendar year may not affect the expenses eligible for reimbursement, or in-kind benefits to be provided, in any other calendar year, provided that the foregoing clause (ii) shall not be violated with regard to expenses reimbursed under any arrangement covered by Internal Revenue Code Section 105(b) solely because such expenses are subject to a limit related to the period the arrangement is in effect and (iii) such payments shall be made on or before the last day of the calendar year following the calendar year in which the expense occurred.
- 12.4** For purposes of Section 409A, COACH's right to receive any installment payments pursuant to this Agreement shall be treated as a right to receive a series of separate and distinct payments.

13.0 Title IX and Sexual Misconduct Policy Reporting and Compliance

- 13.1** COACH shall promptly report to the University's Title IX Coordinator or Deputy Title IX Coordinator any Known Violation(s) of the University or 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.

13.2 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:

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

14.0 Notices

14.1 Any notice or other communication which is required to be given under this Agreement shall be in writing and shall be deemed to have been given on the earlier of the day actually received or on the close of business on the fifth business day next following the day when deposited in the U.S. Mail, postage prepaid, registered or certified, addressed to the party at the address set forth after its name below or such other address as may be given by such party in writing.

If to Coach:

With a copy to:

Attention: _____

If to the University:

Nicholls State University
P.O. Box 2070
Thibodaux, LA 70310
Attention: President

If to the Colonel Athletic Association:

Colonel Athletic Association
P.O. Box 2070
Thibodaux, LA 70310
Attention: Executive Director

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Thus, Agreed To, by and between the herein named parties, on this 15th day of March, 2023.

NICHOLLS STATE UNIVERSITY

COACH: JONEA RIMA

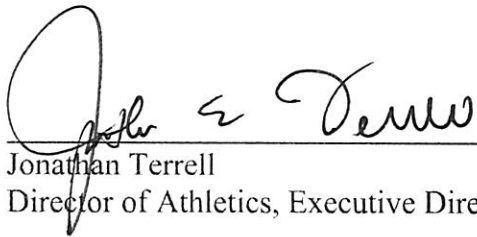


John Clune, Jr., Ph.D.
President, Nicholls State University



Jonea Rima
Nicholls State University Head Volleyball
Coach

COLONEL ATHLETIC ASSOCIATION



Jonathan Terrell
Director of Athletics, Executive Director, Colonel Athletic Association

Approved by the Board of Supervisors of the University of Louisiana System at its meeting on the _____ day of _____, 2023.

Secretary – Board of Supervisors

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

ATHLETIC COMMITTEE

April 27, 2023

Item G.7. **Nicholls State University’s** request for approval of a contract with Mr. Justin Payne, Head Women’s Basketball Coach, effective May 1, 2023.

EXECUTIVE SUMMARY

Under the proposed new agreement, effective through March 30, 2028, Coach’s annual salary is \$110,800 per year. The base salary funded by the University is \$96,900 and \$13,900 funded by the Colonel Athletic Association (CAA). During the time of employment, Coach will have the opportunity to receive the following earned salary supplements/incentives, funded by the CAA:

- (a) \$3,000 – Regular Season Conference Championship
- (b) \$5,000 – Southland Conference Tournament Championship (in a year where Coach wins regular season and tournament championship, only the tournament championship incentive would apply)
- (c) \$2,500 – Conference “Coach of the Year” honors as determined by the Southland Conference
- (d) \$2,500 – Per victory in the NCAA Tournament
- (e) \$2,000 – National Invitation Tournament (NIT) appearance
- (f) \$1,000 – Per victory in the NIT
- (g) \$1,500 – Twenty-win season
- (h) \$500 – Any contract year in which the women’s basketball team’s cumulative GPA is 3.0 or greater
- (i) \$500 – Any contract year in which the women’s basketball team’s NCAA multiyear APR (academic performance rate) is 980 or above
- (j) \$500 – Any contract year in which the women’s basketball team’s GSR (graduation success rate) is 75% or above

Coach is also eligible to participate and receive incentives as outlined in the Nicholls State University Athletics Incentives for Head Coaches.

In the event the University terminates the Contract during any year without cause, Coach is entitled to the following: Year 1 - \$75,000; Year 2 - \$50,000; Year 3 - \$35,000; Year 4 - the remaining amount owed for the year, prorated to the date of termination, up to \$25,000. Amounts due for the year, which come due during the current fiscal year ending June 30, shall be paid by the University. The remaining amounts due, which come due beyond the current fiscal year, shall be funded solely by the Colonel Athletic Association.

If Coach terminates the agreement without cause to become employed as a basketball coach or staff member of any rank or standing with another institution, Coach would be liable to the University for liquidated damages of \$20,000.

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 Nicholls State University's request for approval of a contract with Mr. Justin Payne, Head Women's Basketball Coach, effective May 1, 2023.*



G.7.

Nicholls State University

Office of the President

P.O. Box 2001 | Thibodaux, LA 70310 | 985.448.4003 | 985.448.4920 [F]

April 5, 2023

Via Electronic Transmittal Only

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

Dear Dr. Henderson:

Nicholls State University requests consideration and approval of the following to be placed on the agenda for the April 27, 2023 meeting of the Board of Supervisors for the University of Louisiana System:

Employment Contract-Justin Payne.

Thank you for your assistance in this matter.

Sincerely,

Jay Clune, PhD
President

JC/apf

Enclosures

- c: Dr. Sue Westbrook, Provost/Vice President for Academic Affairs
- Mr. Terry Braud, Vice President for Finance & Administration
- Mr. Jonathan Terrell, Athletic Director
- Dr. Michele Caruso, Vice President for Student Affairs
- Dr. Todd Keller, Vice Provost
- Ms. Alison Hadaway, Director of Human Resources
- Ms. Paulette Mayon, Internal Auditor
- Ms. Claire Bourgeois, Faculty Senate President
- Ms. Renee Hicks, Assistant Vice President of Institutional Effectiveness Access & Success
- Ms. Monique Crochet, Executive Director of External & Alumni Affairs

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

STATE OF LOUISIANA

PARISH OF LAFOURCHE

This agreement is made and entered into on the 1st day of May 2023, between Nicholls State University through its President, Dr. John Clune, Jr., the Colonel Athletic Association (hereinafter "CAA") through its Executive Director, Mr. Jonathan Terrell, and Mr. Justin Payne (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 Nicholls State University, and therefore the terms and conditions set forth in this agreement should not be considered a valid contract until approval is provided by the Board.

1.1 Employment

1.2 Nicholls 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 (athletic program), 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.

1.3 COACH shall be responsible, and shall report, directly to Nicholls State 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 the Nicholls State University President.

- 1.4 COACH shall manage and supervise the team and shall perform such other duties related to the women's basketball program and Nicholls State University's athletic program as the Director may reasonably assign (but in no event shall such other duties constitute a reassignment to another position at Nicholls State University).
- 1.5 COACH agrees to represent Nicholls State University positively in public and private forums. In public appearances COACH 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 the University. COACH shall not engage in conduct that reflects adversely on the University or its athletic programs.
- 1.6 Due to the nature of the position, the Board of Supervisors prohibits the earning of compensatory time. In lieu of compensatory time, COACH will be exempted from having to take leave when the university is officially closed.

2.1 Term

- 2.2 The "Term" of this Agreement is for a fixed period commencing on the 1st day of May 2023, and terminating without further notice to COACH on the 30th day of March, 2028 unless extended under the terms of this Agreement.
- 2.3 This Agreement is renewable solely upon an offer from the Nicholls State University president and an acceptance by COACH, both of which must be in writing, signed by the parties, and approved by the Board. This Agreement in no way grants COACH a claim to tenure in employment, nor shall COACH'S service

pursuant to this Agreement count in any way toward tenure at Nicholls State University.

2.4 This Agreement may be amended or extended at any time during the Term of this Agreement by mutual signed agreement of both parties, and approved by the Board.

3.1 **Compensation**

3.2 In consideration of COACH'S services and satisfactory performance of this agreement, the University shall pay COACH an annual base salary of One Hundred Ten Thousand Eight Hundred Dollars (\$110,800.00) per year for the Term of this agreement, on a bi-weekly basis, as well as all related benefits, subject to applicable taxes. The base salary shall be funded as follows: the sum of Ninety-Six Thousand Nine Hundred Dollars (\$96,900.00) shall be funded directly by the University and the sum of Thirteen Thousand Nine Hundred Dollars (\$13,900.00) shall be funded by the CAA and paid through the University to COACH.

3.3 COACH may be eligible for annual cost of living or merit pay increases in addition to the stated base salary. The COACH also may be subject to pay adjustments according to economic circumstances that affect all employees of the University in the unclassified staff service.

3.4 The Colonel Athletic Association (CAA) will use best efforts to secure the use of a vehicle for COACH, or the CAA will pay COACH a vehicle allowance of \$4,200 annually, in monthly installments of \$350 each month throughout the term of this agreement.

3.5 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 Paragraph 10.

4.0 Incentive Compensation

4.1 During the Term of this Agreement, COACH will have the opportunity to receive the following earned salary supplements/incentives. These salary supplements / incentives are cumulative, unless otherwise stated, and shall be subject to all mandatory withholdings and are inclusive of employer matches for retirement and Medicare payments. The supplements shall be funded by the Colonel Athletic Association (CAA) and paid through University payroll .

- (a) \$3,000 – Regular Season Conference Championship
- (b) \$5,000 – Southland Conference Tournament Championship (in a year where COACH wins regular season and tournament championship, only the tournament championship incentive would apply)
- (c) \$2,500 - Conference “Coach of the Year” honors as determined by the Southland Conference
- (d) \$2,500 – Per victory in the NCAA Tournament
- (e) \$2,000 – National Invitation Tournament (NIT) appearance
- (f) \$1,000 – Per victory in the NIT
- (g) \$1,500 – Twenty-win season
- (h) \$500 – Any contract year in which the women’s basketball team’s cumulative GPA is 3.0 or greater
- (i) \$500 – Any contract year in which the women’s basketball team’s NCAA multiyear APR (academic performance rate) is 980 or above

- (j) \$500 – Any contract in year in which the women’s basketball team’s GSR (graduation success rate) is 75% or above

4.2 Incentives for Head Coaches: COACH is eligible to participate and receive incentives in addition to and above the incentives in section 4.0 as outlined and according to the terms in the policy "Nicholls State University Athletics Incentives for Head Coaches" as long as said policy remains in existence and is active.

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, but in no event shall said suitable compensation reward University a profit. The use of University facilities will be determined by the availability of those facilities as established by the University. Any monies earned during said camp or camps in excess of compensation paid to the University and all expenses related to the camp or camps shall be fully retained by COACH.

5.2 It is specifically agreed that in the operation of any private camp (LLC), COACH acts in private capacity and not as an agent or employee of the University and such agreement constitutes merely a license to use the property and facilities subject to the conditions hereafter stated:

- a) 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:

- A. 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.
 - B. Comprehensive General Liability: \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage.
-
- b) Annual leave must be requested to cover the dates of the camp operation for all University personnel involved.
 - c) Complete records will be maintained regarding income and expenditures associated with said camp and available for verification by University auditors.
 - d) 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 education campus environment and the character of a State institution which makes facilities open to persons without discrimination.
 - e) 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 Employee Benefits

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

6.2 For each women's basketball season, COACH shall be entitled to a total of twelve (12) tickets per home women's basketball game.

7.0 **Outside Income-Subject to Compliance with Board Rules**

7.1 The COACH shall be authorized to earn other revenue while employed by the University. Such activities are independent of COACH's University employment and the University shall have no responsibility for any claims arising there from. COACH shall be entitled to retain revenue generated from operation of basketball camps and/or basketball clinics in accordance with University policy relating to camps or clinics conducted by Athletic Department personnel and as noted in section 5.0. All outside employment and income will be subject to approval in accordance with the Board of Supervisors for the University of Louisiana System and University policies.

7.2 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 the University, COACH must report all such income or benefits to the University 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 the University.

8.0 Compliance with NCAA, Conference, University, System, and State Rules

- 8.1** In accordance with NCAA Constitution 11.2.1, COACH shall abide by the rules and regulations of the NCAA, Conference and University rules. If found in violation of NCAA regulations, COACH shall be subject to disciplinary or corrective action as set forth in the provisions of the NCAA infractions process, including suspension without pay or termination of employment for significant or repetitive violations; provided, however, COACH's employment may only be terminated under this Agreement if COACH is found, after the exhaustion of all appeals, to be in violation of a Level I or Level II violation as set forth more specifically below.
- 8.2** COACH bears the responsibility of using his best efforts to ensure that the Basketball team maintains at least the minimum APR threshold of 930. Increasing APR scores is a product of recruiting academically ambitious student-athletes. It is the responsibility of COACH to ensure that student-athletes are maintaining their eligibility. Academic achievement and student-athlete graduation are of the highest priority for student-athletes. If the minimum APR threshold is increased by the NCAA during the Term of this Agreement, this paragraph will be amended to reflect the same.
- 8.3** COACH shall also abide by the State of Louisiana Code of Government Ethics, University Policy and Regulations, and the 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 positive image for the University.

8.4 COACH and University 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.

9.0 Women's Basketball Staff

9.1 COACH shall have the authority to select unclassified women's basketball personnel upon authorization by the Athletic Director and approval by the Board of Supervisors for the University of Louisiana System following the University hiring policies.

9.2 COACH is expected to supervise the women's basketball staff in compliance with NCAA, Conference and University rules and regulations. Further as described in NCAA Constitution 11.1.1.1, Responsibility of Head Coach., COACH is responsible for the actions of all institutional staff members who report, directly or indirectly, to the COACH, and it is COACH's responsibility to promote an atmosphere of compliance within the basketball program and to monitor the activities regarding compliance of all assistant coaches and other administrators involved with the program.

9.3 During the Term of this agreement, the aggregate salary pool for women's basketball personnel shall be a minimum of One Hundred Twenty-Two Thousand Eight Hundred Seventy-Three Dollars (\$122,873.00). Such compensation shall be allocated to the staff by COACH's discretion and subject to approval of the University President and Athletic Director whose approval shall not be unreasonably withheld. COACH and University will work in good faith to establish a reasonable incentive bonus pool for staff to be allocated by COACH's discretion and subject to approval of the University President and Athletic Director whose approval shall not be unreasonably withheld. The University shall pay these sums as they become due.

10.0 Termination

10.1 Either party may terminate this agreement without just cause prior to the expiration of its terms by giving (30) days written notice to the other party, and by fulfilling the termination obligations set forth in Section 10.3 or 10.4. Prior to the termination of COACH, UNIVERSITY will obtain approval from the President of the University of Louisiana System.

10.2 (a) COACH may be terminated by the Director at any time for misconduct, substantial and manifest incompetence, violation or gross disregard of state or federal laws constituting a felony, and deliberate, repetitive and serious violations of NCAA that rise to a Level I or Level II violation (as defined by the NCAA Rules as amended from time to time), conference, or university rules, regulations, policies, or procedures, or availability of sufficient funding as provided by the

Louisiana Legislature in its annual Appropriation of funds to the Institution (“Termination For Cause”). In the event of such Termination For Cause, COACH will receive thirty (30) calendar days’ notice of termination, and such Termination For Cause shall be subject to COACH’s Right to Remedy under 10.2(b). 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, and shall be subject to COACH’s Right to Remedy under Section 10.2(b). No damages shall be due if termination is for just “Cause”.

(b) Prior to issuing a notice of termination or suspension, University shall give COACH a written notice of a violation, detailing the reasons for such termination or suspension, and provide COACH with “Right to Remedy” it with thirty (30) days (“Cure Period”) unless the reasons for such termination or suspension are not susceptible to being cured. Notwithstanding the foregoing, COACH shall not be suspended or terminated, and pay shall not be withheld, during the Cure Period set forth in this Section 10.2(b), unless the reasons for such termination or suspension are not susceptible to being cured.

(c) COACH may be terminated with Cause for failure to promptly report to the University’s Title IX Coordinator or the Athletic Department’s Senior Woman Administrator or law enforcement in the case of an emergency any illegal gender discrimination, sexual harassment, sexual assault, sexual exploitation, intimate partner violence, stalking, and/or related retaliation.

10.3 The University may at any time, and in its sole discretion, terminate the employment of COACH for any reason (“Termination Without Cause”). In the event the University terminates the Contract during any year as noted below, without cause, the COACH shall be entitled to the following payment as set forth below:

-Year 1 of the contract: \$75,000.00

-Year 2 of the contract: \$50,000.00

-Year 3 of the contract: \$35,000.00

-Year 4 of the contract: The remaining amount owed for the year, prorated to the date of termination, up to \$25,000.

Amounts listed above are not cumulative and COACH shall only be entitled to the applicable amount noted above for the year in which an event of termination may occur. Amounts due as liquidated damages which come due during the University’s current fiscal year in which COACH is terminated without cause, ending June 30 shall be paid by the University, while all other amounts due shall be paid by the CAA. The liquidated damages shall be due and payable in the same manner as outlined in Section 3.1.

Notwithstanding anything to the contrary contained in this section 10, to the extent applicable, the parties acknowledge that Code section 457(f) may require some or all of the bi-weekly payments described above to be taxable to COACH before their scheduled payment dates. Therefore, unless in the reasonable opinion of the University’s counsel that Code section 457(f) does not apply, the University will pay the Applicable Portion (as defined below) of amounts due as set forth above before the scheduled payment dates to the extent permitted by

Treasury Regulation Section 1.409A-3(j)(4)(iv) (a “Tax Distribution”); each subsequent payment shall be reduced by a prorated portion of any Tax Distribution. The “Applicable Portion” means an amount, as determined by the University, equal to the federal, state, local, and foreign income tax withholding that would have been remitted by the University if there had been a payment of wages equal to the income includible by COACH under Code Section 457(f) at the relevant time.¹

- 10.4** In the event COACH terminates this Agreement without cause during the Term to become a basketball coach or staff member of any rank or standing with another institution, then, COACH or a designee of COACH shall pay to the University, in lieu of all other legal remedies, liquidated damages of Twenty Thousand Dollars (\$20,000.00). The liquidated damages shall be due and payable within forty-five (45) days from the date of termination. If COACH terminates this Agreement for health or personal reasons, then COACH shall have no responsibility, obligation, or liability to the University. Notwithstanding anything to the contrary contained in this Agreement, University agrees that COACH’s obligations as contained in this Section 10.4 shall be waived by the University if the University’s basketball program is no longer a participating member of the Southland Conference or another Division-I conference.
- 10.5** COACH may be terminated by the Athletic Director at any time for just cause. Just cause for termination of COACH shall include, but is not limited to, a knowing or willful violation or gross disregard of state or federal laws, NCAA or Conference regulations or University policies or procedures; COACH’s

¹ Language is intended to track language in 409A regulations that permits deferred compensation to be accelerated upon a Code 457(f) income inclusion event.

unreasonable failure to utilize his best efforts in the fulfillment of his duties as may be reasonably required hereunder; behavior that brings the employee into public disrepute, contempt, scandal, ridicule, or that reflects unfavorably on the reputation or the high moral or ethical standards of the University; or the financial circumstances of the University as discussed in Section 11.6 herein below.

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 shall be due if termination is for just cause.

10.6 COACH may be terminated at any time due to financial circumstances in which the University and/or the University of Louisiana System has declaration of financial exigency. Such a termination can be based on consideration of budgetary restrictions, and priorities for maintenance of program and services. In the event of such termination, COACH will receive six (6) month notice of termination or six (6) months regular pay in lieu of such notice. All compensation, including salary, benefits, and other remuneration incidental to employment, cease upon termination.

11.0 Fundraising

11.1 All fundraising activities by COACH must be pre-approved by the Athletic Director or designee to ensure that such activities are in compliance with University policies.

12.0 Section 409A

- 12.1** The Intent of the parties is that payments and benefits under this Employment Agreement comply with or be exempt from Section 409A of the Internal Revenue Code and the regulations and guidance promulgated thereunder (collectively, “Section 409A”) and, accordingly, to the maximum extent permitted, this Employment Agreement shall be interpreted to be in compliance therewith. If COACH notifies the University (with specificity as to the reason therefore) that COACH believes that any provision of this Agreement (or any award of compensation, including benefits) would cause COACH to incur an additional tax or interest under Section 409A or the University independently makes such determination, the University shall, with consent of COACH, reform such provision to attempt to comply with or be exempt from Section 409A. To the extent that any provision hereof is modified in order to comply with Section 409A, such modification shall be made in good faith and shall, to the maximum extent reasonably possible, maintain the original intent and economic benefit to COACH and the University of the applicable provision without violating the provisions of Section 409A.
- 12.2** Solely to the extent necessary to comply with Section 409A, a termination of employment shall not be deemed to have occurred for purposes of the applicable provisions of this Agreement providing for the payment of amounts or benefits subject to Section 409A upon or following a termination of employment unless such termination is also a “separation from service” within the meaning of Section 409A and, for purposes of any such provision of this Agreement, references to a “termination,” “termination of employment” or like terms shall mean “separation from service.”

12.3 All expenses or other reimbursements paid under this Agreement or otherwise hereunder that are taxable income to COACH shall be paid promptly upon submission of appropriate documentation, but in no event later than the end of the calendar year following the calendar year in which COACH incurs such expense or pays such related tax. With regard to any provision herein that provides for reimbursement of costs and expenses or in-kind benefits, except as permitted by Section 409A, (i) the right to reimbursement or in-kind benefits shall not be subject to liquidation or exchange or another benefit, (ii) the amount of expenses eligible for reimbursement, or in-kind benefits to be provided, during any calendar year may not affect the expenses eligible for reimbursement, or in-kind benefits to be provided, in any other calendar year, provided that the foregoing clause (ii) shall not be violated with regard to expenses reimbursed under any arrangement covered by Internal Revenue Code Section 105(b) solely because such expenses are subject to a limit related to the period the arrangement is in effect and (iii) such payments shall be made on or before the last day of the calendar year following the calendar year in which the expense occurred.

12.4 For purposes of Section 409A, COACH's right to receive any installment payments pursuant to this Agreement shall be treated as a right to receive a series of separate and distinct payments.

13.0 Title IX and Sexual Misconduct Policy Reporting and Compliance

13.1 COACH shall promptly report to the University's Title IX Coordinator or Deputy Title IX Coordinator any Known Violation(s) of the University or 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.

13.2 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:

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

14.0 Notices

14.1 Any notice or other communication which is required to be given under this Agreement shall be in writing and shall be deemed to have been given on the earlier of the day actually received or on the close of business on the fifth business day next following the day when deposited in the U.S. Mail, postage prepaid, registered or certified, addressed to the party at the address set forth after its name below or such other address as may be given by such party in writing.

If to COACH: _____

With a copy to:

Attention: _____

If to the University:

Nicholls State University
P.O. Box 2070
Thibodaux, LA 70310
Attention: President


If to the Colonel Athletic Association:

Colonel Athletic Association
P.O. Box 2070
Thibodaux, LA 70310
Attention: Executive Director


Thus Agreed To, by and between the herein named parties, on this 4th day of April, 2023.

NICHOLLS STATE UNIVERSITY

COACH: JUSTIN PAYNE



John Clune, Jr., Ph.D.
President, Nicholls State University



Justin Payne
Nicholls State University Head
Women's Basketball Coach

COLONEL ATHLETIC ASSOCIATION



Jonathan Terrell
Director of Athletics, Executive Director, Colonel Athletic Association

Approved by the Board of Supervisors of the University of Louisiana System at its meeting on the _____
day of _____, 2023.

Secretary – Board of Supervisors

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

ATHLETIC COMMITTEE

April 27, 2023

Item G.8. **Northwestern State University's** request for approval of a contract with Mr. Ian Brophy, Head Women's Soccer Coach, effective February 21, 2023.

EXECUTIVE SUMMARY

Under the proposed four-year agreement, effective through December 1, 2026, Coach's salary for each year remains at \$61,526, payable in 26 equal installments. The NSU foundation may pay Coach additional salary supplements as follows:

- COACH will receive use of a vehicle from a dealership for personal and business use as arranged by the Demons Unlimited Foundation and if such vehicle is not secured for coach, a living stipend of \$500 per month will be provided.
- COACH will receive use of a cell phone, including data and texting plan, with an approximate annual value of \$1,200.
- COACH will receive \$1,500 should he be named Southland Conference Coach of the Year.
- COACH will receive \$2,000 for Southland Conference Regular Season Championship.
- COACH will receive \$2,000 for Southland Conference Tournament Championship/ NCAA Tournament Appearance.
- COACH will receive \$2,500 should his team win the first-round match in NCAA Tournament.
- COACH will receive \$5,000 should his team advance to the Sweet 16 in the NCAA Tournament.
- COACH will receive \$7,500 should his team advance to the Elite 8 in the NCAA Tournament.
- COACH will receive \$10,000 should his team advance to the NCAA Final Four.
- COACH will receive \$15,000 should his team win the NCAA National Championship.

- COACH is also eligible to receive a \$1,000 incentive stipend for an annual APR of 980+. This incentive stipend will be for use of the Coach's name and likeness in Foundation material or literature promoting the academic achievements of the team. The coach must have worked at NSU for one full academic year (July 1-June 30) to be initially eligible to receive this bonus and must be employed by NSU at the time that the final APR number is released to be eligible to receive the bonus.

If the University terminates the agreement without cause, the Coach shall be entitled to 50% of the combined total of the base salary and Demons Unlimited Foundation "living stipend" that he would have earned in the years remaining in the contract, less compensation received by the Coach from any other employment. The University would be responsible for the current fiscal year compensation, through the end of the fiscal year (June 30). The Demons Unlimited Foundation would be responsible for the remaining months in the agreement (the next July 1 through expiration).

In the event Coach terminates the contract without cause, Coach would be liable to the University for liquidated damages in the following manner:

- If after February 21, 2023 but before February 20, 2024 – Thirty Thousand Dollars (\$30,000)
- If after February 21, 2024 but before February 20, 2025 – Twenty Thousand Dollars (\$20,000)
- If after February 21, 2025 but before February 20, 2026 – Ten Thousand Dollars (\$10,000)

The University and the Demons Unlimited has a joint agreement with the Coach.

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 Northwestern State University's request for approval of a contract with Mr. Ian Brophy, Head Women's Soccer Coach, effective February 21, 2023.

 **NORTHWESTERN STATE**

Office of the President

April 5, 2023

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

Re: Appointment of Mr. Ian Brophy as Head Women's Soccer Coach

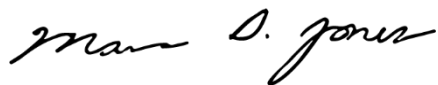
Dear Dr. Henderson:

Northwestern State University is submitting the following item to be placed on the agenda for approval at the April 2023 Board Meeting:

Appointment of Mr. Ian Brophy as Head Women's Soccer Coach for Northwestern State University at an annual salary of \$61,526 for the period of February 21, 2023 – December 1, 2026, as outlined in the attached contract.

Thank you for your consideration of this request.

Sincerely,



Dr. Marcus D. Jones
President

Attachment

est 1884

NORTHWESTERN STATE UNIVERSITY

**CONTRACT OF EMPLOYMENT
for IAN BROPHY**

STATE OF LOUISIANA

PARISH OF NATCHITOCHEs

THIS AGREEMENT, made and entered into as of this 21st day of February, 2023, by and between Northwestern State University (hereinafter "University") represented by Dr. Marcus Jones, President, the Demons Unlimited Foundation (hereinafter "Foundation") and Ian Brophy, Head Women's Soccer Coach (hereinafter "Coach") of Northwestern State University. This agreement is subject to the approval of the Board of Supervisors for the University of Louisiana System, the management board for Northwestern State University and therefore the terms and conditions set forth in this agreement should not be considered a valid contract until approval is provided by the board.

WITNESSETH:

WHEREAS, the University requires the services of a Head Women's Soccer Coach and has selected the Coach to perform those services,

NOW, THEREFORE, the parties agree as follows:

1. EMPLOYMENT

The University does hereby employ Ian Brophy as Head Women's Soccer Coach at Northwestern State University, and Ian Brophy does hereby accept said employment and agrees to perform all those services pertaining to Head Women's Soccer Coach as prescribed by the University through the President and the Director of Athletics.

- 1.1. Coach shall be responsible, and shall report, directly to Northwestern State 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 Northwestern State University's President.
- 1.2. Coach shall manage and supervise the team and shall perform such other duties in Northwestern State University's athletic program as the Director may assign.
- 1.3. Coach agrees to represent Northwestern State University positively in public and private forums and shall not engage in conduct that reflects adversely on Northwestern State University or its athletic programs.

2. TERM

The employment under the terms of this contract shall be for the period February 21, 2023 to December 1, 2026, subject to approval of the University of Louisiana System Board of Supervisors. This agreement is renewable solely upon an offer from the University and an acceptance by Coach, both of which must be in writing and signed by all the parties and approved by the Board. This agreement in no way grants the Coach a claim to tenure in employment, nor shall Coach's service pursuant to this agreement count in any way toward tenure at the University.

3. **UNIVERSITY SALARY**

The University shall pay the Head Coach as follows:

First Year of Contract

Total salary of \$61,526 Dollars payable in 26 equal installments

Second Year of Contract

Total salary of \$61,526 Dollars payable in 26 equal installments

Third Year of Contract

Total salary of \$61,526 Dollars payable in 26 equal installments

Fourth Year of Contract

Total salary of \$61,526 Dollars payable in 26 equal installments

- 3.1. 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 in accordance with Section 9.
- 3.2. The Coach may be eligible for cost of living or merit pay increases in addition to the stated base salary. The Coach is also subject to pay adjustments according to economic circumstances that affect all employees in the unclassified state services.

4. **EMPLOYEE BENEFITS**

The Coach shall participate in the mandatory employee benefit plans and be eligible for optional employee benefit plans as would any other University unclassified employee based upon his annual University salary only.

5. **CAMPS AND CLINICS**

- 5.1 Coach Brophy may operate and receive additional compensation for camps/clinics as outlined in the athletic department's policy regulating camps and clinics.
 - a. All revenues from university camps/clinics will be deposited into Coach Brophy's university camp budget. After all expenses are met, Coach Brophy may be compensated up to the amount of surplus remaining in the account, or use the profits to pay his assistant coaches, supplement his university soccer operating budget, or a combination of the three, at his discretion.
 - b. Camps operated through the university camp budget will not be subject to facility fees.

- c. Conducting camps and clinics is considered a part of Coach Brophy's job description related to promoting the University and the athletic department; thus, Coach Brophy will not be required to take leave while conducting camps run through the University camp budget.
- d. Coach Brophy's camp budget will be charged for a personal injury insurance policy approved by the University for camp/clinic participants.
- e. The Director of 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 the camps.

5.2 Private Camps

- a. Coach may operate a camp for the teaching of athletic pursuits on 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 University policy.
- b. It is specifically agreed that in the operation of such camps, Coach acts for himself in his private capacity and not as an agent or employee of the University and that this agreement constitutes merely a license to use the property and facilities subject to the conditions hereafter stated.
 - 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.
 - The Coach agrees to pay the University all out-of-pocket costs incurred by the University in making the facilities available for the camps.
 - 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 for the University of Louisiana System, the University, and its agents and servants, are named as the insured (or as an additional insured) which provides:
 - Workers' Compensation and Employers Liability: Workers Compensation limits are required by the Labor Code of the State of Louisiana and Employers Liability coverage if Coach hires any employees to work at such camps and clinics.
 - Comprehensive General Liability: \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage.
 - Annual leave must be requested to cover the dates of the camp operation for all University personnel involved.
 - Complete records will be maintained regarding income and expenditures associated with said camp and available for verification by University auditors.
 - 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.
 - 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.
- c. 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. FOUNDATION SERVICES

During the time of employment as head coach, Coach Brophy will also have the opportunity to earn salary supplements and incentives as a result of promotional activities for the Demons Unlimited Foundation. These payments, made through the university's payroll system, are subject to all mandatory withholdings and are inclusive of retirement and Medicare payments. Supplemental payments based on incentive clauses are to be paid no later than the conclusion of the financial quarter immediately following the one in which the incentive payment was earned. The potential supplements/incentives are as follows:

- COACH will receive use of a vehicle from a dealership for personal and business use as arranged by the Demons Unlimited Foundation and if such vehicle is not secured for coach, a living stipend of \$500 per month will be provided.
- COACH will receive use of a cell phone, including data and texting plan, with an approximate annual value of \$1,200.
- COACH will receive \$1,500 should he be named Southland Conference Coach of the Year.
- COACH will receive \$2,000 for Southland Conference Regular Season Championship.
- COACH will receive \$2,000 for Southland Conference Tournament Championship/NCAA Tournament Appearance.
- COACH will receive \$2,500 should his team win the first-round match in NCAA Tournament.
- COACH will receive \$5,000 should his team advance to the Sweet 16 in the NCAA Tournament.
- COACH will receive \$7,500 should his team advance to the Elite 8 in the NCAA Tournament.
- COACH will receive \$10,000 should his team advance to the NCAA Final Four.
- COACH will receive \$15,000 should his team win the NCAA National Championship.
- COACH is also eligible to receive a \$1,000 incentive stipend for an annual APR of 980+. This incentive stipend will be for use of the Coach's name and likeness in Foundation material or literature promoting the academic achievements of the team. The coach must have worked at NSU for one full academic year (July 1-June 30) to be initially eligible to receive this bonus and must be employed by NSU at the time that the final APR number is released to be eligible to receive the bonus.

7. OUTSIDE INCOME

The 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 there from. All outside income will be subject to approval in accordance with the Board of Supervisors for the University of Louisiana System policies.

Coach shall report annually in writing to the President through the Athletic Director on July 1st of each year all athletically related income received from sources outside the University. The University shall have reasonable access to all records of Coach to verify this report (NCAA Constitution Article 11.2.2).

"Notwithstanding the above or anything else herein to the contrary, if Employee receives athletically related income or benefits totaling more than \$600 per year from any source or combination of

sources other than Employer, Employee must report all such income or benefits to the [president or chancellor] 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.).”

8. STANDARDS OF CONDUCT AND COMPLIANCE WITH NCAA AND CONFERENCE REGULATIONS

Coach shall abide by the rules and regulations of the NCAA, Conference and University rules. If Coach is personally found to be 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). Coach may be suspended for a period of time, without pay, or employment of Coach may be terminated if Coach is found to be personally guilty of deliberate and serious violations of NCAA, Conference and University regulations (NCAA Constitution 11.2.1).

Coach shall also abide by the State of Louisiana Code of Government Ethics, University Policy and Regulations, federal laws, other state laws and the 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 the University.

Employee and Employer acknowledge and agree that (1) Employee 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. TERMINATION

Termination Without Cause: Either party may terminate this agreement without just cause prior to the expiration of its terms by giving thirty (30) 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. If the University terminates the agreement without cause, the Coach shall be entitled to 50% of the combined total of the base salary and Demons Unlimited Foundation “living stipend” that he would have earned in the years remaining in the contract, less compensation received by the Coach from any other employment. The University would be responsible for the current fiscal year compensation, through the end of the fiscal year (June 30th). The Demons Unlimited Foundation would be responsible for the remaining months in the agreement (the next July 1 through expiration). In the event Coach Brophy terminates the Contract without cause, Coach Brophy would be liable to the University for liquidated damages in the following manner:

- If after February 21, 2023 but before February 20, 2024 – Thirty Thousand (\$30,000) Dollars
- If after February 21, 2024 but before February 20, 2025 – Twenty Thousand (\$20,000) Dollars
- If after February 21, 2025 but before February 20, 2026 – Ten Thousand (\$10,000) Dollars

The liquidated damages by either party shall be due and payable in a lump sum within sixty (60) days of Coach’s final date of employment at Northwestern State University.

Failure to make reasonable efforts to secure employment shall be cause for termination of this agreement, and release of the University and Demons Unlimited Foundation of any obligations to make further payments.

Termination For Cause: Should Coach’s contract be terminated for just cause, the University and Demons Unlimited Foundation shall not be liable for any payments or benefits specified in this agreement past the effective date of termination. Just cause for termination shall include, but not be

limited to, violation or gross disregard of state or federal laws, NCAA or conference regulations or university policies or procedures.

Coach may be terminated by the University for Cause at any time for the following:

- Misconduct, including but not limited to: hostile workplace violations, documented acts of moral turpitude, acts of violence and aggression, and insubordination.
- Misconduct that: (1) violates state or university ethics laws, rules or regulations; (2) offends the ethics or traditions of the university; or (3) brings discredit or harm to the reputation of the university.
- Acts of violence or personal conduct, or condoning or encouraging employees or student athletes in such conduct, which may not warrant criminal prosecution, but result in public disrepute, contempt, scandal or ridicule that reflects unfavorably upon the reputation or mission of the university.
- Substantial and manifest incompetence.
- Gross violation or disregard of state or federal laws (excluding minor traffic offenses or non-criminal offenses).
- Deliberate and serious violations of NCAA, conference, or UNIVERSITY rules, regulations, policies or procedures.
- Failure to promote an atmosphere of compliance pursuant to NCAA Bylaw 11.1.2.1.
- Unethical conduct pursuant to NCAA 10.1.

The judgment as to whether the conduct of the Coach constitutes cause under this provision shall not be exercised arbitrarily or capriciously by the University.

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:

- (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.

Termination for Financial Exigency: Coach may be terminated at any time due to the financial circumstances in which the University and/or the University of Louisiana System has declaration of financial exigency. Such a termination can be based on consideration of budgetary restrictions, and priorities for maintenance of program and services. In the event of such termination, COACH will receive six (6) months' notice of termination or six (6) months regular pay in lieu of such notice. All compensation, including salary, benefits, and other remuneration incidental to employment, cease upon termination.

10. ASSOCIATE/ASSISTANT COACHES

The Coach shall have the authority to select the associate and assistant coaches with consent of the Athletic Director, President and approval of the Board of Supervisors. Associate and assistant coaches shall be appointed as University unclassified employees.

11. UNIVERSITY FUNDRAISING

All fundraising activities by COACH must be pre-approved by the Athletic Director, or his designee, to ensure that such activities are in compliance with University policies.

12. **AMENDMENT EXTENSION**

This Contract may be amended and/or extended in writing by the mutual consent of the parties, and approved by the Board.

13. **SEVERABILITY**

If any provision of this Agreement 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 to alter the bounds thereof in order to render it valid and enforceable.

14. **FORCE MAJEURE**

Neither party shall be considered in default performance of her or its obligations under this Agreement 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.

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

WITNESSES:

NORTHWESTERN STATE UNIVERSITY

BY 

IAN BROPHY, Head Coach

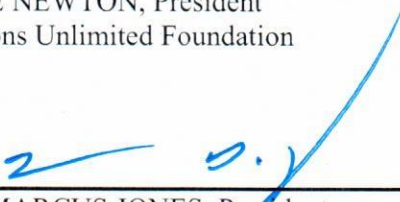
BY 

KEVIN BOSTIAN, Director of Athletics

BY 

MIKE NEWTON, President
Demons Unlimited Foundation



BY 

DR. MARCUS JONES, President
Northwestern State University

BY _____
DR. JAMES HENDERSON, President
University of Louisiana Board of Supervisors

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

ATHLETIC COMMITTEE

April 27, 2023

Item G.9. **Northwestern State University's** request for approval of a contract with Mr. Rick Cabrera, Head Men's Basketball Coach, effective March 27, 2023.

EXECUTIVE SUMMARY

Under the proposed four-year agreement, effective through March 26, 2027, Coach's salary for each year remains at \$141,279, payable in 26 equal installments. The agreement includes an option for an automatic rollover of an additional year through March 26, 2028, subject to approval of the University of Louisiana System Board of Supervisors. The agreement also stipulates that the Demons Unlimited Foundation shall pay a premium benefit in the amount of \$38,721 annually to be paid in 26 equal installments. The NSU Foundation will also pay increased related benefits associated with any supplements. The NSU foundation may pay Coach additional salary supplements as follows:

- COACH will receive use of a cell phone, including data and texting plan, with an approximate annual value of \$1,200.
- COACH will receive an annual vehicle stipend of \$6,000.
- COACH will receive \$5,000 should he be named Southland Conference Coach of the Year.
- COACH will receive \$5,000 for Southland Conference Regular Season Championship.
- COACH will receive \$5,000 for Southland Conference Tournament Championship/ NCAA Tournament Appearance.
- COACH will receive \$250 for each Power 5 Conference and Ranked team win. Ranked team is determined by using either the AP Top 25 poll or the Coaches Top 25 poll.
- COACH will receive \$2,000 for twenty NCAA Division I wins per season.
- COACH will receive \$5,000 for each First Four and First Round NCAA Tournament win.
- COACH will receive \$25,000 for NCAA Sweet 16 Appearance.
- COACH will receive \$50,000 for NCAA Elite 8 Appearance.

- COACH will receive \$100,000 for NCAA Final Four Appearance.
- COACH will receive \$150,000 should his team win the NCAA National Championship.
- COACH will receive \$1,000 for each NIT win.
- COACH will receive \$10,000 should his team win the NIT Championship.
- COACH is also eligible to receive a \$2,500 incentive stipend for an annual APR of 965+. This incentive stipend will be for use of the Coach's name and likeness in Foundation material or literature promoting the academic achievements of the team. The coach must have worked at NSU for one full academic year (July 1-June 30) to be initially eligible to receive this bonus and must be employed by NSU at the time that the final APR number is released to be eligible to receive the bonus.

If the University terminates the agreement without cause, the Coach shall be entitled to 50% of the combined total of the base salary and Demons Unlimited Foundation "living stipend" that he would have earned in the years remaining in the contract, less compensation received by the Coach from any other employment. The University would be responsible for the current fiscal year compensation, through the end of the fiscal year (June 30). The Demons Unlimited Foundation would be responsible for the remaining months in the agreement (the next July 1 through expiration).

In the event Coach terminates the contract without cause, Coach would be liable to the University for liquidated damages in the following manner:

- If after March 27, 2023 but before March 26, 2024 – Two Hundred and Thirty Thousand Dollars (\$230,000)
- If after March 27, 2024 but before March 26, 2025 – One Hundred Eighty Thousand Dollars (\$180,000)
- If after March 27, 2025 but before March 26, 2026 – One Hundred and Thirty Thousand Dollars (\$130,000)

The University and the Demons Unlimited has a joint agreement with the Coach.

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 Northwestern State University's request for approval of a contract with Mr. Rick Cabrera, Head Men's Basketball Coach, effective March 27, 2023.

 **NORTHWESTERN STATE**

Office of the President

April 5, 2023

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

Re: Appointment of Mr. Rick Cabrera as Head Men's Basketball Coach

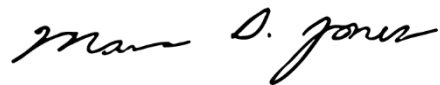
Dear Dr. Henderson:

Northwestern State University is submitting the following item to be placed on the agenda for approval at the April 2023 Board Meeting:

Appointment of Mr. Rick Cabrera as Head Men's Basketball Coach for Northwestern State University at an annual salary of \$180,000 for the period of March 27, 2023 – March 26, 2027, as outlined in the attached contract.

Thank you for your consideration of this request.

Sincerely,



Dr. Marcus D. Jones
President

Attachment

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NORTHWESTERN STATE UNIVERSITY

CONTRACT OF EMPLOYMENT for Rick Cabrera

STATE OF LOUISIANA

PARISH OF NATCHITOCHEs

THIS AGREEMENT, made and entered into as of this 27th day of March, 2023, by and between Northwestern State University (hereinafter "University") represented by Dr. Marcus Jones, President, the Demons Unlimited Foundation (hereinafter "Foundation") and Rick Cabrera, Head Men's Basketball Coach (hereinafter "Coach") of Northwestern State University. This agreement is subject to the approval of the Board of Supervisors for the University of Louisiana System, the management board for Northwestern State University and therefore the terms and conditions set forth in this agreement should not be considered a valid contract until approval is provided by the board.

WITNESSETH:

WHEREAS, the University requires the services of a Head Men's Basketball Coach and has selected the Coach to perform those services,

NOW, THEREFORE, the parties agree as follows:

1. EMPLOYMENT

The University does hereby employ Rick Cabrera as Head Men's Basketball Coach at Northwestern State University, and Rick Cabrera does hereby accept said employment and agrees to perform all those services pertaining to Head Men's Basketball Coach as prescribed by the University through the President and the Director of Athletics.

- 1.1. Coach shall be responsible, and shall report, directly to Northwestern State 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 Northwestern State University's President.
- 1.2. Coach shall manage and supervise the team and shall perform such other duties in Northwestern State University's athletic program as the Director may assign.
- 1.3. Coach agrees to represent Northwestern State University positively in public and private forums and shall not engage in conduct that reflects adversely on Northwestern State University or its athletic programs.

2. TERM

The employment under the terms of this contract shall be for the period March 27, 2023 to March 26, 2027 with the option for a one-year rollover to the contract, subject to approval of the University of Louisiana System Board of Supervisors. This agreement is renewable solely upon an offer from the University and an acceptance by Coach, both of which must be in writing and signed by all the parties and approved by the Board. This agreement in no way grants the Coach a claim to tenure in employment, nor shall Coach's service pursuant to this agreement count in any way toward tenure at the University.

3. **UNIVERSITY SALARY**

The University shall pay the Head Coach as follows:

First Year of Contract

Total salary of \$180,000 Dollars.

Source of payments will be split accordingly:

- \$141,279 from Northwestern State and payable in 26 equal installments
- \$38,721 from the Demons Unlimited Foundation in 12 monthly installments

Second Year of Contract

Total salary of \$180,000 Dollars.

Source of payments will be split accordingly:

- \$141,279 from Northwestern State and payable in 26 equal installments
- \$38,721 from the Demons Unlimited Foundation in 12 monthly installments

Third Year of Contract

Total salary of \$180,000 Dollars.

Source of payments will be split accordingly:

- \$141,279 from the Northwestern State and payable in 26 equal installments
- \$38,721 from the Demons Unlimited Foundation in 12 monthly installments

Fourth Year of Contract

Total salary of \$180,000 Dollars.

Source of payments will be split accordingly:

- \$141,279 from Northwestern State and payable in 26 equal installments
- \$38,721 from the Demons Unlimited Foundation in 12 monthly installments

- 3.1. 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 in accordance with Section 9.
- 3.2. The Coach may be eligible for cost of living or merit pay increases in addition to the stated base salary. The Coach is also subject to pay adjustments according to economic circumstances that affect all employees in the unclassified state services.

4. **EMPLOYEE BENEFITS**

The Coach shall participate in the mandatory employee benefit plans and be eligible for optional employee benefit plans as would any other University unclassified employee based upon his annual University salary only.

5. **CAMPS AND CLINICS**

5.1 Coach Cabrera may operate and receive additional compensation for camps/clinics as outlined in the athletic department's policy regulating camps and clinics.

- a. All revenues from university camps/clinics will be deposited into Coach Cabrera's university camp budget. After all expenses are met, Coach Cabrera may be compensated up to the amount of surplus remaining in the account, or use the profits to pay his assistant coaches, supplement his university basketball operating budget, or a combination of the three, at his discretion.
- b. Camps operated through the university camp budget will not be subject to facility fees.

- c. Conducting camps and clinics is considered a part of Coach Cabrera's job description related to promoting the University and the athletic department; thus, Coach Cabrera will not be required to take leave while conducting camps run through the University camp budget.
- d. Coach Cabrera's camp budget will be charged for a personal injury insurance policy approved by the University for camp/clinic participants.
- e. The Director of 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 the camps.

5.2 Private Camps

- a. Coach may operate a camp for the teaching of athletic pursuits on 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 University policy.
- b. It is specifically agreed that in the operation of such camps, Coach acts for himself in his private capacity and not as an agent or employee of the University and that this agreement constitutes merely a license to use the property and facilities subject to the conditions hereafter stated.
 - 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.
 - The Coach agrees to pay the University all out-of-pocket costs incurred by the University in making the facilities available for the camps.
 - 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 for the University of Louisiana System, the University, and its agents and servants, are named as the insured (or as an additional insured) which provides:
 - Workers' Compensation and Employers Liability: Workers Compensation limits are required by the Labor Code of the State of Louisiana and Employers Liability coverage if Coach hires any employees to work at such camps and clinics.
 - Comprehensive General Liability: \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage.
 - Annual leave must be requested to cover the dates of the camp operation for all University personnel involved.
 - Complete records will be maintained regarding income and expenditures associated with said camp and available for verification by University auditors.
 - 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.
 - 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.
- c. 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. FOUNDATION SERVICES

During the time of employment as head coach, Coach Cabrera will also have the opportunity to earn salary supplements and incentives as a result of promotional activities for the Demons Unlimited Foundation. These payments, made through the university's payroll system, are subject to all mandatory withholdings and are inclusive of retirement and Medicare payments. Supplemental payments based on incentive clauses are to be paid no later than the conclusion of the financial quarter immediately following the one in which the incentive payment was earned. The potential supplements/incentives are as follows:

- a. COACH will receive use of a cell phone, including data and texting plan, with an approximate annual value of \$1,200.
- b. COACH will receive an annual vehicle stipend of \$6,000.
- c. COACH will receive \$5,000 should he be named Southland Conference Coach of the Year.
- d. COACH will receive \$5,000 for Southland Conference Regular Season Championship.
- e. COACH will receive \$5,000 for Southland Conference Tournament Championship/NCAA Tournament Appearance.
- f. COACH will receive \$250 for each Power 5 Conference and Ranked team win. Ranked team is determined by using either the AP Top 25 poll or the Coaches Top 25 poll.
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- o. COACH is also eligible to receive a \$2,500 incentive stipend for an annual APR of 965+. This incentive stipend will be for use of the Coach's name and likeness in Foundation material or literature promoting the academic achievements of the team. The coach must have worked at NSU for one full academic year (July 1-June 30) to be initially eligible to receive this bonus and must be employed by NSU at the time that the final APR number is released to be eligible to receive the bonus.

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The 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 there from. All outside income will be subject to approval in accordance with the Board of Supervisors for the University of Louisiana System policies.

Coach shall report annually in writing to the President through the Athletic Director on July 1st of each year all athletically related income received from sources outside the University. The University shall have reasonable access to all records of Coach to verify this report (NCAA Constitution Article 11.2.2).

“Notwithstanding the above or anything else herein to the contrary, if Employee receives athletically related income or benefits totaling more than \$600 per year from any source or combination of sources other than Employer, Employee must report all such income or benefits to the [president or chancellor] 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).”

8. STANDARDS OF CONDUCT AND COMPLIANCE WITH NCAA AND CONFERENCE REGULATIONS

Coach shall abide by the rules and regulations of the NCAA, Conference and University rules. If Coach is personally found to be 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). Coach may be suspended for a period of time, without pay, or employment of Coach may be terminated if Coach is found to be personally guilty of deliberate and serious violations of NCAA, Conference and University regulations (NCAA Constitution 11.2.1).

Coach shall also abide by the State of Louisiana Code of Government Ethics, University Policy and Regulations, federal laws, other state laws and the 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 the University.

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9. TERMINATION

Termination Without Cause: Either party may terminate this agreement without just cause prior to the expiration of its terms by giving thirty (30) 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. If the University terminates the agreement without cause, the Coach shall be entitled to 50% of the combined total of the base salary and Demons Unlimited Foundation “living stipend” that he would have earned in the years remaining in the contract, less compensation received by the Coach from any other employment. The University would be responsible for the current fiscal year compensation, through the end of the fiscal year (June 30th). The Demons Unlimited Foundation would be responsible for the remaining months in the agreement (the next July 1 through expiration). In the event Coach Cabrera terminates the Contract without cause, Coach Cabrera would be liable to the University for liquidated damages in the following manner:

- If after March 27, 2023 but before March 26, 2024 – Two Hundred and Thirty Thousand (\$230,000) Dollars
- If after March 27, 2024 but before March 26, 2025 – One Hundred Eighty Thousand (\$180,000) Dollars
- If after March 27, 2025 but before March 26, 2026 – One Hundred and Thirty Thousand (\$130,000) Dollars

The liquidated damages by either party shall be due and payable in a lump sum within sixty (60) days of Coach’s final date of employment at Northwestern State University. Failure to make reasonable efforts to secure employment shall be cause for termination of this agreement, and release of the University and Demons Unlimited Foundation of any obligations to make further payments.

Termination For Cause: Should Coach's contract be terminated for just cause, the University and Demons Unlimited Foundation shall not be liable for any payments or benefits specified in this agreement past the effective date of termination. Just cause for termination shall include, but not be limited to, violation or gross disregard of state or federal laws, NCAA or conference regulations or university policies or procedures.

Coach may be terminated by the University for Cause at any time for the following:

- Misconduct, including but not limited to: hostile workplace violations, documented acts of moral turpitude, acts of violence and aggression, and insubordination.
- Misconduct that: (1) violates state or university ethics laws, rules or regulations; (2) offends the ethics or traditions of the university; or (3) brings discredit or harm to the reputation of the university.
- Acts of violence or personal conduct, or condoning or encouraging employees or student athletes in such conduct, which may not warrant criminal prosecution, but result in public disrepute, contempt, scandal or ridicule that reflects unfavorably upon the reputation or mission of the university.
- Substantial and manifest incompetence.
- Gross violation or disregard of state or federal laws (excluding minor traffic offenses or non-criminal offenses).
- Deliberate and serious violations of NCAA, conference, or UNIVERSITY rules, regulations, policies or procedures.
- Failure to promote an atmosphere of compliance pursuant to NCAA Bylaw 11.1.2.1.
- Unethical conduct pursuant to NCAA 10.1.

The judgment as to whether the conduct of the Coach constitutes cause under this provision shall not be exercised arbitrarily or capriciously by the University.

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:

- (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.

Termination for Financial Exigency: Coach may be terminated at any time due to the financial circumstances in which the University and/or the University of Louisiana System has declaration of financial exigency. Such a termination can be based on consideration of budgetary restrictions, and priorities for maintenance of program and services. In the event of such termination, COACH will receive six (6) months' notice of termination or six (6) months regular pay in lieu of such notice. All compensation, including salary, benefits, and other remuneration incidental to employment, cease upon termination.

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The Coach shall have the authority to select the associate and assistant coaches with consent of the Athletic Director, President and approval of the Board of Supervisors. Associate and assistant coaches shall be appointed as University unclassified employees.

11. **UNIVERSITY FUNDRAISING**

All fundraising activities by COACH must be pre-approved by the Athletic Director, or his designee, to ensure that such activities are in compliance with University policies.

12. **AMENDMENT EXTENSION**

This Contract may be amended and/or extended in writing by the mutual consent of the parties, and approved by the Board.

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If any provision of this Agreement 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 to alter the bounds thereof in order to render it valid and enforceable.

14. **FORCE MAJEURE**

Neither party shall be considered in default performance of her or its obligations under this Agreement 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.

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

WITNESSES:


NORTHWESTERN STATE UNIVERSITY

BY 
RICK CABRERA, Head Coach

BY 
KEVIN BOSTIAN, Director of Athletics

BY 
MIKE NEWTON, President
Demons Unlimited Foundation



BY 
DR. MARCUS JONES, President
Northwestern State University

BY
DR. JAMES HENDERSON, President
University of Louisiana Board of Supervisors