

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding ("MOU") is entered into between THE UNIVERSITY OF TENNESSEE, a public educational corporation of the State of Tennessee, for and on behalf of The University of Tennessee, Knoxville ("UTK") and its Athletics Department (collectively, the "University"), and Joshua K. Heupel ("Coach"), and records the agreement of the University and Coach as to the principal terms and conditions under which the University shall employ Coach and Coach accepts employment as UTK's Head Football Coach. This MOU is effective on a date to be mutually agreed upon by the parties but no later than seven (7) days after the execution of this MOU ("Effective Date"), and constitutes a binding agreement between Coach and the University, subject to the execution of a formal Employment Agreement, which shall not be inconsistent in any material way with this MOU, and cancels and supersedes all prior existing oral and written agreements between the University and Coach. In consideration of the mutual promises contained herein, the parties agree as follows:

1. TERM, DUTIES & AUTHORITY: Coach shall be employed as UTK's Head Football Coach from the Effective Date through January 31, 2027 ("Term"), with the duties and authority ordinarily associated with a head football coach at a major university that participates at the NCAA Division I FBS level. Notwithstanding any of the foregoing it is agreed that if at any time during the Term the NCAA imposes against the University's football team a post season ban for two (2) or more years and/or a reduction in allowable scholarships of 8 or more, as a result of violations that occurred prior to the Effective Date, the Term shall be automatically extended through January 31, 2028. In the event the Term is extended as aforesaid, it is agreed that each year contained in Paragraphs 4 and 5 below shall be extended by one (1) year.

2. COMPENSATION & BENEFITS (ALL SUBJECT TO APPLICABLE STATE AND FEDERAL LAWS; DOLLARS STATED IN GROSS AMOUNTS; PARTIAL MONTHS/YEARS PRORATED): The University shall provide Coach with the following compensation and benefits:

- (a) Annual base compensation of \$275,000.00 ("Base Pay").
- (b) Annual supplemental compensation of \$3,725,000.00 payable from income earned by the University under various broadcast, endorsement and/or consultation contracts ("Supplemental Pay").
- (c) Annual incentive compensation for athletic and academic achievements as provided in Exhibit A, which is incorporated herein by reference.
- (d) A one-time moving allowance of \$35,000 in accordance with University rules.
- (e) In the University's discretion, either a monthly vehicle allowance of \$1,700.00 or two (2) vehicles of a quality, in terms of make and model, similar to vehicles provided to other University head coaches, for Coach's personal use. The University shall be solely responsible for maintaining liability insurance coverage on the vehicle. Coach shall be solely responsible for maintaining full comprehensive and collision insurance coverage on the vehicle, for paying fuel costs, and for otherwise complying with the courtesy vehicle program.
- (f) In the University's discretion, either temporary housing or a temporary housing allowance for the actual, documented costs of Coach's temporary housing and other living expenses, not to exceed \$10,000.00 per month, through the earlier of June 30, 2021 or the month in which Coach completes the sale of his current house, in accordance with University policy and rules.
- (g) The following complimentary tickets: twelve (12) season football tickets in the lower bowl in Neyland Stadium; use of a suite in Neyland Stadium for use by Coach's family and guests during all home football games, including the sixteen (16) tickets in connection therewith; and four (4) football season parking passes.
- (h) Authorization for Coach's spouse and immediate family members to travel at no additional cost to away football contests and post-season competitions.
- (i) Coach shall be included in the University's athletic play/practice insurance coverage. Coach shall be eligible for participation in the same fringe benefit programs for which other regular full-time employees are eligible. The University shall not be required to compensate Coach for his accrued and unused annual leave

upon the termination of his employment for any reason. Coach shall be entitled to the maximum annual amount of retirement contributions by the University allowed by federal and state law.

3. TERMINATION FOR CAUSE BY UNIVERSITY: The University has the right to terminate this MOU or the Employment Agreement at any time for cause as determined in the reasonable and good faith judgment of the University. For the purpose of terminating this MOU, "cause" shall be interpreted consistently with its meaning in the most recent head coach's employment agreement, excluding a memorandum of understanding, executed by the University. Termination of the Employment Agreement for "cause" shall be in accordance with the definitive terms and conditions set out in the Employment Agreement, which shall be generally consistent with, but not limited to, those included in the most recent head coach employment agreement, excluding a memorandum of understanding, executed by the University. In the event of a termination of either this MOU or the Employment Agreement for "cause," the University shall not be liable to Coach for any unearned or unaccrued payments or benefits after the date of termination. The University may suspend Coach with pay pending an investigation or decision relating to termination for "cause." For any one or more acts, omissions, or events that would be grounds for termination for "cause," the University may take other disciplinary or corrective action against Coach short of termination, including but not limited to suspension without pay (said suspension not to exceed 90 days). Prior to any final determination regarding a possible termination for "cause," the University shall afford Coach notice and an opportunity to meet with the Vice Chancellor and Director of Athletics to respond to any allegations or proposed termination. Coach voluntarily waives all rights to a post-termination opportunity to contest a for-cause termination, including but not limited to his rights under the Tennessee Uniform Administrative Procedures Act, Tennessee Code Annotated § 4-5-301 et seq. In the event a termination of this MOU or the Employment Agreement is ultimately found to be a breach of this Agreement by the Tennessee Claims Commission or a court of competent jurisdiction, after any available appeals have been exhausted, then Coach shall be entitled only to the remedies that would be available to him under this MOU or the Employment Agreement if the University terminated this MOU or the Employment Agreement without cause, according to the date of termination, in lieu of all other legal remedies or equitable relief.

4. TERMINATION WITHOUT CAUSE BY UNIVERSITY: In its sole discretion and at any time during the Term, the University may terminate this MOU or the Employment Agreement without cause. If the University terminates this MOU or the Employment Agreement without cause, then the University shall pay Coach a separation payment ("University Separation Payment") in the amount of: (i) one hundred percent (100%) of the Base Pay and Supplemental Pay which would have been payable from the date of termination through January 31, 2027, if such termination occurs before December 15, 2023; or (ii) seventy-five percent (75%) of the Base Pay and Supplemental Pay which would have been payable from the date of termination through January 31, 2027, if such termination occurs on or after December 15, 2023 but before December 15, 2025; or (iii) fifty percent (50%) of the Base Pay and Supplemental Pay which would have been payable from the date of termination through January 31, 2027, if such termination occurs on or after December 15, 2025. Payment of the University Separation Payment shall be made in equal monthly installments over a period equal to the number of months remaining in the Term until January 31, 2027, with the first monthly installment of the University Separation Payment due on or before the last day of the month following the month in which the MOU or the Employment Agreement was terminated. The University's obligations to pay the University Separation Payment shall not accrue interest (so long as not in arrears). As a condition of being eligible to receive the University Separation Payment, Coach shall be required to (1) execute a waiver and release of claims that is substantially similar to the release attached to the most recent head coach's employment agreement and (2) use his reasonable best efforts to mitigate the University's obligation to pay the University Separation Payment by making reasonable and diligent efforts as soon as practicable following termination to obtain another comparable employment or paid services position; Coach's failure to satisfy either condition will nullify the University's obligation to make the University Separation Payment. During the period of time in which the University is obligated to make the University Separation Payment, Coach shall promptly report to the University on a quarterly basis all non-passive income received or earned by him relating to all employment, independent contractor and/or paid services. For each month from the termination date through the end of the Term, the University shall have the right to deduct or offset any and all such non-passive income of Coach from

the monthly University Separation Payment installment. Notwithstanding the language and/or guidelines contained herein, the parties agree to engage in a good faith discussion and review regarding the applicability of Internal Revenue Code §409A (“§409A”) to such guarantee payment structure and, pending such review, agree to make reasonable accommodations in the Employment Agreement to comply with §409A.

5. TERMINATION WITHOUT CAUSE BY COACH: In his sole discretion and at any time during the Term, Coach may terminate this MOU or the Employment Agreement without cause. If Coach terminates this MOU or the Employment Agreement without cause, then Coach shall pay the University a separation payment (“Coach Separation Payment”) in the amount of: (i) \$8,000,000.00 in the event such termination occurs prior to December 15, 2022; or (ii) \$6,000,000.00 in the event such termination occurs on or after December 15, 2022 but prior to December 15, 2023; or (iii) \$4,000,000.00 in the event such termination occurs on or after December 15, 2023 but prior to December 15, 2024; or (iv) \$3,000,000.00 in the event such termination occurs on or after December 15, 2024 but prior to December 15, 2025; or (v) \$2,000,000.00 in the event such termination occurs on or after December 15, 2025 but prior to December 15, 2026 (with no payment being due in the event such termination occurs on or after December 15, 2026); Payment of the Coach Separation Payment shall be paid to the University before the last day of the month following the month in which the MOU or Employment Agreement was terminated.

6. MISCELLANEOUS:

- (a) In addition to the terms and conditions concerning the matters set out in Paragraphs 1 through 5 above (excluding terms and conditions applicable only while the MOU is in effect), the Employment Agreement shall include, among other things, provisions concerning the following, all in a form substantially similar to the provisions of the most recent head coach’s employment agreement: (i) duties and authority of Coach as Head Football Coach; (ii) provisions relating to the principles of institutional control including communications with University officials other than the Athletics Director; (iii) reasonable limitations on outside activities by Coach, including commercial endorsements; (iv) enforcement of NCAA, Southeastern Conference, and other governing athletic rules, including without limitation provisions relating to Coach’s responsibility to establish an atmosphere of compliance in the football program and monitor the activities of all coaches and staff members in the football program; (v) the University’s rights to use Coach’s name, likeness, image, etc.; (vi) operation of football camps; (vii) Coach’s obligation to notify the Athletics Director of material discussions about employment with another college or university or with a professional football organization; (viii) limitation of remedies and waiver of claims by both parties; and (ix) restrictions on Coach’s disclosure of confidential information relating to the football program during the Term and after termination of the Employment Agreement. Additionally, the Employment Agreement shall include a provision stating that Coach will be solely responsible for any fine or other penalty imposed personally on Coach by the NCAA and/or the Southeastern Conference and for any fine or other penalty imposed upon the University by the NCAA and/or the Southeastern Conference based on conduct of Coach.
- (b) The University shall be responsible for the payment of Coach’s buyout to the University of Central Florida, not to exceed 50% of remaining base salary, radio and television, and sponsorship and endorsement revenue compensation resulting from his acceptance of employment with the University (the “Expense”). The University has authorized this amount to be paid as a reimbursable employee business expense of the candidate and does not consider it compensation. The University acknowledges that payment of the Expense was necessary to obtain the services of the candidate, and therefore substantially benefits the University. Further, the University has determined that the requirements of its accountable plan have or will be satisfied with respect to the Expense. The candidate acknowledges that he has not and will not be reimbursed for this expense from any other source. Additionally, the candidate acknowledges that he will not take a deduction for the Expense on his personal income tax return. Should the Expense be determined to be non-qualified under the University’s accountable plan or if it taxed as Candidate’s income, the University will neutralize the actual tax impact to the candidate resulting from the University’s payment of the Expense. In such case, the candidate must claim all deductions allowable under applicable tax law,

including the Expense. The parties will review the candidate's pertinent tax information, including signed income tax returns (and any amended returns) for 2021 (or other applicable tax year) to substantiate such amount as is necessary to effectuate this desired outcome.

(c) Coach represents and warrants that he has disclosed to the University all material information concerning previous NCAA, conference, or institutional rules violations or potential violations committed by him or any coach, staff member, or other person under his direct or indirect control at any other NCAA member institution prior to the date on which he executed this Agreement. Coach also represents that: neither he nor any person acting on his behalf knowingly misrepresented material information, knowingly withheld material information, or knowingly provided incomplete or false material information during the University's process of interviewing and hiring Coach; he is not restricted from entering into this Agreement by any conflicting obligations to another authority, person, body, or entity; and he has never been convicted of, pled guilty to, or pled nolo contendere to a criminal act that constituted either (i) a felony or (ii) a misdemeanor involving moral turpitude (excluding minor traffic offenses). This MOU is conditioned on a satisfactory criminal background check and NCAA compliance check, to be completed within five (5) business days after the University's execution of this MOU.

(d) This MOU may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but all such counterparts shall together constitute one and the same MOU. This MOU shall be governed by the laws of the State of Tennessee.

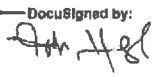
The parties acknowledge their agreement by signing and dating this Memorandum of Understanding below.

THE UNIVERSITY OF TENNESSEE

Head Football Coach


By: 

Dr. Daniel White
Vice Chancellor and Director of Athletics
The University of Tennessee, Knoxville

DocuSigned by:

8208CDF368B3428
Joshua K. Heupel

1.27.2021
Date

1/26/2021
Date


Dr. Donde Plowman
Chancellor
The University of Tennessee, Knoxville

1/27/2021
Date

EXHIBIT A - INCENTIVE COMPENSATION

In recognition of exemplary athletic and academic performance by the football team (the "Team") and the additional work required by Coach therewith, and as an incentive for Coach to assist the Team in achieving the goals described below, the University agrees to pay Coach, if earned, annual incentive compensation in an amount equal to the sum of the highest amounts described in the following subsections, subject to all applicable state and federal tax reporting and withholding requirements:

SEC Championship. A maximum of one (1) of the following (payment based on highest goal achieved in this subsection):

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| (a) | Winning the SEC Championship Game | \$300,000 |
| (b) | Appearing in the SEC Championship Game | \$100,000 |

National Achievement. A maximum of one (1) of the following (payment based on highest goal achieved in this subsection):

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|-----|---|-----------|
| (a) | Winning the CFP National Championship Game | \$500,000 |
| (b) | Appearing in CFP National Championship Game | \$400,000 |
| (c) | Appearing in CFP Semifinal Game | \$300,000 |
| (d) | Appearing in a CFP Access Bowl Game | \$200,000 |
| (e) | Appearing in a bowl game | \$100,000 |

Final Polls. A maximum of one (1) of the following (payment based on highest goal achieved in this subsection):

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|-----|---|-----------|
| (a) | Top 5 Finish in the AP, USA Today/Coaches, or CFP Poll | \$150,000 |
| (b) | Top 10 Finish in the AP, USA Today/Coaches, or CFP Poll | \$100,000 |
| (c) | Top 25 Finish in the AP, USA Today/Coaches, or CFP Poll | \$50,000 |

Coach of the Year Awards. Either or both of the following:

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|-----|--------------------------------|-----------|
| (a) | AP National Coach of the Year* | \$100,000 |
| (b) | AP SEC Coach of the Year | \$50,000 |
- *AFCA/AP/Bobby Dodd/Paul "Bear" Bryant/Walter Camp (limited to one)

Academic Progress Rate. A maximum of one (1) of the following (payment based on highest goal achieved in this subsection):

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| (a) | Single year APR or four year APR of 985 or greater | \$100,000 |
| (b) | Single year APR or four year APR of 945 or greater | \$50,000 |

The maximum amount of incentive compensation that may be earned relating to athletic and academic performance relating to a football season (including academic achievements for the academic year in which the football season occurred) shall be One Million Two Hundred Thousand Dollars (\$1,200,000.00). Annual incentive compensation earned shall be paid by the University on or before March 1 following the conclusion of the football season in which the goal was achieved. Annual incentive compensation shall be earned by and payable to Coach only if Coach is employed as the Head Football Coach on the day of the event that forms the basis for the incentive compensation. Notwithstanding anything herein to the contrary, however, the University shall not be obligated to pay any incentive compensation to Coach (and Coach shall be obligated to reimburse any incentive compensation that he has already received) if Coach or any member of the football program that reports to him, either directly or indirectly, is found by the NCAA to have committed a Level I or Level II infraction during the time period in which the incentive compensation was otherwise earned.