

NMSU HEAD COACH EMPLOYMENT AGREEMENT

Football Program



This Head Coach Employment Agreement (the "Agreement") is made by and between the **Regents of New Mexico State University** ("University" or "NMSU") and **Doug Martin** ("Coach") (collectively, the "Parties"), and is effective upon the signature of both parties.

The Parties agree that, subject to the terms and conditions of this Agreement, University will employ Coach as the head coach of University's Intercollegiate Football Program (the "Program"), and Coach will serve University in this capacity and fulfill the duties and responsibilities specified in this Agreement. Coach represents and warrants that he/she is fully qualified to serve and is available for employment. The University and Coach further agree to the Defined Key Terms and the Terms and Conditions of Employment set forth below.

DEFINED KEY TERMS:

Commencement Date of Employment: (Section 2.1)	August 1, 2018
Expiration Date of Employment: (Section 2.1)	June 30, 2022
Automatic Earned Extensions	One year extension automatically granted upon each occurrence of winning six (6) games in a season during the 2018, 2019, 2020 and/or 2021 seasons (maximum 4 one year extensions).
Base Annualized Salary: (Section 3.1)	FY 2018-2019: \$419,640.40 FY 2019-2020: \$422,000.00 FY 2020-2021: \$429,000.00 FY 2021-2022 and during any automatic earned extension: \$437,000.00 <i>FY commences on July 1 and ends on June 30.</i>
Performance Incentives: (Section 3.3)	See Schedule A attached.
Additional Benefits: (Section 3.4)	See Schedule B attached.
University Contact and Notification Address: (Section 6.8)	Mario Moccia, NMSU Director of Athletics Telephone: (575) 646-7630 Email: moccia@nmsu.edu c/o Office of General Counsel Hadley Hall Room 132, 2850 Weddell Road MSC 3UGC PO Box 30001 Las Cruces, NM 88003-8001
Coach Notification Address: (Section 6.8)	Doug Martin Email: dougmart@nmsu.edu Telephone: 575.649.9687 3113 Moonlight Ridge Arc Las Cruces, NM 88011

TERMS AND CONDITIONS OF EMPLOYMENT:

Section 1: Employment Duties

1.1 Reporting and Institutional Control. Coach will report directly to University's Director of Athletics (the "Director") and will confer with the Director or the Director's designee on all administrative and technical matters. The parties recognize that the Director is responsible to University's Chancellor for the operation, budgetary compliance, review and periodic evaluation of the entire athletics program at University. Coach recognizes and acknowledges the importance of maintaining and observing the principles of institutional control over every aspect of the Program. Coach agrees to recognize and respect those relationships and the organizational structure of University, and more specifically, agrees to follow the verbal or written instructions of the Director or designees. Within this structure, the Director and Coach will mutually cooperate to achieve the goals of the Program and the purposes of this Agreement.

1.2 Program Management. Within the authority granted by University and subject to the instruction of Director, Coach will faithfully perform the customary duties of a head coach, including managing and supervising the Program, and will perform such other duties in University's athletics programs, consistent with his/her status as head coach, as the Director may assign. Coach will devote his/her full time and best efforts to the performance of such duties. Such duties will include, without limitation, coaching University's team against major Division 1 college competition in a quality program. Coach's duties will include general responsibility for recruiting, training, supervision, evaluation and performance of student-athletes and all other duties and tasks as assigned by the Director. Coach is expected and required to operate the program within the budget established by the Director.

1.3 NCAA Rules and Compliance. Coach understands that the University and the University's Athletics Department are committed to the spirit and the letter of the Rules and Regulations of the National Collegiate Athletic Association (NCAA) and the Athletic Conference ("Conference") of which University is a member (collectively "Rules"). Coach will conduct himself/herself with honesty and good sportsmanship at all times, so that Coach and the Program will represent the honor and dignity of fair play and the generally recognized high standards associated with competitive sports. To the extent any provision of this Agreement is inconsistent with any of the Rules, the Rules will control and will be deemed a part of this Agreement.

- a) Rules and Regulations. Coach agrees to comply with the Rules, as well as all applicable laws, and the policies, rules and regulations of University (as such may be amended from time to time), and to supervise and take appropriate steps to ensure that Coach's assistant coaches, any other employees for whom Coach is administratively responsible, and the members of the Program's team know, recognize and comply with all such laws, policies, rules and regulations. Coach will comply with and will not knowingly or deliberately violate, or knowingly allow the violation of the Rules by other coaches, student-athletes, University personnel, and/or boosters. Coach will not be involved in improper arrangements or other violations of the Rules, or the policies and procedures of University and its Athletics Department. Coach represents that he is knowledgeable of the Rules and agrees that he will remain informed as such rules and regulations may be changed or interpreted during the term of this Agreement. Coach understands that his/her agreement to comply with the Rules is of utmost importance, and a material term of this Agreement.
- b) Compliance Education. Coach will regularly attend compliance rules educational meetings conducted by the University's Associate Athletics Director for Compliance and Eligibility (AADCE) to discuss and ensure strict adherence to the Rules. Coach will assist in the periodic education of coaches, boosters, high school and youth coaches, and others regarding compliance with the Rules as may be requested by the Director and/or the AADCE or designees.
- c) Notification and Cooperation. Coach agrees to immediately report to Athletics Director and the AADCE any known or possible or suspected NCAA infraction, or any act of non-compliance with the Rules or with

University rules, policies, or procedures, whether by Coach or other team coaches, or any other individuals or team. Coach will cooperate fully with the AADCE.

- d) Prohibited Endorsement. Coach will not use, directly or by implication, the NCAA's name or his affiliation with the NCAA in the endorsement of any products or services without the prior written approval from the NCAA and the University's Chancellor, or designee.

1.4 Primary Educational Purpose. Coach understands that a primary goal of the University is to provide a high quality educational opportunity to all its students, including student athletes, and that this goal is paramount to the goals of any of its athletics programs or sports teams. Consistent with this primary goal of the University, Coach will observe and uphold all academic standards, requirements and policies of University and encourage Program's team members to consistently attend all classes in which the student-athlete is enrolled and to devote sufficient time and attention to their academic studies to successfully pass those classes. Coach will fully cooperate with the student athlete support services staff, all academic counselors or similar persons designated by University to assist student-athletes, and will use his/her personal best efforts to encourage and promote those efforts. Coach will not contact any of the student-athlete's professors regarding the student-athlete's academic status. Coach recognizes that the goal of University is that every student-athlete obtain a baccalaureate degree, and agrees to support fully the attainment of this goal. The parties recognize that a student-athlete may be suspended from the University and/or declared ineligible for competition (1) for academic reasons, (2) because University believes the student-athlete would not be an appropriate representative of University under university policies, (3) as a disciplinary sanction under University's Code of Student Conduct, or (4) because University believes that the student-athlete is not eligible according to the Rules or for similar reasons.

1.5 Personal Conduct and Public Statements. Coach agrees to represent University positively in public and private forums and will not engage in conduct that reflects adversely on University or its athletics programs. Coach will perform his/her duties and personally comport himself/herself at all times in a manner consistent with good sportsmanship and with the high moral, ethical and academic standards of University and its Department of Athletics. Coach agrees that any public or external statements or comments he or she makes about University policy, Director, or senior administrators must be positive and constructive, and understands that any negative or critical statements constitute a material breach of this Agreement. Coach agrees that he will not use, and will not allow his staff or team members to use, any tobacco products during team practice, team events and meetings, or team competition.

1.6 Sportsmanship and Social Conduct. Coach will use best efforts to ensure that both the coaching staff and the student-athletes exercise good sportsmanship and appropriate social conduct at all times. Coach is responsible for providing team leadership and ensuring that student athletes abide by the University's Student Athlete Code of Conduct as set forth in the Student Athlete Handbook. Coach's inability to control the behavior of the staff and student-athletes in the Program, as represented by significant or repeated violations of University rules or the Student Athlete Code of Conduct, is a breach of this Agreement.

1.7 Intentionally left blank.

1.8 Additional Duties. In addition to the Employment Duties set forth in this Section 1 of this Agreement, Coach agrees to fulfill the more detailed duties and responsibilities as set forth in Section 4.

Section 2: Term

2.1 Specified Term. This Agreement is for a specified term appointment commencing on the Commencement Date of employment indicated in the Key Terms, and terminating automatically, without further notice to Coach, on the Expiration Date of Employment indicated in the Key Terms, if not previously terminated in accordance with Section 5. Notwithstanding the foregoing, the term of the employment will be automatically extended upon the occurrence of an event specified in the Key Terms for the period of time specified in the Key

Terms, without further action by either party. Under this agreement, Coach is employed on a 1.0 FTE (full time equivalent), and is required to devote his full time and best efforts to this employment.

2.2 Renewal or Extension or Hold-Over Employment. Except to the extent otherwise explicitly stated in the Key Terms, this Agreement may be renewed or extended only upon agreement of both parties, which must be evidenced by a written agreement signed by both Coach and University's President. This Agreement does not grant Coach any claim to tenure in employment or any right to renewal of this Agreement whatsoever. If this contract should expire without renewal, and if thereafter Coach is permitted to continue working for University in the same position, then for any period following the expiration, the employment is deemed at-will, with either party having the right to terminate at any time without notice or any other obligation, save the University's duty to pay for services rendered prior to termination at a rate equivalent to that provided by this Agreement.

Section 3. Compensation and Benefits

3.1 Base Salary and Benefits. During the term of this Agreement, in consideration of Coach's services and satisfactory performance of this Agreement, University will provide Coach with the following base compensation and benefits:

- a) The Base Annualized Salary as indicated in the Key Terms, payable in semi-monthly installments, in accordance with normal University procedures (subject to deductions required under federal and state law); and
- b) Such employee benefits as University generally provides to its benefit eligible employees, pursuant to University policy, as may be amended from time to time.

3.2 Salary Increases. Coach may receive salary increases as may be determined appropriate by the Director and approved in writing by the University's Board of Regents (or designee). Any such increase will be prospective only and effective only if set forth in a written addendum to this Agreement and signed by a duly authorized representative of University. No verbal or informal agreement to change the compensation terms of this Agreement will have any force or effect whatsoever.

3.3 Supplemental Incentive Compensation. University may agree to pay Coach supplemental incentive compensation for achieving annual specified performance goals. Any such agreement will be set forth in Schedule A to this Agreement and must be prospective, compensating Coach only for services and events which have not occurred at the time of signing, and the agreement to pay supplemental incentive compensation will not be effective unless Schedule A is signed by the University Chancellor or his designee. Any supplemental incentive compensation provided will be subject to any limits or restrictions of University policy, and subject to the availability of adequate funding, as may be determined by the Director and the Business Manager for the Athletics Department, in their sole discretion.

3.4 Additional Benefits. Additional benefits may be provided to Coach, and if so will be set forth in either the Key Terms or Schedule B attached to this Agreement. If a separate Schedule B is used, that Schedule must be signed by the University Chancellor (or designee). Any additional benefits provided will be subject to any limits or restrictions of University policy, and subject to the availability of adequate funding, as may be determined by the Director and the Business Manager for the Athletics Department, in their sole discretion.

3.5 Taxable Income. All compensation and benefits received by Coach will be subject to applicable tax laws and, if appropriate, will be treated as taxable income subject to applicable withholding and other payroll taxes.

Section 4. Coach's Additional Specific Duties and Responsibilities

4.1 Conflicts of Interest and Commitment. Coach will not undertake any business, professional or personal

activities or pursuits that would prevent Coach from devoting Coach's full time Coach's and best efforts to the performance of Coach's duties under this Agreement, or that would otherwise detract from those duties in any manner, or that, in the opinion of University, would reflect adversely upon University or its athletics programs. Coach will comply with University's Conflicts of Interest policy.

4.2 Accounting for Other Related Income and Benefits. In accordance with NCAA rules, Coach will obtain **prior written approval** from University's Chancellor and the Director for all athletically related income and benefits (to include all sources of possible income mentioned in the subsections below) from sources outside University and will report the source and amount of all such income and benefits in writing to Director on or before September 1 of each year, and upon request at any other time. University will be provided access to all records of Coach reasonably required to verify such report. Coach understands that University is required to make this information available to NCAA and Conference.

- a) Endorsements, Appearances and Additional Income. Coach will not receive any extra compensation for radio or television appearances on stations operated by the University, or for participating as part of Aggie Sports Network or for other appearances required by University. Subject to the foregoing and the restrictions of section 4.2.4 of this Agreement, Coach may enter into separate arrangements for other radio and television programs and endorsements. Coach will not be permitted to participate in any business transactions or endorse any products or appear on any radio or television programs which may discredit or bring undue criticism to University or which violate any contractual obligations of University. Coach may not associate University's name, logos, trademarks, symbols, insignias, indicia, service marks or reputation in connection with any such arrangements or endorsements without the prior written approval of the Director. Subject to the limitations and restrictions set out in this Agreement, Coach may earn income separate and distinct from that provided under this Agreement from other non-university sources.
- b) Sports Camps. Coach will not operate independent sports camps. Coach may, with the at the discretion of and with the prior written approval of the Director, earn additional income from University under a written agreement to develop and operate a youth sports camp.
- c) Barred Compensation. Coach will not accept any compensation or gratuities (excluding institutionally administered funds) from an athletics footwear, apparel or equipment manufacturer in exchange for the use of such merchandise during practice or competition by University's student-athletes, without first obtaining prior written approval from University's Chancellor or designee. Coach will not accept compensation or gratuities for scheduling athletic contests or individual player participation from another university or institution or a sponsor of athletics competition. This specifically precludes the acceptance of compensation or gratuities from other institutions, schedule brokers or agents, and television networks or syndicators. Coach will not accept compensation for personal appearances (e.g., speaking engagements, clinics) held in conjunction with the competition in which University's team is a participant. Coach will not accept compensation or gratuities for representing a professional sports organization as a coach or scout, in the negotiating of a contract, or for the performance of other services that involve the observation of or contact with athletics talent. Coach will not accept compensation or gratuities for representing any individual in the marketing of athletic ability or reputation to an agent, a professional sports team, or a professional sports organization.

4.3 Prospective Employment with Other Entities. Coach agrees to provide the Director with written notice prior to engaging in discussions or negotiations for prospective employment with any other institution of higher learning or with any professional athletics team, and to notify Director should Coach be approached or presented with another coaching opportunity. Coach will not, under any circumstances, accept employment as a coach at any other institution of higher learning or with any professional athletics team, where such employment would require performance of duties prior to the expiration of this Agreement, without the prior written approval of the Director. Notwithstanding any permission given by the Director pursuant to this section, Coach is subject to the terms of Section

5.7 relating to voluntary termination and the obligation to pay liquidated damages as specified in Section 5.7 for a voluntary termination prior to the expiration of the term of this Agreement.

4.4 Public Relations and Appearances. If requested to do so, Coach will work cooperatively with University in making arrangements for and participating in, public relations events including local media, and pre-game and post-game interviews for television and radio. If requested, Coach will make personal appearances during each year of this Agreement at activities or functions to promote University and the Program.

4.5 Non-Certified Events. Coach will not knowingly participate, directly or indirectly, in the management, coaching, officiating, supervision, promotion or player selection of any all-star contest involving student-athletes that is not certified by the NCAA's Special Events Committee.

4.6 Expense Approval and Reimbursement. Coach must seek advance authorization from Athletic Director or designee for expenses to be incurred in student recruitment activities and in the performance of Coach's other duties. Coach will be reimbursed only for pre-approved reasonable expenses, incurred in compliance with University policy and business rules and restrictions. Coach will not have authority to incur indebtedness for or on behalf of University and will not make any representation which might suggest that Coach has authority to incur indebtedness, unless such representation by Coach is in conformance with existing University or Athletics Department policies and procedures and is made or incurred with the express written approval of the Director, the Senior Vice President for Administration and Finance, and the Purchasing Director.

4.7 University Property and Equipment. Coach will not use, or allow students or others to use University's property or equipment for any personal purpose, except as explicitly allowed by University policy. Coach must comply with University rules regarding the reporting and reimbursement of expenses for personal use of University desk telephone, photocopy machine and fax machine. Under no circumstance will Coach allow any student-athlete to use Coach's personal or University provided equipment, including but not limited to the computer, desk telephone, mobile devices or fax machine. Upon request, Coach will provide University with an itemized detail of any use of Coach's personal telephone or other personal equipment in fulfillment of his official duties to University.

4.8 Assistant Coaches and Staff. Coach will have the responsibility and the authority to recommend to the Director the hiring and termination of Assistant Coaches and other staff for the Program, but the recruitment will be conducted in accordance with university policy and rules, and the decision will be made by the Director, and no contract to hire an Assistant Coach will be final until submitted through the University's contract approval process and signed by the University Chancellor or designee. Staffing for the Program will be subject to the availability of adequate funding, as may be determined by the Director and the Business Manager or Chief Operating Officer for the Athletics Department, in their sole discretion. Staff may not be hired using funds from donor or club accounts.

4.9 Game Schedule and Contracts. Subject to University regulations and budget, and governing athletics rules, the Head Coach, in consultation with and subject to the final approval of the Athletic Director, will negotiate the game schedule and the terms of the various game contracts, as well as invitations for pre-season or post-season play (if applicable). Coach may be required to schedule and play such guarantee games as maybe required to satisfy budget needs. No game contract is final unless and until submitted through University's contract approval process and signed by the Athletic Director or Senior Vice President for Administration and Finance. Head Coach has no authority to sign game contracts.

4.10 Program Club: Subject to University regulations and policies, the Head Coach may operate club(s), provided, however, that such activities may not include the sale of sponsorships of any type. Coach acknowledges that all sponsorship revenue is payable to University, and may be assigned to the holder of University's multi-media rights. Receipts from all club events will be subject to University accounting and cash handling procedures and will be deposited in accounts maintained with the NMSU Foundation, Inc. No salary supplements may be paid using club or donor funds except as may be specifically authorized by University.

Section 5: Termination

5.1 Termination Generally. This Agreement will terminate by expiration of the term as set forth in Section 2, or pursuant to any of the circumstances set forth below. Unless otherwise explicitly stated in this Agreement, University's obligation upon any termination of this Agreement, prior to the expiration of the term, will be limited to the payment of salary and benefits as provided in this Agreement for the specific period of time prior to and until the date of termination. In no case will University be liable to Coach for the loss of any collateral business opportunities, or any other consequential damages suffered by Coach as a result of University's termination.

5.2 Death, Disability or Illegality. This Agreement will terminate automatically upon the death or permanent disability of Coach, or upon Coach's failure to hold and maintain authorization to work in the U.S. under U.S. immigration law. "Permanent disability" will mean a physical and/or mental incapacity which prevents Coach from performing his duties under this Agreement for a period of ninety (90) consecutive calendar days. The determination of the existence of a permanent disability will be made by University in consultation with appropriate medical personnel, selected by University.

5.3 Termination by University for Cause. University may, at its option and discretion, terminate this Agreement for cause, upon the occurrence of any one or more of the following events:

- a) Neglect or inattention by Coach to the duties set forth in this Agreement, or Coach's refusal or unwillingness or inability to perform such duties in good faith after reasonably specific written notice has been given to Coach by the Director or Director's designee, and Coach has continued such neglect, inattention, refusal, unwillingness or inability during a subsequent period specified by University.
- b) Abandonment of job duties for a period of 3 or more days without reasonable justification or approved leave of absence, or acceptance of other employment, or engaging in providing coaching services to any other entity, without express written permission of the Director.
- c) Material, significant or repetitive violation or breach of this Agreement by Coach.
- d) Commission by Coach of a crime, whether prosecuted or not (excluding minor traffic offenses).
- e) Fraud or dishonesty by Coach in the performance of his/her duties or responsibilities under this Agreement.
- f) Coach's actions or inactions which permit, encourage or condone fraudulent or dishonest acts by any person in any matter relating to the Program or compliance with the Rules, provided that Coach had actual knowledge of such fraudulent or dishonest acts or reasonably should have known about such fraudulent or dishonest acts.
- g) Failure by Coach to respond accurately and fully, within a reasonable time, to any reasonable request or inquiry by University, NCAA, the Conference or other governing body having supervision over the athletics programs of University, relating to the performance of his/her duties while serving as Coach for University, or relating to the performance of his/her duties during his/her prior employment at any other institution of higher learning.
- h) Failure by Coach to manage the Program and its staff and team members, or to conduct himself/herself in a manner that reflects the academic values of University as set forth in this Agreement.
- i) Counseling or instructing by Coach of any person to fail to respond accurately and fully within a reasonable time to any reasonable request or inquiry concerning a matter relevant to University's athletics programs or other institution of higher learning which is propounded by University, NCAA, the Conference or other

governing body having supervision over the athletics programs of University, or as required by law, governing athletics rules or University rules and regulations.

- j) Soliciting, placing or accepting by Coach of a bet on any intercollegiate or professional athletics contest, or permitting, condoning or encouraging by Coach of any illegal gambling, bookmaking or illegal betting involving any intercollegiate or professional athletics contest whether through a bookmaker, a parlay card, a pool or any other method of organized gambling; or furnishing by Coach of information or data relating in any manner to any sport to any individual known by Coach to be, or whom he/she should reasonably know to be a gambler, better or bookmaker, or an agent of any such person, or the consorting or associating by Coach with such persons.
- k) Use or consumption by Coach of alcoholic beverages, drugs, controlled substances, steroids or other chemicals in such degree and for such appreciable period as to impair significantly or materially his/her ability to perform his/her duties hereunder; or failure by Coach to fully cooperate in the enforcement and implementation of any drug testing program established by University for student-athletes.
- l) Coach's sale, use or possession, or Coach's permitting, encouraging or condoning any other person in the sale, use or possession, of any narcotics, drugs, controlled substances, steroids or other chemicals, the sale, use or possession of which is prohibited by law or the Rules.
- m) Failure by Coach to report promptly to the Director any violations known to Coach of the Rules, or University policy, rules or regulations, by assistant coaches, students or other persons under the direct control or supervision of Coach.
- n) Failure by Coach to obtain prior approval for outside activities as required by this Agreement or by Rules, or failure to report accurately all sources and amounts of all income and benefits as required by NCAA rules or this Agreement, or the acceptance of compensation barred under this Agreement (reference Section 4.2).
- o) Commission of, or participation in, by Coach of any act, situation, or occurrence which, in University's reasonable judgment, brings Coach into public disrepute, contempt, scandal or ridicule, or failure by Coach to conform his/her personal conduct to conventional standards of good citizenship, with such conduct offending prevailing social mores and values and/or reflecting unfavorably upon University's reputation and overall primary mission and objectives, including but not limited to, public intoxication, conviction of driving while under the influence of drugs or alcohol, sexual harassment or assault, any sexual act or relationship with an NMSU student or staff subordinate, acts of dishonesty, misrepresentation, fraud or violence, irrespective of whether such acts rise to a level warranting criminal prosecution by the relevant authorities.
- p) A serious or intentional violation (or if University has a reasonable basis for believing that a serious or intentional violation occurred) by Coach (or any other person under Coach's supervision and direction, including student athletes) of any University policies or rules, or the Rules as defined in this Agreement, including findings or determinations of Rule violations during employment of coach at University or at any other institution of higher learning.
- q) Intentionally Omitted.

5.4 Notice and Procedural Rights. If University exercises its right to terminate this Agreement for cause under Section 5.3, it will give written notice to Coach of its intention to so terminate this Agreement and will specify the contractual provision(s) upon which University bases such termination, and the intended effective date of termination (which date will be no less than one month after the date the notice is delivered). In such case, Coach will have only such procedural rights and remedies, if any, as are provided in Section 6.4 of this Agreement.

5.5 Termination by University Without Cause. University may elect to terminate Coach's employment under this Agreement without cause, by written notice, at any time during its term, and in such event, University will be liable to Coach only for damages in an amount equal to the base salary provided in this Agreement for the remainder of the period from termination to the stated expiration date, but offset by any compensation earned by coach from any Coaching employment in a university or professional football program (comparable employment) in mitigation of those damages. Such damages will be paid in bi-monthly payments subject to federal and state tax withholdings. No retirement withholdings or contributions by University will be due with respect to the post-termination damage payments, and Coach will not be entitled to any other employment benefit of any kind. The parties agree that upon a University Termination Without Cause, Coach has a duty to mitigate his damages by making a reasonable good faith and diligent effort to obtain and keep other comparable employment. Coach agrees to promptly notify University upon accepting any comparable employment, and to provide University with documentary evidence of his earnings from such other employment. The damages due from University under this section will be reduced by an amount equal to the salary earned by Coach from any other comparable employment during the period from the termination to the stated expiration date. As a condition precedent to delivery of the damage payments contemplated by this section, Coach agrees to sign a liability release and waiver of claims indicating that the payments to be made by University are in full settlement of any and all legal claims of any type that Coach might otherwise assert against University. The liability release is subject to all payments being made timely.

5.6 Termination by Coach for Cause. Coach may terminate this Agreement for cause only if University materially breaches any term of this Agreement and fails to remedy such breach within 30 days after written notice from Coach. In the event of such a termination for any material reason other than non-payment of base salary, University will pay Coach, as liquidated damages and in full discharge of its obligations, an amount equal to three (3) months' base salary at Coach's then-current rate. Such payment will be made in a lump sum within sixty (60) days of the effective date of termination.

5.7 Unilateral Termination by Coach. A unilateral termination by coach, which is a breach of this Agreement, occurs upon the first of any of these events: (1) Coach's submission of a written resignation to University or any public announcement of his intent to resign before expiration of the term of this Agreement, made with Coach's active participation, or (2) Coach's written notification of University of Coach's intent to accept another coaching position, or (3) the abandonment of Coach's job duties for a period of more than three days without approved leave or other reasonable justification, or (4) the announcement of Coach's acceptance of other employment with duties commencing before the expiration of this Agreement, made with his participation. Coach hereby represents that Coach has unique and valuable knowledge, skills, and ability as an intercollegiate coach, and acknowledges that the loss of Coach's services to University, prior to the expiration of this Agreement (including any extension), is likely to cause significant loss to University. Coach and University agree that in such event, the amount of the resulting loss would be extremely difficult if not impossible to establish or prove to any degree of certainty, that the parties have made a good faith effort to estimate the amount of likely damages in establishing the amount to be paid in such an event, and that the liquidation of anticipated damages as provided in this Agreement is appropriate and should be legally enforceable. Accordingly, Coach agrees that any unilateral termination is a breach of this Agreement which will be remedied by the payment of liquidated damages in the amount and in accordance with the terms of the subsections below.

- a) In the event Coach unilaterally terminates the Agreement, and does not meet one of the conditions for reduction of the amount, as specified below, Coach will pay to University, within 45 days of the termination, a sum of money to be determined by the following formula: the number of months remaining in the term of the Agreement (including any automatic extension earned or otherwise agreed upon at the time of the unilateral termination), multiplied by the Coach's monthly base salary (annualized salary divided by 12) multiplied by 0.5.
- b) The parties agree that in the event that certain conditions are satisfied at the time that Coach unilaterally terminates this Agreement, that a reduction in the liquidated damages amount to be paid (as specified above) will be allowed, in accordance with the terms set out below. The conditions that must occur before any reduction in the liquidated damages are that (1) the Coach receives a bona fide written offer of employment as Head Coach of a University's Division 1 football program, and (2) Coach notifies the NMSU Athletic Director of

the offer by providing a copy of the offer and indicates an intent to accept that offer if it is not matched by NMSU, and (3) NMSU fails to match the compensation terms of that offer within 3 days after receiving the notification and copy, and (4) a minimum of 6 assistant coaches (excluding any graduate assistants) individually submit to the Athletic Director their written resignations from their respective positions at NMSU within 30 days after Coach's unilateral termination of this Agreement. In the event that all four conditions occur, then the liquidated damages to be paid by Coach will be reduced in accordance with one of the subsections (c or d) set forth below.

- c) If the termination occurs on or before December 1, 2019, then upon the occurrence of the conditions set forth in subpart b) above, liquidated damages will be reduced to \$75,000.00, payable in 3 equal annual installments, with the first payment due on the 45th day after the termination of this contract, and subsequent payments due on the same day of the year in each of the subsequent 2 years.
- d) If the termination occurs after December 1, 2019, then upon the occurrence of the conditions set forth in subpart b) above, liquidated damages will be reduced to \$50,000.00, payable in 2 equal annual installments, with the first payment due on the 45th day after the termination of this contract, and the second payment due on the same day of the next year.

5.8 Termination by Mutual Agreement. Coach may request a voluntary mutual termination of this Agreement, which if granted, must be in writing and signed by University Chancellor or designee. In the event University grants the request and agrees to a mutual termination, the University's payment to Coach of wages and benefits specified Section 3 above and earned prior to the date of such agreed upon termination will be in full satisfaction of all claims by Coach against University under this Agreement.

5.9 Restriction on Student Recruitment and Interference. Upon termination of this Agreement by Coach, Coach will not for a period of one (1) year after termination contact or otherwise seek to recruit any prospective student athlete previously contacted or recruited by University, unless such athlete had been recruited or contacted by any new institution employing Coach prior to the notice of termination by Coach to University. Coach further agrees that he/she will not interfere with University's student-athletes or otherwise obstruct University's ability to transact business.

5.10 Suspension or Other Disciplinary Action. If Coach is found to have violated this Agreement, any law, the Rules, or University policies or procedures, Coach may be subject to suspension or other disciplinary or corrective action as University may deem appropriate. This may include, but is not limited to, warnings, reprimands, and suspensions (with or without pay) for a period of time. In the event of any one or more of the acts or omissions constituting grounds for termination for cause under Section 5.3 of this Agreement, University, in its sole discretion, may elect to suspend Coach for a period not to exceed ninety (90) days in lieu of termination. During a period of suspension in lieu of termination for cause under this section, Coach will not be entitled to the compensation provided under Section 3.

5.11 Records and Information. All materials and records, including personnel records, recruiting records, Program information, films, statistics, or any other material or data, furnished to Coach by University or developed by Coach on behalf of University, or at University's direction or for University's use, are and will remain the sole property of University. Within seventy-two (72) hours of the expiration of the term of this Agreement, or its earlier termination as provided herein, Coach will immediately cause any such materials in his possession or control, including, but not limited to, all keys (including car keys), credit cards, telephones and computers to be delivered to University.

Section 6: General Terms

6.1 Contingencies. The University's duty to make payments pursuant to this Agreement will be contingent upon (a) the approval of University's annual operating budget by University's Board of Regents including sufficient funding to fully cover the expenses of operating the Program, including any expected increase in expenses for the budget period, (b) the continuation of the Program at University, and (c) the sufficiency of legislative appropriations to

support the University's athletics programs. Upon failure of any of these contingencies, the Agreement, and all obligations hereunder, will automatically terminate.

6.2 Waiver. No waiver of any default in the performance of this Agreement will be effective unless in writing and signed by the waiving party. The waiver of a particular default in the performance of this Agreement will not constitute a waiver of any other or subsequent default. The resort to a particular remedy upon a default will not constitute a waiver of any other available remedies.

6.3 Limitation of Remedies. The financial consequences of termination of this Agreement or suspension thereunder are exclusively set forth herein. Therefore, with the sole exception of payments required by this Agreement, in any instance of termination for cause or without cause or suspension effected in accordance with the procedures established in this Agreement, neither Coach nor University will be entitled to receive, and each hereby waives any claim against the other and their respective officers, Board of Regents, agents, employees, successors, heirs and personal representatives, for consequential damages allegedly sustained by reason of any alleged loss of business opportunity, loss of perquisites, loss of outside income, or expectation of income, or any damages allegedly sustained by reason of alleged humiliation, emotional distress, defamation or loss of consortium resulting from the fact of termination, the public announcement of such termination, or the release by University or Coach of information or documents which are required to be released by law. Coach acknowledges that in the event of termination of this Agreement for cause, without cause or otherwise, or suspension hereunder, he/she will have no right to occupy the position of head coach of the Program, and that his/her sole remedies are provided herein and will not extend to injunctive relief.

6.4 Arbitration. Subject to any limit on damages provided by applicable law and in this Agreement, any controversy or claim arising out of or relating to this Agreement, or its breach, will be settled exclusively by final and binding arbitration in Las Cruces, New Mexico, in accordance with the New Mexico Uniform Arbitration Act (§§ 44-7A-1 NMSA et seq. 1978). The arbitration proceedings and resolution will be kept confidential to the extent permitted by law.

6.5 Severability and Headings. If any provision of this Agreement is determined to be invalid or unenforceable, the remainder of the Agreement will not be affected and will remain in effect. The headings and titles set forth in this Agreement are strictly for the convenience of the parties and will have no effect on the interpretation of any provision of this Agreement.

6.6 Governing Law and Jurisdiction. This Agreement will be subject to and construed in accordance with the law of New Mexico. Any action or claim based in whole or in part on this Agreement, or the enforcement of an arbitration award made pursuant to Section 6.4, must be brought in a court of competent jurisdiction in the State of New Mexico.


6.7 Entire Agreement; Amendments. This Agreement constitutes the entire agreement between the parties and supersedes all prior understandings, written or oral, with respect to the subject of employment and Coach's relationship with NMSU. No amendment or modification of this Agreement will be effective unless in writing and signed by Coach and the University Chancellor, or designee, on behalf of the Regents of New Mexico State University. No verbal or informal agreement to amend the terms of this Agreement will have any force or effect whatsoever. The parties agree that this Agreement governs the rights, benefits, and obligations of Coach and University, and that, in the event there is any conflict between the terms of this Agreement and University policy, this Agreement will be controlling.

6.8 Notice. Any notice provided for herein will be in writing and will be deemed to have been given, delivered, or served when delivered personally to the party who is to receive such notice, or when mailed by U.S. registered or certified mail, postage prepaid, or when sent by package delivery service (such as Fed Ex or UPS) to such party at the physical address indicated in the Key Terms of this Agreement (or such other address as a party may have substituted by written request to the other). Written notice which is actually received by a party will be deemed effective on the date of receipt, irrespective of the method of transmittal.

6.9 Acknowledgement. Coach acknowledges that Coach has read and understands the provisions of this Agreement, has had the opportunity to consult legal counsel, and that such terms are reasonable and enforceable.

This **Head Coach Employment Agreement** is signed by the parties or their duly authorized representative, to be effective as of the date that the final signature is placed upon this document, as noted below.

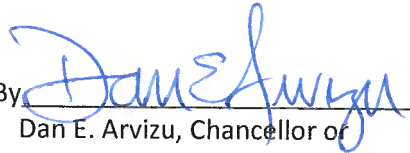
COACH:



Doug Martin

Date: 7/26/18

**THE REGENTS OF
NEW MEXICO STATE UNIVERSITY:**

By 

Dan E. Arvizu, Chancellor of
Andrew J. Burke, Sr. Vice President

Date: July 30, 2018

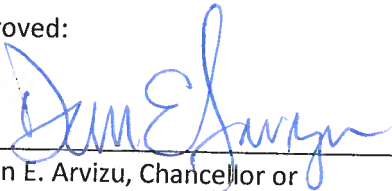
Schedule A – Supplemental Incentive Compensation

As provided in Section 3.3 of the Agreement, and subject to the terms, limitations and restrictions of the Agreement, in the event Coach successfully accomplishes the performance objectives listed below during any sports season during the term of this Agreement, University will pay the supplemental incentive compensation indicated below to Coach as additional compensation, provided that, at the time of the event, sufficient unallocated funds are available in the Athletics budget or accounts, as may be determined by University in its sole discretion.

- For the 2018-2019 season, Head Coach will receive an incentive amount equal to 10% of that portion of the 2018 season's ticket revenue, excluding any tickets purchased by Learfield (or any subsequent media rights holder), which is in excess of \$427,423, with the incentive not to exceed \$50,000.
- For each season subsequent to 2018 under this agreement, Head Coach will receive an incentive amount equal to 10% of that portion of that season's ticket revenue, excluding any tickets purchased by Learfield (or any subsequent media rights holder), which is in excess of the greater of the prior five-year average ticket revenue, or \$427,423, whichever is larger, with the incentive not to exceed \$50,000.
- \$10,000 upon win over UTEP
- \$10,000 upon win over UNM
- \$50,000 upon National Championship win
- \$20,000 upon being nationally ranked at the end of the year by the AP or USA Today
- \$25,000 per Power 5 win or Notre Dame win
- \$30,000 upon appearing in the College Football Playoff \$20,000 upon winning 6 games or qualifying for a bowl game, \$25,000 for 7 wins, \$30,000 for 8 wins and \$35,000 for 9-12 wins (not cumulative)
- \$10,000 for being named Conference Coach of the Year.
- \$20,000 for being named National Coach of the Year.

Approved:

By


Dan E. Arvizu, Chancellor or
Andrew J. Burke, Sr. Vice President

Date:

July 30, 2018

Schedule B – Additional Benefits

As provided in Section 3.4 of the Agreement, and subject to budgetary restrictions and the terms, restrictions and conditions of the Agreement, the following benefits listed below will be provided as additional compensation during the term of this Agreement.

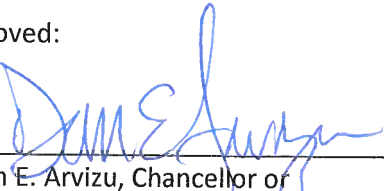
1. A cash stipend of \$50.00 per month towards the Coach's purchase of a cell phone and calling plan.
1. A cash stipend of \$400.00 per month as a vehicle allowance, OR, at the option of the Director, personal use of a courtesy vehicle which will be subject to Coach obtaining personal insurance coverage for all personal use of the vehicle, and subject to all terms and restrictions relating to the Athletics Department Courtesy Car Program as may be amended from time to time.

Condition: The courtesy vehicle may not at any time be driven by anyone other than NMSU employees and individuals named on Coach's personal insurance policy, and Coach must abide by all University policies and procedures for business and personal use of an NMSU vehicle. Coach acknowledges this restriction through his initials below.

Coach's Initials DM

2. Twenty (20) tickets to each home football game and a number of tickets, not to exceed twenty (20), for each road football game, subject to availability from the host team. Such tickets will be used solely for promotional and business development of the program or athletics department. Head Coach will also be entitled to four (4) tickets to University athletics department events conducted in the Pan American Center, the location of which will be determined by the Director of Athletics. Head Coach will not sell any tickets receive pursuant to this agreement.
3. A family membership to a local country club in Las Cruces, New Mexico as determined by the Director of Athletics.

Approved:

By 
Dan E. Arvizu, Chancellor or
Andrew J. Burke, Sr. Vice President

Date: July 30, 2018