

## UNIVERSITY OF KENTUCKY ASSISTANT COACH AGREEMENT

This Assistant Coach Agreement is entered into this 1<sup>st</sup> day of March 2023, between the University of Kentucky (hereinafter "University") and Benjamin Josephson, Assistant Volleyball Coach (hereinafter "Coach"). Parties to this agreement are the University and Coach.

In consideration of the mutual covenants and conditions contained herein, the University and Coach agree as follows:

1. **Employment.** Subject to the conditions stated in the provisions of this Agreement, the University hereby employs Coach as Assistant Coach of the volleyball program at the University and the Coach hereby agrees to and does accept the terms and conditions for said employment outlined herein. Coach shall perform such duties as may be assigned in connection with the supervision and administration of the volleyball program, and such other duties and responsibilities as assigned by the University of Kentucky Athletics Department ("UKAD"). Coach shall work under the immediate supervision of the Head Coach of the volleyball program (hereinafter "Head Coach") and shall confer with this supervisor on all matters requiring administrative and technical decisions. Coach agrees to assist Head Coach in accordance with the bylaws and regulations of the University, NCAA and SEC and any subsequent amendments thereto, including but not limited to the duty to report known and suspected violations to the University Compliance Director or Director of Athletics. Pursuant to NCAA and SEC regulations, it is stipulated by the parties that Coach has an affirmative obligation to cooperate fully in the NCAA or SEC enforcement process, including the investigation and adjudication of a case, as set forth in NCAA or SEC bylaws or other procedures. It is also stipulated by the parties that if Coach is found in violation of NCAA or SEC regulations, he shall be subject to disciplinary or corrective actions as set forth in the provisions of the NCAA and SEC enforcement procedures.

2. **Term.** The term of this Agreement shall begin on March 1, 2023 and shall terminate on June 30, 2024, subject to the conditions stated herein. This Agreement is renewable solely at the option of the University, and in no way grants Coach a claim to tenure or continued employment with the University. However, any year of employment under Coach's Agreement shall count as a year of service toward service awards, as a year of service toward "vesting" under the University's retirement plan, and as a year of service toward eligibility for the University benefit plans, including but not limited to the University's long term disability program.

3. **Compensation.** In consideration for services and satisfactory performance of the conditions of this Agreement by Coach, the University promises to pay Coach:

3.1 Effective March 1, 2023 through June 30, 2024, compensation shall be monthly rate of **eleven thousand, two hundred fifty dollars, (\$11,250)** which, calculated at an annual rate, equals to **One-hundred thirty-five thousand dollars (\$135,000)** and shall be payable at the end of each regular monthly University pay period.

3.2 The University shall pay Coach a bonus if the volleyball team achieves the following and Coach actively participates as part of the staff for the regular and post season competitions:

- a. *Regular season or Conference Tournament Championship- an incentive bonus equal to seventeen-thousand, five hundred dollars (\$17,500). Coach can earn a bonus for one championship or the other but not both.*
- b. *Participation in NCAA Elite Eight- an incentive bonus equal to seventeen thousand, five-hundred dollars (\$17,500)*

c. *Participation In NCAA Final Four- an incentive bonus equal to twenty-five thousand dollars (\$25,000)*

d. *NCAA National Volleyball Champion- an incentive bonus equal to thirty-thousand dollars (\$30,000)*

The incentive bonuses listed above shall not be cumulative, and coach shall not be entitled to more than one bonus in any one year. By way of illustration, if coach's team wins a Conference Regular Season championship and participates in the NCAA Final Four, Coach shall be entitled to an incentive bonus equal to twenty-five thousand dollars (\$25,000).

**3.3** Coach shall be entitled to select employee benefits from the standard array of employee benefit plans that are currently available to exempt staff employees of the University, under the same conditions and circumstances. Coach shall receive temporary disability leave (sick leave), vacation leave, and holiday leave, subject to approval of the Head Coach. Vacation and temporary disability leave do not accrue. Benefits based on salary shall be calculated using annual base salary. As a contract employee, Coach is not covered under University Employee Grievance Procedures. Coach may, however, bring work disputes to the attention of the Director of Athletics or designee, and/or seek assistance from the Human Resources. Coach enjoys the rights of and is subject to the Human Resources Policy and Procedures Administrative Regulations as they are applicable to exempt staff employees, relating to all matters not specifically covered in this Agreement.

**3.5** The foregoing compensation shall be subject to the same payroll deductions (for example, state and federal taxes, FICA withholding, and retirement plans) that apply to the University's exempt staff employees.

**4.** Coach's duties. In consideration of the annual salary and other benefits which may become due and payable to Coach under provisions of this Agreement, Coach promises and agrees as follows:

**4.1** Faithfully and conscientiously to perform the duties assigned by the Head Coach (or Designee), the Director of Athletics, and the President of the University as specified in paragraph 1 above, and to maintain the high moral and ethical standards commonly expected of Coach as a leading representative of the UKAD.

**4.2** To devote full-time attention and energy to coaching duties as required herein, and to the promotion of UKAD's program.

**4.3** To receive approval, in advance, from the Director of Athletics, for any business or professional activities or pursuits that may conflict with his performance of the duties under this Agreement or may otherwise interfere with the University's interests. The purpose of this approval is to assure that business or professional activities do not or do not appear to conflict with Coach's performance of the duties under this Agreement or with the University's interests.

**4.4** Coach agrees that academic progress and achievement of the student-athletes under his supervision is of the highest importance. Coach agrees to adhere to the University's standards and goals for the academic performance of its student-athletes in his recruitment, supervision and coaching of players. Coach agrees to follow conscientiously any directives from the Head Coach and the Director of Athletics (or Designee) concerning such matters.

**5.** Travel Expenses. Coach shall conduct travel as is necessary to carry out duties as an assistant coach and shall be entitled to reimbursement for travel expenses pursuant to the University's policy subject to the limitations set forth

in the UKAD's policies and rates. Post season travel for Coach's guests may be approved by the Director of Athletics upon receipt of Coach's request. Reimbursement and payment of travel expenses shall be in accordance with the University's and the Athletic Department's business policies.

**6. Promotion, Endorsements, Consulting, and Summer Camp Activities.**

**6.1** Coach agrees to be available for media or other public appearances at such times as the University, through UKAD, may reasonably designate for athletic programs for publicity or promotion purposes.

**6.2** The University reserves the right to contract with commercial firms regarding the procurement or endorsement of services, equipment or apparel that may be worn or used by student-athletes or athletic department personnel, including Coach, in practices and public performances. Any income derived from such agreements shall be the sole and exclusive property of the University.

**6.3** Coach may not engage in any endorsement, consulting, or broadcasting activities for a fee without the prior written consent and approval of the Director of Athletics (or Designee).

**6.4 Sports Camps.** The right to sponsor and operate summer camps ("Camps") on University premises belongs to the University, acting through UKAD. Coach cannot conduct camp without the specific written approval of the Director of Athletics.

**6.5** Coach shall, upon request, provide a written detailed account annually to the President of the University for all athletically related income and benefits from sources outside the institution. The approval of all athletically related income and benefits shall be consistent with the University policy related to outside employment/income and benefits applicable to all regular employees.

**7. Termination.**

**7.1** Notwithstanding paragraph 2, this Agreement shall terminate upon the occurrence of any of the following contingencies, and except for the payment of any salary or other compensation, or installments thereof, earned as of the date of termination, the rights and obligations of the parties shall cease:

(a) In the event of Coach's death.

(b) In the event Coach is eligible and is approved for benefits under the University's Long Term Disability (LTD) Program. Termination of payment under the Agreement shall be on the date the LTD benefits begin, unless the termination date of the Agreement has passed.

(c) In the event of Coach's resignation or retirement from University employment or upon his acceptance of other employment in violation of the terms of this Agreement.

(d) In the event of "cause" as determined by the Director of Athletics; provided, however, Coach will first receive written notice and be accorded an opportunity to be heard in a meeting with the Director of Athletics. The decision of the Director of Athletics shall be subject to an appeal to the President. If Coach initiates an appeal, the appeal shall be reviewed at a hearing, conducted by the University Hearing Officer, by a three-person Committee appointed by the President; the Committee shall make a recommendation on the matter of the appeal to the President who shall make the final decision.

Cause shall include material misconduct, moral turpitude, or a pattern of unprofessional or unsportsmanlike behavior, insubordination, refusal, neglect, or failure to render services or otherwise fulfill completely the duties and obligations established in this Agreement. Cause includes neglect or willful conduct which the Director of Athletics concludes violates the University's Human Resources Policy and Procedures Administrative Regulation (HRP&P AR), SEC Rules and Regulations, the NCAA Constitution or the NCAA Operating Bylaws, especially those pertaining to Ethical Conduct.

The Director of Athletics may suspend (with or without pay) or reassign Coach pending an investigation, decision, or other matter relating to the existence of cause for termination. The Director of Athletics shall consult with the Director of Human Resources and shall terminate for a violation of the HRP&P AR only upon approval of the Director of Human Resources.

7.2 In addition to the reasons for termination set forth in paragraphs 7.1 and 7.3, the performance of work under this Agreement may be terminated by the University whenever the University determines that termination is in its best interests. Any such termination shall be effected by delivery to Coach of a written Notice of Termination specifying the date upon which such termination becomes effective. In the event of a termination pursuant to this paragraph 7.2, Coach shall be entitled to continue to receive his salary and additional compensation as provided in paragraphs 3.1 and 3.4 for the remaining portion of the term of this Agreement as if Coach were still actively employed; provided, however, Coach shall have an affirmative duty to mitigate amounts paid by the University by actively seeking employment in his profession during the remaining portion of the term. In the event Coach secures other employment, whether compensated or uncompensated, during the remaining portion of the term of this Agreement, Coach is obligated to notify the University in writing of the terms of that employment before the first day of said employment, including salary and any additional compensation. The University has the right to reduce continuing payment obligations to Coach to the extent that Coach earns other salary and additional compensation. Failure to notify the University as required under this paragraph shall be considered a material breach of this Agreement and shall relieve this University from all future obligations to make payments to Coach under this Agreement.

7.3. In addition to the reasons for termination set forth in paragraphs 7.1 and 7.2, the University may terminate this Agreement in the event of Head Coach's resignation or retirement from University employment or upon Head Coach's acceptance of other employment in violation of the terms of Head Coach's agreement with the University. Any termination under this paragraph 7.3 shall be effected by delivery to Coach of a written Notice of Termination specifying the date upon which such termination becomes effective. In the event of a termination pursuant to this paragraph 7.3, Coach shall be entitled to continue to receive his salary and additional compensation as provided in paragraphs 3.1 and 3.4 for a period of six (6) months after the effective date of Head Coach's resignation or retirement ("Six-Month Pay Period"), as if Coach were still actively employed. At the expiration of the Six Month Pay Period, the University shall owe no further pay or benefits under this Agreement. In the event Coach secures other employment, whether compensated or uncompensated, during this Six-Month Pay Period, he is obligated to notify the University in writing of the terms of that employment before the first day of said employment, including salary and any additional compensation. The University has the right to reduce continuing payment obligations to Coach to the extent that he earns other salary and additional compensation during the Six-Month Pay Period. Failure to notify the University as required under this paragraph shall be considered a material breach of this Agreement and shall relieve this University from all future obligations to make payments to Coach under this Agreement.

## **8. Actions other than Termination.**

**8.1** Notwithstanding anything in Paragraph 7.1.d, above, in the event the Director of Athletics determines Coach to have engaged in material misconduct, moral turpitude, or a pattern of unprofessional or unsportsmanlike behavior, insubordination, refusal, neglect or failure to render services or otherwise fulfill completely the duties and obligations established in this Agreement, it shall lie in the discretion of the Director of Athletics to take action other than termination; provided, however, Coach will first receive written notice and be accorded an opportunity to be heard in a meeting with the Director of Athletics. Actions the Director of Athletics may take include, but are not limited to, an oral or written warning, a written reprimand, a suspension (with or without pay), a forfeiture of future bonuses or benefits; loss of a planned salary increment or merit raise, probation, or permanent reassignment.

**8.2** The Director of Athletics may suspend (with or without pay) or reassign Coach pending an investigation, decision or other matter relating to the existence of cause for action under this Paragraph.

**9. Suspension or Fine Imposed by the SEC or NCAA.** Notwithstanding any other provision of this Agreement to the contrary, if Coach is suspended by the SEC or NCAA, Coach shall automatically be suspended by the Athletics Department for the duration of the SEC or NCAA imposed suspension without further notice or process. During such suspension Coach shall not be entitled to receive any compensation, benefits or any other payments under this Agreement, except for only the benefits provided under paragraphs # 2 and # 3.4 of this Agreement. Notwithstanding any other provision of this Agreement to the contrary, if Coach is fined by the SEC or NCAA for conduct attributable to Coach or assistant coaching staff, Coach shall be solely responsible for payment of the fine. In the event this agreement is terminated by either party, with or without cause, UKAD shall collect the fined amount as it would any other unpaid obligation of employee.

**10. Other employment.** Except as provided in Section 7.2, Coach agrees not to personally or through any agent actively seek, negotiate for, or accept other employment of any nature during the term of this Agreement without first having advised the Head Coach and Director of Athletics of the intention to do so.

**11. Personal Services.**

**11.1** Coach hereby represents to have special, exceptional, and unique knowledge, skill, and ability as a volleyball coach which, in addition to future acquisitions of coaching experiences at the University, as well as the University's special need for continuity in its volleyball program, will render Coach's services unique. Coach recognizes that the loss of Coach's services to the University, without University approval and release, prior to the expiration of the term of this Agreement or any renewal thereof, would cause an inherent loss to the University which cannot be estimated with certainty, or fairly or adequately compensated by money damages.

**11.2** Except as provided in paragraphs 7.2 or 7.3, Coach, therefore, agrees and hereby specifically promises not to accept employment, under any circumstances, as a volleyball coach at any institution of higher education which is a member of the National Collegiate Athletic Association, or for any team participating in any professional league or conference in the United States or elsewhere, requiring performance of duties prior to the expiration date of the term of this Agreement or any extension thereof, without first obtaining a release of this Agreement, or a negotiated settlement thereof in writing accepted by the Director of Athletics.

**11.3** Coach agrees that the University shall have the right, in addition to any other rights which the University may possess, to obtain an injunction by appropriate judicial proceedings to prevent Coach from coaching or performing activities related thereto in violation of this Agreement for any person, institution, firm, corporation or other entity;

and against any other breach of this Agreement; and Coach further agrees to indemnify the University for its costs in any injunction proceeding including court costs and reasonable attorneys' fees.

12. **Relationship between the Parties.** The relationship between Coach and the University shall be determined solely by the terms and conditions of this Agreement and the University's Administrative and Governing Regulations.

13. **Limitation of Remedies.** The Parties agree that neither party shall be liable for any collateral or consequential damages of any kind, including damages for lost collateral business opportunities or compensation arrangements, or for court costs and attorneys' fees (except as specifically permitted in paragraph 11.3) in the event of a breach hereunder.

14. **Assignment.** Neither party may assign, transfer, alienate, or encumber any of its rights or obligations hereunder without the express written consent of the other party.

15. **Governing Law.** This Agreement shall be governed by and construed under the laws of the Commonwealth of Kentucky, and any action regarding enforcement of this Agreement shall be brought in Franklin Circuit Court pursuant to KRS 45A.245.

IN WITNESS WHEREOF, Coach and the authorized representative of the University have executed this Agreement below.

FOR COACH

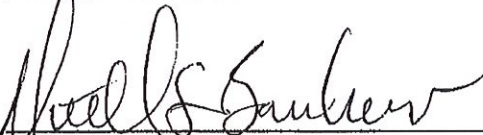


Employee/Coach

04/21/2023

Date

FOR THE UNIVERSITY

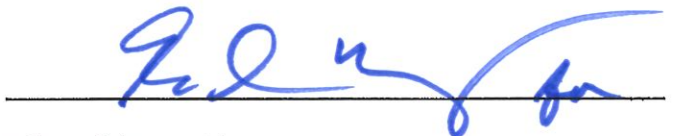


Mitchell S. Barnhart

Director of Athletics

5-23-23

Date



Office of the President

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Date