

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 **WILLIE MARTINEZ** ("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 Assistant Football Coach. This MOU is effective on February 18, 2021 ("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 Assistant Football Coach from the Effective Date through January 31, 2023 ("Term"), with the duties and authority ordinarily associated with an assistant football coach at a major university that participates at the NCAA Division I FBS level.

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) Annualized base compensation of \$290,000.00 ("Base Pay").
- (b) Annualized supplemental compensation of \$135,000.00 for February 18, 2021 through January 31, 2022 and \$160,000.00 for February 1, 2022 through January 31, 2023 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 stipend in a gross amount of up to \$35,000.00, subject to applicable state and federal tax withholding and in accordance with University rules.
- (e) In the University's discretion, either a monthly vehicle allowance of \$600.00 or one (1) vehicle of a quality, in terms of make and model, similar to vehicles provided to other University assistant 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) Complementary home football tickets in accordance with Athletics Department policy.
- (g) 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. All of Coach's compensation (including but not limited to Base Pay, Supplemental Pay, Retention Bonus, and Incentive Pay) is subject to any furlough and/or temporary salary reduction measures that may be imposed by the University or the UTK Athletics Department.

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 football 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 equal to the monthly rate of the sum of Base Pay and Supplemental Pay times the number of months remaining in the Term, with any part of a month prorated based on weekdays and subject to all applicable state and federal tax reporting and withholding requirements. 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, 2023 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 assistant 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 the objectively best comparable employment or paid services position that Coach is able to obtain based on Coach's skill and experience; 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 prior to the end of the Term, including any extension thereof, and accepts employment with another member institution of the Southeastern Conference, then Coach shall pay the University a separation payment in the amount equal to 50% of the total compensation (Base Pay plus Supplemental Pay) that would have otherwise been payable to Coach through the end of the Term had he not terminated the MOU or the Employment Agreement. If Coach terminates this MOU or the Employment Agreement without cause

prior to the end of the Term, including any extension thereof, and accepts employment with any school outside of the Southeastern Conference or any NFL team, then Coach shall pay the University a separation payment in an amount equal to 25% of the total compensation (Base Pay plus Supplemental Pay) that would have otherwise been payable to Coach through the end of the Term had he not terminated the MOU or the Employment Agreement. Payment of the Coach's 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. Coach's obligation to pay a separation payment may be waived by the University in writing signed by the UTK Chancellor, for good cause (e.g., Coach obtains a head football coaching position at the NCAA Division I FBS level or if the termination occurs after the final regular game, including postseason games, if applicable, of the final contract year of the Term) and upon request of the Head Football Coach made to the Chancellor through the Athletics Director.

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 assistant football coach's employment agreement: (i) duties and authority of Coach as Assistant Football Coach; (ii) reasonable limitations on outside activities by Coach, including commercial endorsements; (iii) enforcement of NCAA, Southeastern Conference, and other governing athletic rules; (iv) the University's rights to use Coach's name, likeness, image, etc.; (v) Coach's obligation to notify the Athletics Director of material discussions about employment with another college or university or with a professional football organization; (vi) limitation of remedies and waiver of claims by both parties; and (vii) 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) 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.
- (c) Notwithstanding anything herein to the contrary, neither party shall be considered in default of performance of any obligations under this MOU or the Employment Agreement if such performance is prevented or delayed by any cause which is beyond the reasonable control of the party affected, including but not limited to causes such as war, hostilities, revolution, or civil commotion; epidemic; accident; fire, wind, flood, or other natural disaster; state or national declaration of emergency; requirement of law, legislative enactment, or executive order; act of God; or any other reason that is generally regarded as force majeure. To the extent that Coach's ability to perform under this MOU or the Employment Agreement is materially prevented in any way or delayed for more than sixty (60) days due to a cause that is beyond the University's reasonable control, the University shall not be obligated to pay Coach the compensation set

forth in this MOU or the Employment Agreement, and shall have cause to terminate the MOU or the Employment Agreement without any further obligation to Coach.

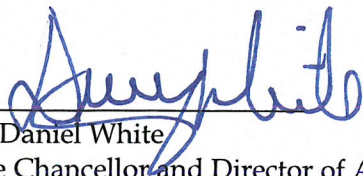
- (d) This MOU may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but all such counterparts shall together constitute one and the same MOU. This MOU shall be governed by the laws of the State of Tennessee.

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

THE UNIVERSITY OF TENNESSEE

WILLIE MARTINEZ

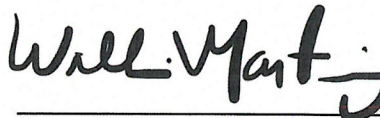
By:



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

2-18-21

Date



Coach

2/17/2021

Date



Dr. Donde Plowman
Chancellor
The University of Tennessee, Knoxville

2-19-21

Date

EXHIBIT A - INCENTIVE COMPENSATION

In recognition of exemplary athletic 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:

- (a) A maximum of one (1) of the following (payment based on highest goal achieved in this subsection):
 - I. Appearing in a bowl game 8.33%
 - II. Appearing in a "New Year's Six" bowl game/CFP Access Game 12%
 - III. Appearing in the College Football Playoff Semifinal Game 16%

- (b) A maximum of one (1) of the following (payment based on highest goal achieved in this subsection):
 - I. Appearing in the SEC Championship Game 2%
 - II. Winning the SEC Championship Game 4%

- (c) A maximum of one (1) of the following (payment based on highest goal achieved in this subsection):
 - I. Appearing in the College Football Playoff National Championship Game 2%
 - II. Winning the College Football Playoff National Championship Game 4%

Annual incentive compensation due under this Exhibit A is calculated by using the applicable percentage listed above in this Exhibit A multiplied by lesser of either: (1) the sum of Base Pay and Supplemental Pay; or (2) five hundred thousand dollars (\$500,000) (i.e., pay earned in excess of five hundred thousand dollars (\$500,000) shall not be used to determine bonus amounts). Annual incentive compensation due under this Exhibit A is subject to all applicable state and federal tax reporting and withholding requirements. Annual incentive compensation due under this Exhibit A 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 due under this Exhibit A shall be earned by and payable to Coach only if Coach is employed as Assistant Football Coach through the completion of the UTK football team's final game (bowl or playoff) of the season for which the incentive compensation was earned. 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 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.