

**EMPLOYMENT AGREEMENT  
HEAD WOMEN'S BASKETBALL COACH**

This Employment Agreement ("Agreement") is entered into by and between **THE UNIVERSITY OF TENNESSEE** ("University"), a public educational corporation of the State of Tennessee, for and on behalf of The University of Tennessee, Knoxville ("UTK") and UTK's Athletics Department, (collectively, the "University"), and **KELLIE HARPER** ("Coach"). This Agreement cancels and supersedes all prior existing oral and written agreements and understandings between the University and Coach. This Agreement does not and is not intended to confer any rights or remedies upon any person other than the University and Coach.

In consideration of the covenants contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged by the parties, the parties agree as follows:

**ARTICLE I – PURPOSE AND TERM OF AGREEMENT**

**SECTION 1.1. PURPOSE.** Subject to the terms and conditions stated in this Agreement, the University agrees to employ Coach and Coach agrees to be employed by the University as the head coach of UTK's intercollegiate women's basketball team ("Head Women's Basketball Coach").

**SECTION 1.2. TERM.** The term of this Agreement shall be from April 15, 2019 through April 15, 2024, unless sooner terminated as provided in this Agreement (the "Term"). The University may allow the Term to expire and elect not to renew Coach's employment as Head Women's Basketball Coach without complying with any University Rules applicable to staff-exempt employees who do not serve under a contract of employment for a definite term. Oral agreements to renew or extend the Term are invalid and nonbinding.

**ARTICLE II – COMPENSATION, BENEFITS, AND BUYOUT EXPENSE**

**SECTION 2.1. BASE PAY.** As payment and consideration for the services to be performed by Coach under this Agreement, the University agrees to pay Coach an annualized salary ("Base Pay") in the amount of Two Hundred Seventy-Five Thousand Dollars (\$275,000). The University shall pay the Base Pay to Coach in equal monthly installments in accordance with the University's customary monthly payroll procedures, with partial years or months prorated. The Base Pay shall not be increased in accordance with the terms of any across the board or merit salary increase authorized or mandated for University employees by the State of Tennessee or the University. The Base Pay is subject to the same furlough and temporary salary reduction measures that may be imposed from time-to-time by the University on its exempt employees.

**SECTION 2.2. SUPPLEMENTAL PAY.**

**Section 2.2.1. Supplemental Pay.** The University agrees to pay Coach additional annualized compensation payable from income earned by the University under the University's various broadcast, endorsement, and/or consultation contracts ("Supplemental Pay") in the amount of Four Hundred Seventy-Five Thousand Dollars (\$475,000). The University shall pay the Supplemental Pay to Coach in equal monthly installments in accordance with the University's customary monthly payroll procedures, with partial years or months prorated. Supplemental Pay shall not be increased in accordance with the terms of any across the board or merit salary increase authorized or mandated for University employees by the State of Tennessee or the University.

**Section 2.2.2. Supplemental Pay Services.** In consideration of the Supplemental Pay, Coach agrees, as reasonably directed by the Chancellor or Athletics Director to: participate in radio, television, internet, and other media shows, programs and appearances relating to the University's multi-media rights contract; carry out endorsement and consultation services described in the University's contracts with athletics shoe, equipment, and apparel manufacturers; carry out endorsement and consultation services described in the University's contract with the University's multi-media rights partner; and perform to a reasonable degree various public relations, University relations, alumni relations, community service, and fundraising services on behalf of the University. Such services shall not unreasonably interfere with Coach's duties with respect to games, practices or recruiting, or her preparation for games or practices. Coach shall use her best reasonable efforts to require that assistant coaches, other women's basketball staff, and women's basketball student-athletes comply with and cooperate in fulfilling the terms of the University's contracts with athletics shoe, equipment, and apparel manufacturers, and endorsement or consultation services as provided in the University's contract with the University's multi-media rights partner.

**SECTION 2.3. INCENTIVE COMPENSATION.** In recognition of exemplary athletic and academic performance by the women's basketball 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 subsections 2.3.1-2.3.4, subject to all applicable state and federal tax reporting and withholding requirements:

**Section 2.3.1. SEC Achievements.** Either or both of the following:

- |     |   |          |
|-----|---|----------|
| (a) | Winning the SEC Regular Season Championship<br>(as determined by the SEC) | \$50,000 |
| (b) | Winning the SEC Tournament Championship                                   | \$25,000 |

**Section 2.3.2. NCAA Achievement.** A maximum of one (1) of the following (payment based on highest goal achieved in this subsection):

- |     |                                  |           |
|-----|----------------------------------|-----------|
| (a) | Winning the NCAA Championship    | \$150,000 |
| (b) | Appearing in the Final Four      | \$80,000  |
| (c) | Appearing in the Elite Eight     | \$60,000  |
| (d) | Appearing in the Sweet Sixteen   | \$40,000  |
| (e) | Appearing in the NCAA Tournament | \$20,000  |

**Section 2.3.3. Coach of the Year Achievements.** Either or both of the following:

- |     |                                     |          |
|-----|-------------------------------------|----------|
| (a) | Naismith National Coach of the Year | \$15,000 |
| (b) | SEC Coach of the Year               | \$10,000 |

**Section 2.3.4. Academic Achievement.** \$25,000 for single year APR exceeding the national average multiyear APR in women's basketball in the same year.

Annual incentive compensation due under Sections 2.3.1-2.3.3 shall be paid by the University on or before May 31 following the conclusion of the women's basketball season in which the goal was achieved. Annual incentive compensation due under Section 2.3.4 shall be paid by the University on or before June 30 following the NCAA's publication of APR scores. Annual incentive compensation described in this Section 2.3 shall be earned by and payable to Coach only if Coach is employed as the Head Women's Basketball Coach on the day of the event that forms the basis for the incentive compensation.

**SECTION 2.4. VEHICLE/VEHICLE ALLOWANCE.** The University, in its sole discretion as to which option it selects, shall provide Coach with either: (a) one (1) vehicle of a quality, in terms of make and model, similar to vehicles provided to other University head coaches, for personal use by Coach; or (b) compensation in the amount of Eight Hundred Fifty Dollars (\$850) per month as a vehicle allowance in lieu of Coach's participation in the Athletics Department's courtesy vehicle program. The University shall be solely responsible for maintaining liability insurance coverage on the vehicle(s) provided to Coach under the courtesy vehicle program. Coach shall be solely responsible for maintaining full comprehensive and collision insurance coverage on the courtesy vehicle, for paying fuel costs, and for otherwise complying with the courtesy vehicle program. Coach acknowledges that the value of the courtesy vehicle or the amount of a vehicle allowance shall be reported as income and that Coach shall be responsible for payment of any income taxes associated with the vehicle or a vehicle allowance.

**SECTION 2.5. MOVING ALLOWANCE.** The University shall provide Coach with a one-time moving allowance of Thirty-Five Thousand Dollars (\$35,000) in accordance with University Rules.

**SECTION 2.6. PLAY/PRACTICE INSURANCE.** The University shall include Coach in the University's athletic play/practice insurance coverage. Coach acknowledges that this insurance coverage is subject to an annual bid process and that the type and amount of coverage for all participants may change from year to year.

**SECTION 2.7. FRINGE BENEFITS.** As a regular full-time employee of the University, Coach is eligible for participation in the same fringe benefit programs for which other similarly situated regular full-time employees are eligible. The Base Pay shall be used to determine benefits that are based on salary.

**SECTION 2.8. RETIREMENT CONTRIBUTIONS.** Coach understands and agrees that federal and state law limit the compensation on which the University may make retirement contributions. The University agrees to make the maximum annual amount of retirement contributions allowed by federal and state law for Coach. Retirement contributions shall be made periodically in accordance with the University's business practices.

**SECTION 2.9. TAX REPORTING AND WITHHOLDING.** All compensation described in this Agreement is stated in gross amounts and is subject to all applicable state and federal tax reporting and withholding requirements.

**SECTION 2.10. BUYOUT EXPENSE.** The University shall be responsible for the payment of Coach's buyout obligation to Missouri State University, if there is such a buyout, not to exceed One Hundred Fifty Thousand Dollars (\$150,000), resulting from her acceptance of employment with the University (the "Expense"). The University has authorized this amount to be paid as a reimbursable employee business expense of Coach and does not consider it compensation. The University acknowledges that payment of the Expense was necessary to obtain the services of Coach, 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. Coach acknowledges that she has not and shall not be reimbursed for this expense from any other source. Additionally, Coach acknowledges that she shall not take a deduction for the Expense on her personal income tax return. Should the Expense be determined to be non-qualified under the University's accountable plan or if it taxed as Coach's income, the University shall neutralize the actual tax impact to Coach resulting from the University's payment of the Expense. In such case, Coach shall claim all deductions allowable under applicable tax law, including the Expense. The parties shall review Coach's pertinent tax information, including signed income tax returns (and any amended returns) for 2019 (or other applicable tax year) to substantiate such amount as is necessary to effectuate this desired outcome. If Coach terminates this Employment

Agreement pursuant to Section 3.3.1 before April 15, 2021, then in addition to the Coach Separation Payment that Coach shall pay to the University pursuant to Section 3.3.2, Coach shall also re-pay the University an amount equivalent to 100% of the Expense, on or before the thirtieth (30<sup>th</sup>) day following the Coach Termination Date.

### **ARTICLE III – TERMINATION**

#### **SECTION 3.1. TERMINATION BY UNIVERSITY WITHOUT CAUSE.**

**Section 3.1.1. Right of University to Terminate Without Cause.** In its sole discretion and at any time during the Term, the University has the right to terminate this Agreement without Cause (defined in Section 3.2.2) upon written notice to Coach. The effective date of the termination (“Termination Date”) shall be the date on which the University issues the written notice to Coach. The University’s decision to terminate this Agreement without Cause is not subject to any University Rules.

**Section 3.1.2. University Separation Payment.** If the University terminates this Agreement without cause, then the University shall pay Coach a separation payment (the “University Separation Payment”) in an amount equal to thirty-three percent (33%) of the aggregate Base Pay and Supplemental Pay that would have been earned by Coach under this Agreement between the Termination Date and April 15, 2024.

**Section 3.1.3. University Separation Payment Schedule.** Payment of the University Separation Payment shall be made in equal monthly installments over a period equal to the number of months remaining until April 15, 2024, subject to all applicable state and federal tax reporting and withholding requirements, with the first monthly installment payment due on or before the last day of the month following the Termination Date (e.g., if the Agreement is terminated on October 15, then the first monthly installment would be due on or before November 30). Within a reasonable time following the termination of this Agreement without Cause pursuant to this Section 3.1, the parties shall provide each other with contact information sufficient to facilitate the provision of the notices, documents, and information required by this Section 3.1.

**Section 3.1.4. Interest.** The University’s obligations under Section 3.1.2 shall not accrue interest (so long as not in arrears).

**Section 3.1.5. Mitigation.** The University’s obligations under Section 3.1.2 are subject to Coach’s obligation to mitigate the University’s obligations under Section 3.1.2 by making reasonable, good faith, and diligent efforts as soon as practicable following the termination of this Agreement pursuant to this Section 3.1, and continuing throughout the Offset Period, to: (i) obtain an employment position or paid services opportunity that is the objectively best Comparable Position that Coach is able to obtain based on her skills and experience; (ii) obtain Gross Income at fair market value to be received during the Offset Period for such Comparable Position; and (iii) not agree to a structure of timing of receipt of Gross Income from a Comparable Position that avoids or minimizes all or part of the offset and reduction of the University Separation Payment under this Section 3.1.5. Such efforts shall continue throughout the Offset Period until Coach obtains a Comparable Position, and if Coach vacates a Comparable Position during the Offset Period then Coach shall make such efforts to obtain another Comparable Position during the Offset Period.

**Section 3.1.5.1. Comparable Position.** Without limiting the types of positions that are

comparable, the parties agree that each of the following positions and opportunities shall be deemed a "Comparable Position" for the purpose of this Section 3.1.5: head, associate, or assistant basketball coach at a college or university at the NCAA Division I level; a senior athletics administrative position at a college or university at the NCAA Division I level (e.g., athletics director or associate athletics director); professional basketball coach (head, associate, or assistant); and media commentator or analyst of college or professional basketball with a national or regional network, broadcast station, cable, internet, or satellite company.

**Section 3.1.5.2. Right to Offset.** Each monthly installment of the University Separation Payment shall be offset and reduced dollar-for-dollar using (A) actual rate of monthly Gross Income Coach receives or is scheduled to receive, either directly or indirectly, from the Comparable Position during the Offset Period in the event Coach receives or is scheduled to receive annual increases in Gross Income of not greater than ten percent (10%) from the Comparable Position during the contract term of the Comparable Position or, if there is no contract, the reasonably expected duration of the Comparable Position, or (B) in the event Coach receives or is scheduled to receive annual increases in Gross Income of greater than ten percent (10%) from the Comparable Position during the contract term of the Comparable Position or, if there is no contract, the reasonably expected duration of the Comparable Position: the average rate of monthly Gross Income Coach receives or is scheduled to receive, either directly or indirectly, from the Comparable Position using the greater of the rates as calculated over the following time periods: (i) the contract term of the Comparable Position or, if there is no contract, the reasonably expected duration of the Comparable Position; or (ii) the Offset Period. For any Comparable Position for which Coach appears, based on relevant market data reasonably available to the University, to be underpaid compared to fair market value, the University may impute the fair market or equitable value of the Gross Income to achieve the appropriate offset and reduction of monthly installments of the University Separation Payment. The University may offset and reduce future monthly installments of the University Separation Payment by the amounts of Gross Income by which prior monthly installments of the University Separation Payment would have been offset and reduced if Coach had been scheduled to receive such Gross Income at the time the University made the prior monthly installment payment(s). Coach agrees to refund all amounts of the University Separation Payment that would have been offset and reduced if Coach had been scheduled to receive such Gross Income at the time the University made the prior monthly installment payment(s). If at any time during the Offset Period Coach is unable to obtain a Comparable Position but obtains other employment or paid services opportunity, then the University may offset and reduce the University Separation Payment dollar-for-dollar by the amount of Gross Income Coach is scheduled to receive from the other employment or paid services opportunity in a similar manner as the manner described above for Gross Income from a Comparable Position.

- (a) For purposes of this Section 3.1.5, "Gross Income" shall mean, without limitation: gross income from salary or wages, supplemental pay, bonuses, incentive payments, talent fees, Deferred Compensation, or other types of compensation earned by or paid to Coach by an employer but specifically excluding any fringe benefits typically provided to individuals in the coaching profession (e.g., health insurance, courtesy use of automobile(s), courtesy tickets, and country club privileges); income, fees, and honoraria received or earned by Coach as an independent contractor, consultant, or self-employed person; or other

income of any kind received or earned as a result of the Comparable Position or other employment or paid services opportunity.

- (b) For purposes of this Section 3.1.5, "Deferred Compensation" means all salary or wages, incentive payments, bonuses, supplemental pay, annuities, insurance premiums, or other compensation of any kind whatsoever that prior to the end of the Term, Coach, or an entity associated with Coach, receives or becomes contractually obligated to receive then or in the future for services provided by Coach while the University's obligations to pay the University Separation Payment are in effect. The amount of Deferred Compensation that shall be credited monthly against the University Separation Payment installments shall equal the total of Deferred Compensation divided by the months in the period between the last day of the month in which the Termination Date occurs and the date the Term would have ended if this Agreement had not been terminated.

**Section 3.1.5.3. Documentation Relating to Comparable Position.** Coach shall provide the University a copy of any offer letter, letter of intent, term sheet, memorandum of understanding, memorandum of agreement, employment contract, or other document describing the terms of any Comparable Position within fourteen (14) calendar days of obtaining the Comparable Position. While the University's obligation to pay the University Separation Payment is in effect, and for a period of six (6) months thereafter, Coach shall provide the University with: (i) a written accounting of all Gross Income received or earned by Coach during the immediately preceding quarter; and (ii) a copy of Coach's W-2 form and 1099 form(s) for each calendar year on or before February 15 following the respective calendar year. This Section 3.1.5.3 shall survive the termination of the Agreement for the entire period in which the University's obligation to pay the University Separation Payment is in effect, plus an additional period of three (3) months thereafter.

**Section 3.1.5.4. Breach.** If Coach breaches an obligation imposed under this Section 3.1.5 and fails to cure the breach within fourteen (14) calendar days after receiving written notice of the breach from the University, then the University's obligation to continue paying the University Separation Payment to Coach shall cease.

**Section 3.1.6. No Further Obligations.** If the University terminates this Agreement without Cause pursuant to this Section 3.1, then all obligations of the University to Coach under this Agreement other than earned or accrued but unpaid compensation and the obligations in this Section 3.1 shall cease as of the Termination Date, and Coach shall be eligible for any post-termination benefits applicable to other regular full-time employees who terminate employment with the University (e.g., COBRA) except Coach voluntarily waives all rights to receive compensation for accrued and unused annual leave. Payment of the University Separation Payment is in lieu of all other legal remedies or equitable relief. Upon termination of this Agreement pursuant to this Section 3.1, Coach shall not be entitled to further salary, compensation, benefits, perquisites, or any other athletically related income or benefits derived by virtue of Coach's position as Head Women's Basketball Coach other than amounts described in this Section 3.1.

**Section 3.1.7. Bargained-For Agreement.** The parties have bargained for and agreed to the University Separation Payment, giving consideration to the fact that termination of this

Agreement without Cause by the University prior to its expiration may cause Coach to lose certain benefits and incentives, supplemental compensation, or other athletically-related compensation associated with Coach's employment with the University, the amounts of which are extremely difficult to determine with certainty. The parties further agree that the payment of the University Separation Payment by the University and the acceptance thereof by Coach shall constitute adequate and reasonable compensation to Coach for any damages and injuries suffered by Coach because of such termination by the University. The University Separation Payment shall not be, nor be construed to be, a penalty.

**Section 3.1.8. Condition - Waiver and Release of Claims.** As a condition of Coach's right to receive the University Separation Payment, within fifteen (15) calendar days of the Termination Date, Coach shall execute a waiver and release of claims in the form attached as **Appendix A** (which may be modified to conform to subsequent changes in the law or by mutual agreement of the parties) and incorporated herein by reference. If Coach brings a claim in violation of the waiver and release of claims, other than a claim against the University for a breach of this Section 3.1, all obligations of the University under this Section 3.1 shall cease, and Coach shall refund in full all monthly installments of the University Separation Payment received from the University.

**Section 3.1.9. After-Acquired Evidence.** If, within six (6) months after the Termination Date, the University learns about misconduct by Coach that would have provided the University with Cause to terminate this Agreement pursuant to Section 3.2 had the University known about the misconduct prior to terminating this Agreement pursuant to Section 3.1, then the University shall have the sole discretion to convert the termination of this Agreement to a termination for Cause pursuant to Section 3.2, in which case all obligations of the University under this Section 3.1 shall cease and Coach shall refund in full all monthly installments of the University Separation Payment received from the University.

**Section 3.1.10. Death/Disability.** The automatic termination of this Agreement upon the death or disability of Coach, as provided in Section 3.4 of this Agreement, shall not give rise to a right to the University Separation Payment pursuant to this Section 3.1.

**Section 3.1.11. Section 409A.**

**Section 3.1.11.1. Intent.** The parties intend all payments and benefits under this Agreement to comply with or be exempt from Section 409A of the Internal Revenue Code and the regulations and guidance promulgated thereunder (collectively, "Section 409A"). Coach acknowledges that the penalties for noncompliance with Section 409A shall be assessed against Coach. Coach and her advisors have reviewed this document for compliance with Section 409A and are not relying on the University's review or advice.

**Section 3.1.11.2. Separation from Service.** Solely to the extent necessary to comply with Section 409A, a termination of employment shall not be deemed to have occurred unless such termination is also a "separation from services" within the meaning of Section 409A and for purposes of any such provision of this Agreement, references to a "termination", "termination of employment" or like terms shall mean "separation from service."

**Section 3.1.11.3. Taxable Income.** All expenses or reimbursement paid under this Agreement that are taxable income to Coach shall be paid promptly upon submission of

appropriate documentation, but in no event later than the end of the calendar year following the year that Coach incurs such expenses or pays such related tax.

**Section 3.1.11.4. Installment Payments.** For purposes of Section 409A, Coach's right to receive any installment payments pursuant to this Agreement shall be treated as a right to receive a series of separate and distinct payments.

**Section 3.1.12. Reasonable Cooperation.** In the event this Agreement is terminated pursuant to this Section 3.1, Coach shall cooperate reasonably with the University in any investigation of Governing Athletic Rules or University Rules and that her failure to do so shall relieve the University of all further obligations to pay the University Separation Payment to Coach.

**Section 3.1.13. No Conflicts.** Nothing in this Section 3.1 shall be construed to conflict with or limit the University's rights set forth in any other part of this Agreement, including but not limited to Section 3.2, Article V, Article VIII, and Article IX. If this Agreement is terminated pursuant to this Section 3.1, or in the circumstances described in Section 3.2.9 or Section 3.3.6, this Section 3.1 shall survive the termination of this Agreement and shall continue in full force and effect for all purposes notwithstanding the termination or expiration of this Agreement.

**SECTION 3.2. TERMINATION BY UNIVERSITY FOR CAUSE.**

**Section 3.2.1. Right of University to Terminate for Cause.** In addition to the grounds for termination of this Agreement under any other part of this Agreement, including but not limited to Section 3.1, Article V, and Article IX, the University shall have the right to terminate this Agreement for "Cause" (as defined in Section 3.2.2) under this Section 3.2 at any time prior to the expiration of the Term.

**Section 3.2.2. Definition of "Cause".** For purposes of this Section 3.2, the term "Cause" shall include, but not be limited to, any one or more of the following as determined in the reasonable and good faith judgment of the University, whether or not the conduct or omission(s) occurred while Coach was employed by the University or during Coach's prior employment at another NCAA member institution:

- (a) Conduct or omission(s) by Coach that constitutes a Level I or Level II violation of one or more Governing Athletic Rules or conduct or omission(s) by Coach that more likely than not will lead to a NCAA finding of a Level I or Level II violation of one or more Governing Athletic Rules – including but not limited to multiple Level III or Level IV violations of Governing Athletic Rules considered collectively to be a Level I or Level II violation;
- (b) Conduct or omission(s) by a person who reports, directly or indirectly, to Coach that constitutes a Level I or Level II violation of one or more Governing Athletic Rules or conduct or omission(s) by a person who reports, directly or indirectly, to Coach that more likely than not will lead to an NCAA finding of a Level I or Level II violation of one or more Governing Athletic Rules – including but not limited to multiple Level III or Level IV violations of Governing Athletic Rules considered collectively to be a Level I or Level II violation;
- (c) Failure of Coach to report promptly to the Athletics Director or the staff member in the Athletics Department with primary responsibility for compliance any actual knowledge of or reasonable cause to believe that a violation of Governing



**Athletic Rules or University Rules has been committed by Coach and/or any other person;**

- (d) As contemplated by Governing Athletic Rules, Coach's: as contemplated by Governing Athletic Rules governing the same, failure to promote and maintain an atmosphere of compliance with Governing Athletic Rules and University Rules within the women's basketball program; as contemplated by Governing Athletic Rules governing the same, failure to monitor all employees who report directly or indirectly to Coach, and student-athletes on the women's basketball team; or knowing failure to take other reasonable steps to ensure that such persons know and strictly comply with Governing Athletic Rules and University Rules including, but not limited to, requiring them to attend compliance education sessions, encouraging them to seek interpretations as necessary, taking compliance into account when evaluating their performance, and applying appropriate disciplinary measures in the event of a violation;**
- (e) Requiring a student-athlete to perform a physical act that: (i) is not relevant to the sport of women's basketball but is, instead, obviously intended to embarrass or degrade a student-athlete; (ii) unreasonably compromises the health or safety of a student-athlete; or (iii) is in direct or material conflict with restrictions or guidelines established by the University's sports medicine staff subsequent to Coach's receipt of written notification of such restrictions or guidelines;**
- (f) Engaging in physical contact with a student-athlete that is obviously not necessary for instructional purposes (but not including occasional appropriate supportive or congratulatory physical contact);**
- (g) Conduct or omission(s) by Coach that is obviously outside the scope of her role as Head Women's Basketball Coach and causes substantial injury to or unreasonably endangers the health or safety of another person, including without limitation physical, psychological, or sexual abuse or violence;**
- (h) Material conduct or omission(s) by Coach that constitutes gross insubordination;**
- (i) Failure by Coach to cooperate reasonably with the University's efforts to prevent sexual assault, dating violence, domestic violence, and/or stalking;**
- (j) Failure by Coach to cooperate fully with and assist, failure to protect the integrity of, or failure to make a full and complete disclosure of any relevant information during, a NCAA, SEC, or University investigation, except that denying alleged violations shall not be deemed to be non-cooperation;**
- (k) Providing false, misleading, or incomplete material information relevant to the conduct of University business or an investigation conducted by the NCAA, the SEC, the University, or law enforcement, if Coach knew or should have known that the information was false, misleading, or incomplete;**
- (l) Conduct or omission(s) by Coach constituting a prohibited conflict of interest under University Rules or applicable Tennessee law (however, such conduct or omission(s) shall not constitute Cause if, in the University's reasonable and good**

faith judgment, the breach is capable of being cured, and Coach cures the breach within fifteen (15) calendar days after written notice by the University specifying the nature of the breach);

- (m) Conduct or omission(s) by Coach that constitutes material neglect or inattention by Coach to the standards or duties generally expected of University employees and specifically required of Coach under this Agreement (however, such conduct or omission(s) shall not constitute Cause if, in the University's reasonable and good faith judgment, the breach is capable of being cured, and Coach cures the breach within fifteen (15) calendar days after written notice by the University specifying the nature of the breach);
- (n) Knowing misrepresentation of a material fact or knowing concealment of a material fact by Coach in the performance of Coach's duties under this Agreement;
- (o) Coach's direct or indirect sale of complimentary tickets or admissions to a University athletics event;
- (p) Counseling or instructing by Coach of any coach, women's basketball staff member, current or former student-athlete, student, or other person to fail or refuse to respond accurately and fully within a reasonable time to any inquiry or request concerning a matter relevant to the conduct of University business which is propounded by the NCAA, Southeastern Conference, the University, or other governing body having supervision over the athletics program of the University, or which shall be required by law, Governing Athletic Rules, or University Rules;
- (q) Violation of Section 3.3.5;
- (r) Coach's conviction of, plea of guilty to, or plea of nolo contendere to a criminal act or omission that constitutes either (i) a felony or (ii) a misdemeanor involving moral turpitude (excluding minor traffic offenses);
- (s) Failure by Coach to obtain prior approval for outside activities as required by Article VI;
- (t) Subject to the University's fulfillment of its obligation to offer appropriate annual information or training to Coach of her obligations hereunder, Coach's violation of University Rules relating to amorous or sexual relationships;
- (u) Subject to the University's fulfillment of its obligation to offer appropriate annual information or training to Coach of her obligations hereunder, the failure by Coach to (1) report misconduct as required by University Rules (e.g., failure to comply with Tennessee laws regarding the mandatory reporting of child abuse and/or child sexual abuse); (2) comply with the University's Title IX-related policies including without limitation failure to satisfy the duties of a mandatory reporter/responsible employee; or (3) satisfy the duties of a "campus security authority" relating to the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act);

- (v) Prolonged absence by Coach from Coach's duties under this Agreement, without the consent of the Athletics Director;
- (w) Soliciting, placing, or accepting by Coach of a bet or wager on any intercollegiate or professional athletic contest whether through a bookmaker, a pool, or any other person, means, or method, or permitting, encouraging, or condoning such acts by any person under Coach's direct or indirect supervision (or subject to Coach's control or authority), including without limitation a student-athlete;
- (x) Furnishing by Coach of information or data relating in any manner to women's basketball, or any other sport, or any student-athlete, to any individual known by Coach to be, or whom Coach should reasonably know to be, a gambler, bettor, or bookmaker, or an agent of any such person, or the consorting or associating by Coach with such person;
- (y) Failure by Coach to fully cooperate in the enforcement and implementation of any drug testing program for student-athletes established by the University, the Southeastern Conference, the NCAA, or any other governing athletic body;
- (z) Use or consumption by Coach of alcoholic beverages, narcotics, drugs, controlled substances, steroids, or other chemicals in such a degree and for such an appreciable period as to impair significantly Coach's ability to perform Coach's duties under this Agreement;
- (aa) Permitting, encouraging, or condoning, through intentional, reckless, wanton, or negligent action, the sale, use, or possession by any women's basketball staff member or student-athlete of any narcotics, drugs, controlled substances, steroids, or other chemicals, the sale, use, or possession of which by such person is prohibited by law, University Rules, or Governing Athletic Rules;
- (bb) A reason sufficient under Tennessee law to terminate an employment contract for cause;
- (cc) Subject to the University's fulfillment of its obligation to offer appropriate annual information or training to Coach of her obligations hereunder, violation by Coach of UTK's Policy on Sexual Misconduct, Relationship Violence, Stalking, and Retaliation, which may be amended by the University from time to time.
- (dd) Conduct or omissions(s) by Coach which brings or is substantially likely to bring Coach and/or the University into considerable public disrepute, embarrassment, contempt, scandal, or ridicule;
- (ee) Gross misconduct by Coach, as defined by University personnel policy now in effect or hereafter adopted by the University. "Gross misconduct" is currently defined by University personnel policy to include the following: theft or dishonesty; gross insubordination; willful destruction of University property; falsification of records; acts of moral turpitude; reporting for duty under the influence of intoxicants; illegal use, manufacture, possession, distribution, or dispensing of controlled substances or alcohol; disorderly conduct; provoking a

fight (with the University acknowledging that fights between college women's basketball players may occur due to the nature of the sport and its practice activities); and other similar acts involving intolerable behavior by the employee; or

- (ff) Any other material breach by Coach of Coach's duties or responsibilities under this Agreement if: (i) in the University's reasonable and good faith judgment, the breach is capable of being cured and Coach fails to cure the material breach within fifteen (15) calendar days after written notice by the University specifying the nature of the breach; or (ii) in the University's reasonable and good faith judgment, the breach is not capable of being cured.

**Section 3.2.3. Separate and Independent Grounds for Termination.** The grounds for termination contained in Section 3.2.2 are separate and independent grounds for termination, and one ground for termination shall not be interpreted in any manner to modify, explain, or restrict any other ground for termination provided for anywhere in this Agreement.

**Section 3.2.4. Suspension with Pay.** In its sole discretion, the University may suspend Coach with pay pending the results of an investigation or decision relating to termination for Cause under this Section 3.2.

**Section 3.2.5. No Further Obligations.** Upon termination of this Agreement for Cause, Coach shall not be entitled to further salary, compensation, benefits, perquisites, or any other athletically related income or benefits derived by virtue of Coach's position as Head Women's Basketball Coach, from the University (except for monies earned or accrued but unpaid prior to the effective date of termination). Coach voluntarily waives all rights to receive compensation for her accrued and unused annual leave.

**Section 3.2.6. Other Disciplinary or Corrective Action.** For any one or more acts, omissions, or events that would be grounds for termination for Cause under this Section 3.2, the University in its sole discretion may take other disciplinary or corrective action against Coach short of terminating this Agreement. Other disciplinary or corrective action may include, but is not limited to, one or more of the following: (a) written reprimand; (b) suspension with pay; (c) suspension without pay (not to exceed ninety (90) calendar days); or (d) reassignment to a position that does not involve contact with prospective or enrolled student-athletes or representatives of the University's athletics interests (the University will make a good faith effort to assign Coach to a position that is consistent with her education or experience). No such disciplinary or corrective action shall be construed to conflict with or limit the University's right to terminate this Agreement during or subsequent to such disciplinary or corrective action. The University shall have no obligation to use progressive discipline, and any University decision to utilize progressive discipline shall not create any future obligation on the University to utilize progressive discipline.

**Section 3.2.7. Notice and Reasonable Opportunity to be Heard; Waiver of UAPA Rights.** Prior to the effective date of termination of Coach's employment or suspension of Coach without pay under this Section 3.2, the University shall afford Coach notice and a reasonable opportunity to meet with the Athletics Director and the Chancellor to respond to the proposed termination or suspension. Coach voluntarily waives all rights to a post-termination or post-suspension without pay opportunity to contest a termination or suspension without pay pursuant to this Section 3.2, including but not limited to her rights under the Tennessee Uniform Administrative Procedures Act, Tennessee Code Annotated § 4-5-301 et seq.

**Section 3.2.8. Continued Employment.** In its sole discretion, the University may elect to terminate this Agreement for Cause under this Section 3.2 but offer Coach continued employment with or without a new employment agreement.

**Section 3.2.9. Limitation of Remedies in Event of Breach.** In the event a termination of this Agreement by the University under this Section 3.2 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 described in Section 3.1 according to the date of termination, in lieu of all other legal remedies or equitable relief.

**Section 3.2.10. No Conflicts.** Coach agrees that nothing in this Section 3.2 shall be construed to conflict with or limit the University's rights set forth in any other Article of this Agreement, including but not limited to Section 3.1, Article V, Article VIII, and Article IX.

**Section 3.2.11. Survival.** If this Agreement is terminated pursuant to this Section 3.2, or in the circumstance described in Section 3.1.9, this Section 3.2 shall survive the termination of this Agreement and shall continue in full force and effect for all purposes notwithstanding the termination of this Agreement.

**SECTION 3.3. TERMINATION BY COACH.**

**Section 3.3.1 Right of Coach to Terminate Without Cause.** In her sole discretion and at any time during the Term, Coach has the right to terminate this Agreement without cause upon written notice to the University. The effective date of the termination by Coach ("Coach Termination Date") shall be the date on which Coach issues the written notice to the University.

**Section 3.3.2 Coach Separation Payment and Separation Payment Schedule.** If Coach terminates this Agreement without cause, then Coach (or a third party on Coach's behalf) shall pay the University a separation payment (the "Coach Separation Payment") in accordance with the following schedule:

<b><u>Date of Termination by Coach</u></b>	<b><u>Amount of Coach Separation Payment</u></b>
Before April 15, 2021	\$1,000,000; plus the amount of the Expense paid by the University under Section 2.10; plus \$17,500 (repayment of 50% of moving allowance)
April 15, 2021 – April 15, 2023	\$500,000
After April 15, 2023	The amount equal to the aggregate Base Pay and Supplemental Pay that Coach would have earned under this Agreement between the Coach Termination Date and April 15, 2024

Payment of the Coach Separation Payment shall be made to the University within forty-five (45) days of the Coach Termination Date.

**Section 3.3.3. Bargained-For Agreement.** The parties have bargained for and agreed to the Coach Separation Payment, giving consideration to the fact that Coach's promise to work for the University for the entire Term is an essential consideration in the University's decision to employ her as the Head Women's Basketball Coach and the fact that the University will commit substantial financial resources to the success of the women's basketball program and that if Coach terminates her employment with the University, the University will suffer damages the amount, nature, and extent of which are difficult to determine and which could include, but not be limited to, additional expenses to search for another Head Women's Basketball Coach, salary or other compensation to hire another Head Women's Basketball Coach, and tangible and intangible detriment to the women's basketball program of the University and support of its fans and donors. Accordingly, Coach agrees that the amount the Coach Separation Payment is a reasonable and fair approximation of the harm that the University will incur in the event of the termination of this Agreement by Coach. The Coach Separation Payment shall not be, nor be construed to be, a penalty.

**Section 3.3.4. Further Obligations.** If Coach terminates this Agreement without cause pursuant to Section 3.3.1, then all obligations of the University to Coach under this Agreement other than earned or accrued but unpaid compensation shall cease as of the date of any such termination, and Coach shall be eligible for any post-termination benefits applicable to other regular full-time employees who terminate employment with the University (e.g., COBRA) except Coach voluntarily waives all rights to receive compensation for accrued and unused annual leave. Coach shall not be entitled to further salary, compensation, benefits, perquisites, or any other athletically related income or benefits derived by virtue of Coach's position as Head Women's Basketball Coach from the University other than amounts described in this Section 3.3.4.

**Section 3.3.5. Notification of Athletics Director about Material Discussions Concerning Other Employment.** Coach shall promptly notify the Athletics Director in the event Coach (or any individual or entity acting on behalf of Coach) has any material discussions with any college or university or a pro basketball entity (or any individual acting on behalf of the entity) regarding potential employment by or with another college or university or a pro basketball entity.

**Section 3.3.6. Right of Coach to Terminate for Material Breach.** In addition to Coach's rights under Section 3.3.1, Coach shall have the right, subject to applicable Tennessee law, to terminate this Agreement in the event of a material breach by the University of its duties under this Agreement if: (i) the breach is capable of being cured and the University fails to cure the material breach within thirty (30) calendar days after the University's receipt of written notice from Coach specifying the nature of the breach; or (ii) the breach is not capable of being cured. If, after a termination of this Agreement by Coach under this Section 3.3.6, the Tennessee Claims Commission or a court of competent jurisdiction, after any available appeals have been exhausted, finds in favor of Coach, then Coach's remedies shall be limited to the remedies described in Section 3.1 according to the Coach Termination Date, in lieu of all other legal remedies or equitable relief. If, after a termination of this Agreement by Coach under this Section 3.3.6, the Tennessee Claims Commission or a court of competent jurisdiction, after any available appeals have been exhausted, finds in favor of the University, then the University's remedies shall be limited only to the remedies described in Section 3.3.2 according to the Coach Termination Date, in lieu of all other legal remedies or equitable relief.

**Section 3.3.7. Survival of Section.** If this Agreement is terminated pursuant to this Section 3.3, then this Section 3.3 shall survive the termination of this Agreement and shall continue in full

force and effect for all purposes notwithstanding the termination of this Agreement.

**SECTION 3.4. TERMINATION UPON DEATH OR DISABILITY OF COACH.**

**Section 3.4.1. Death.** This Agreement shall terminate automatically upon the death of Coach, and all salary, compensation, benefits, and perquisites shall terminate as of the conclusion of the calendar month in which death occurs, except that the executor or administrator of Coach's estate or other beneficiary specifically designated in writing shall be paid any death benefits due Coach under any University Rules now in effect or hereafter adopted by the University (and except for other payments earned or accrued prior to the effective date of termination).

**Section 3.4.2. Disability.** This Agreement shall terminate automatically if Coach becomes disabled. "Disabled" shall mean physical or mental incapacity of a nature that prevents Coach, in the reasonable and good faith judgment of the University, from coaching, recruiting, or performing several of the other essential functions of the position of Head Women's Basketball Coach for a period of ninety (90) consecutive calendar days (including but not limited to days on which Coach uses accumulated sick, annual, or personal leave). If this Agreement is terminated because Coach becomes disabled pursuant to this Section 3.4.2, all unearned salary, compensation, benefits, and perquisites shall terminate, except that Coach shall receive: (a) any disability benefits to which she is entitled under any disability program in which she is enrolled; (b) compensation for her accrued and unused annual leave; and (c) other payments which were due or accrued prior to the effective date of termination.

**ARTICLE IV – DUTIES**

**SECTION 4.1. DUTIES.** Subject to other provisions of this Agreement, Coach shall devote her full time, ability, skill, attention, and loyalty to the performance of the duties of Head Women's Basketball Coach. Coach shall report directly to the Athletics Director. Coach shall be responsible for performing duties ordinarily associated with and performed by a Head Women's Basketball Coach at a major university that participates in intercollegiate women's basketball competition at the NCAA Division I level, in compliance with Governing Athletic Rules, University Rules, and the law, including but not limited to:

- (a) Leading, supervising, evaluating, recruiting, training, conditioning, disciplining, educating, developing, promoting, and coaching the University's women's basketball team to compete successfully in the SEC and nationally.
- (b) Supporting the University's educational mission by maintaining an environment in which the pursuit of higher education is a priority as may be reflected by women's basketball student-athletes' class attendance, grade point averages, graduation rates, and NCAA Academic Progress Rates.
- (c) Subject to departmental budgetary limitations, University hiring practices, and the final approval of the Athletics Director – which approval shall not be unreasonably withheld – the recruitment, hiring, supervision, disciplining, termination, and evaluation of the performance of the Team's assistant coaches.
- (d) Making her best efforts to perform her duties and personally comport himself at all times in a manner consistent with good sportsmanship and in accordance with the high moral, ethical, conduct, and academic standards of the University. At all times, Coach shall exercise her best reasonable efforts to ensure that all employees and students under

Coach's direct supervision, or subject to Coach's direct or indirect control (e.g., a women's basketball student-athlete or an employee with duties directly related to women's basketball), comport themselves in a like manner on and off the field. Such efforts shall include without limitation maintaining rules of conduct, imposing fair discipline for violations of those rules, and implementing reasonable education to prevent misconduct.

- (e) **Becoming knowledgeable of and complying with all Governing Athletic Rules and University Rules, to which Coach acknowledges she has access.**
- (f) **As contemplated by Governing Athletic Rules, promoting and advancing institutional control over every aspect of the women's basketball program; promoting and maintaining an atmosphere of compliance with Governing Athletic Rules and University Rules within the women's basketball program; monitoring all employees who report directly or indirectly to Coach, and students on the women's basketball team under Coach's supervision, and taking other reasonable steps to ensure that such persons know and strictly comply with Governing Athletic Rules and University Rules including, but not limited to, requiring them to attend compliance education sessions, encouraging them to seek interpretations as necessary, taking compliance into account when evaluating their performance, and applying appropriate disciplinary measures in the event of a violation. The University agrees to cooperate in good faith with Coach in her efforts to fulfill her responsibilities under Governing Athletic Rules to promote an atmosphere of compliance and monitor the activities of her staff.**
- (a) **Engaging in reasonable actions in the development, implementation, management, and monitoring of all aspects of prospective women's basketball student-athlete recruiting, including but not limited to: recruiting contacts, evaluations, official visits, telephone calls and other communications, improper benefits, and any travel-related activities of prospective student-athletes and the women's basketball program's coaching staff; and in the development and implementation of effective plans and strategies to recruit academically qualified student-athletes who possess the talent necessary to ensure the women's basketball team is competitive in the SEC and who possess the personal characteristics necessary to be well-regarded representatives of the University.**
- (g) **Reporting promptly to the Athletics Director or the staff member in the Athletics Department with primary responsibility for compliance any actual knowledge of or reasonable cause to believe that one or more violations of Governing Athletic Rules or University Rules have been committed by himself and/or any other person;**
- (h) **Cooperating fully in any investigation of any aspect of the women's basketball program or the intercollegiate athletics program, whether by the NCAA, the Southeastern Conference, or the University.**
- (i) **Working cooperatively with the Athletics Compliance Office on compliance matters and Governing Athletic Rules education.**
- (j) **As contemplated by NCAA Bylaw 18.4.2.1.1.2, attesting annually that the obligations of NCAA Constitution 2.1 (Principle of Institutional Control and Responsibility) and NCAA Constitution 2.8 (Principle of Rules Compliance) have been met;**



- (k) Using reasonable efforts to protect the health and welfare of women's basketball student-athletes. Coach agrees that final decisions regarding student-athletes' participation in practices and competitions shall be made by the Athletics Department's sports medicine staff and that such decisions shall not be considered a breach of this Agreement.
- (l) Providing substantive input and working in good faith with the Athletics Director to schedule future opponents, supporting in good faith the Athletics Director's negotiations and other efforts to schedule future opponents, and not unreasonably objecting to any such future opponents. The Athletics Director is the final decision maker on scheduling.
- (m) Making diligent, good faith efforts to maintain and cultivate positive and effective working relations with governing boards, associations, conferences, committees, alumni, the media, the public, students, faculty, staff, and friends of the University.
- (n) Under the direction of the Athletics Director, making diligent, good faith efforts to maintain responsibility for the fiscal and budgetary functions associated with the women's basketball program.
- (o) Recognizing that her statements about any aspect of the University and its employees are often publicized and agreeing to use her best efforts to keep comments she makes about the University and its employees positive and constructive, except as approved by the Athletics Director.
- (p) Performing the duties of a "campus security authority" under the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act and the duties of a mandatory reporter/responsible employee under UTK's Policy on Sexual Misconduct, Relationship Violence, Stalking, and Retaliation (which may be amended by the University from time to time).
- (q) Materially performing other duties specifically described elsewhere in this Agreement, including but not limited to Section 2.2.2.
- (r) Materially performing other reasonable women's basketball-related duties as may be reasonably assigned by the Athletics Director from time to time.

Notwithstanding anything to the contrary in this Section 4.1, a breach of a duty described in this Section 4.1 shall not be considered to be cause sufficient to terminate this Agreement unless termination for the breach would be for "Cause" under Section 3.2.2.

**SECTION 4.2. INSTITUTIONAL CONTROL.** Coach recognizes and acknowledges the importance of the maintenance and observance of the principles of institutional control as contemplated by Governing Athletic Rules over every aspect of the women's basketball program. Coach agrees to recognize and respect the organizational structure of the University in the execution of her duties under this Agreement. For example, Coach agrees to follow all protocols established by the Chancellor and/or the Athletics Director from time to time with respect to contact with University officials (including without limitation members of the Board of Trustees and the Board's Athletics Committee) about matters of concern relating to the women's basketball program and/or the Athletics Department. The foregoing shall not be deemed to prohibit non-substantive social discourse between Coach and University officials in the context of social or other gatherings at which Coach and one or more University officials

are present, but discussion of all substantive issues about the women's basketball program or the Athletics Department shall be handled in accordance with established protocols. In addition, Coach shall at all times recognize that as part of the University's administration and its publicly visible representative, Coach has a duty to support the policies and academic priorities of the University in her actions and in public discourse.

**SECTION 4.3. STUDENT-ATHLETE DECLARED INELIGIBLE.** Coach recognizes that the primary mission of the University is higher education. Coach also recognizes that a student-athlete may be declared not eligible for competition: (i) for academic reasons; (ii) because the University believes the student-athlete would not be an appropriate representative of the University; (iii) because the University believes that the student-athlete is not eligible according to Governing Athletic Rules; and/or (iv) under University Rules. Coach agrees that such action by the University shall not be considered a breach of this Agreement.

**SECTION 4.4. PAYMENT/REIMBURSEMENT OF EXPENSES.** Coach shall receive payment and/or reimbursement for reasonable and necessary expenses incurred in connection with the performance of her duties, subject to applicable University Rules and Governing Athletic Rules. Payment and/or reimbursement for travel expenses for a spouse/guest and/or children will be in accordance with University Rules and Governing Athletic Rules; however, Coach will not be responsible for paying for travel for a spouse/guest and/or children that does not result in additional costs to the University e.g., charter bus, charter flight).

## **ARTICLE V – ENFORCEMENT OF GOVERNING ATHLETIC RULES; UNIVERSITY DISCLAIMER REGARDING NCAA VIOLATIONS**

**SECTION 5.1. DISCIPLINARY OR CORRECTIVE ACTION REQUIRED BY NCAA AND/OR SEC.** Coach agrees that the University, as a member of the NCAA and the SEC, is required to apply and enforce certain Governing Athletic Rules with respect to all institutional staff members through appropriate disciplinary or corrective action and is further required by NCAA Bylaw 11.2.1 and/or SEC Bylaw 19.8 to include the following stipulation in this Agreement: (1) Coach has an affirmative obligation to cooperate fully in the NCAA infractions process, including the investigation and adjudication of a case (see NCAA Bylaw 19.2.3); and (2) if Coach is found in violation of Governing Athletic Rules or responsible for another person's violation of Governing Athletic Rules, then she shall be subject to disciplinary or corrective action as set forth in the provisions of the NCAA infractions process (see NCAA Bylaw 19), Article 4 of the SEC Constitution, and/or SEC Bylaw 19.8, including but not limited to suspension without pay or termination of employment, whether the violation(s) occurred while Coach was employed by the University or during prior employment at another NCAA member institution.

**SECTION 5.2. NCAA COMMITTEE ON INFRACTIONS FINDING.** Coach agrees that a finding by the NCAA Committee on Infractions (or, if appealed by the University, by the NCAA Infractions Appeals Committee), or an agreed-on finding approved by the NCAA Committee on Infractions in the course of a summary disposition, that Coach has engaged in or condoned a Level I or Level II violation of one or more Governing Athletic Rules, or is responsible for another person's Level I or Level II violation(s) of Governing Athletic Rules, shall constitute a material breach of this Agreement that is not capable of being cured, and the University, in its sole discretion, may elect to terminate this Agreement, suspend Coach without pay, or take other disciplinary or corrective action against Coach as set forth in the provisions of the NCAA enforcement procedures upon written notice to Coach within thirty (30) calendar days of the finding by the NCAA Committee on Infractions (or, if appealed by the University, by the NCAA Infractions Appeals Committee) or the NCAA Committee on Infractions' approval of the agreed-on finding, whether the violation(s) occurred while Coach was employed by the University or

during prior employment at another NCAA member institution.

**SECTION 5.3. NCAA/SEC FINES AND PENALTIES.** Coach agrees to comply with any penalty imposed by the NCAA and/or the Southeastern Conference pursuant to Governing Athletic Rules, following the exhaustion of any available appeals by Coach. Any fine or other penalty imposed personally on Coach by the NCAA and/or the Southeastern Conference shall be the sole responsibility of Coach.

**SECTION 5.4. FURTHER OBLIGATIONS.** Upon termination of this Agreement pursuant to this Article V, Coach shall not be entitled to further salary, compensation, benefits, perquisites, or any other athletically related income or benefits derived by virtue of Coach's position as Head Women's Basketball Coach from the University (except for payments earned or accrued prior to the effective date of termination). Coach waives all rights to receive compensation for her accrued and unused annual leave upon termination of this Agreement pursuant to this Article V.

**SECTION 5.5. CONTINUED EMPLOYMENT OPTION.** In its sole discretion, the University may elect to terminate this Agreement under this Article V but offer Coach continued employment with or without a new employment agreement.

**SECTION 5.6. NOTICE AND REASONABLE OPPORTUNITY TO MEET; WAIVER OF UAPA RIGHTS.** Prior to implementing any disciplinary or corrective action as contemplated by this Article V against Coach based on a finding by the Southeastern Conference, NCAA Committee on Infractions, or, if appealed, the NCAA Infractions Appeals Committee, the University shall afford Coach notice and a reasonable opportunity to meet with the Athletics Director and the Chancellor to respond to the proposed disciplinary or corrective action. Coach voluntarily waives all rights to a post-termination or post-suspension opportunity to contest a termination or suspension without pay pursuant to this Article V under University Rules and the Tennessee Uniform Administrative Procedures Act, Tennessee Code Annotated § 4-5-301 *et seq.*

**SECTION 5.7. REPAYMENT OF INCENTIVE COMPENSATION.** Coach shall forfeit and repay to the University all annual athletics incentive compensation paid to Coach pursuant to Section 2.3 if any goal achieved is subsequently vacated by the Southeastern Conference or the NCAA, or if the women's basketball program is subsequently placed on probation by the NCAA (or by the University, if the self-imposed) for violations that occurred in whole or in part during a year for which Coach was awarded annual athletics incentive compensation. This obligation shall apply regardless of whether the University terminates this Agreement or Coach's employment. This obligation shall survive the termination or expiration of this Agreement and shall continue in full force and effect for all purposes notwithstanding the termination or expiration of this Agreement.

**SECTION 5.8. INDEMNIFICATION.** Coach shall indemnify the University against all damages, costs and expenses, including attorney's fees, in an amount not to exceed Twenty-Five Thousand Dollars (\$25,000), incurred by the University as a direct result of any investigation or proceeding resulting in a finding by the University or by the NCAA Committee on Infractions (or, if appealed by the University, by the NCAA Infractions Appeals Committee) that Coach has engaged in or knowingly condoned a Level I or Level II violation of one or more Governing Athletic Rules or multiple Level III or Level IV violations considered collectively to be a Level I or Level II violation. Any amounts payable by Coach under this Section 5.8 shall be paid within sixty (60) days after written notice from the University that such amounts are owed and the University's delivery of all appropriate supporting documentation. This obligation shall apply regardless of whether the University terminates this Agreement or Coach's employment. This obligation shall survive the termination or expiration of this Agreement and shall continue in full force and effect for all purposes notwithstanding the termination or expiration of this Agreement.

**SECTION 5.9. NO CONFLICTS.** Nothing in this Article V shall be construed to conflict with or limit the University's rights set forth in any other part of this Agreement, including but not limited to Article III and Article IX.

## **ARTICLE VI – OUTSIDE ACTIVITIES**

**SECTION 6.1. PRIOR WRITTEN APPROVAL.** Coach shall not engage in any outside activities without the prior written approval of the Athletics Director and the Chancellor. Approved outside activities shall be conducted by Coach in accordance with Governing Athletic Rules and the law. In conducting approved outside activities, Coach shall avoid any use, directly or by implication, of the University's name, logo, or other University trademark or intellectual property without the prior written approval of the Athletics Director and the Chancellor (if given, such approval shall expire automatically upon the termination or expiration of this Agreement).

**SECTION 6.2. DEFINITION OF OUTSIDE ACTIVITIES.** For purposes of this Article VI, "outside activities" means activities performed and/or income or benefits received outside the course and scope of Coach's employment as Head Women's Basketball Coach including, without limitation: personal services contracts; cash payments, bonuses, annuities, interest, honoraria, royalties, and other income; sports camps; housing allowances or benefits (including preferential housing arrangements); country club memberships; charitable fundraising; complimentary tickets; radio, television, internet, or other media shows, programs and appearances not approved by the University's multi-media rights partner, but not including routine media interviews for which Coach receives no compensation; serving on corporate boards of directors; endorsing, promoting, consulting, or advertising for commercial purposes any product or service, including without limitation shoe, apparel, or equipment manufacturers; speaking engagements; ownership, control, or management of a foundation, organization, or other entity; written publications; and public appearances. "Outside activities" does not mean owning less than ten percent of any publicly traded security or receiving interest, gains or dividends from a savings account, checking account, certificate of deposit, publicly available mutual fund, or publicly available and passive investments which require nominal attention by Coach and which do not interfere with her duties as Coach.

**SECTION 6.3. ANNUAL REPORT.** Coach shall submit an annual written detailed report of all outside activities to the Chancellor, through the Athletics Director, consistent with the way in which the Athletics Department's collects this information from other employees. Such report shall comply with Governing Athletic Rules, including without limitation NCAA Bylaw 11.2.2 and NCAA Bylaw 11.3.2.1.1. Upon request, the University shall have reasonable access to all records of Coach necessary to verify the information contained in such report.

**SECTION 6.4.  GROUNDS FOR WITHHOLDING OR CONDITIONING APPROVAL.** The Athletics Director and the Chancellor shall not unreasonably withhold or condition their approval of Coach's proposed outside activities. Reasonable grounds for withholding approval and/or reasonable grounds for conditioning approval include without limitation, as determined in the reasonable and good faith judgment of the Athletics Director and the Chancellor:

- (a) The proposed activity would violate Governing Athletic Rules;
- (b) The proposed activity would involve a conflict of interest with Coach's University duties pursuant to the University Rules;

- (c) The proposed activity would reflect adversely on the University and/or Coach;
- (d) The proposed activity would interfere with Coach's ability to apply her best efforts to the full performance of her duties under this Agreement;
- (e) The proposed activity would usurp a corporate opportunity of the University;
- (f) The University has a current or existing agreement (or is actively engaging in negotiations) with another vendor, business entity, or commercial enterprise that provides substantially the same type of product, service, or benefit as that involved in the proposed activity;
- (g) The University's multi-media rights partner does not approve of the proposed activity or approves of the proposed activity only upon certain conditions;
- (h) Prohibiting the use of University facilities and resources; and
- (i) Requiring the approval of the University's multi-media rights partner.

A breach of conditions imposed by the Athletics Director and the Chancellor concerning outside activities shall be deemed to be a breach of this Agreement. In addition to any conditions imposed by the Athletics Director and the Chancellor pursuant to this Section 6.4, Coach shall comply with Section 6.5 and Section 6.6, if applicable.

**SECTION 6.5. WOMEN'S BASKETBALL CAMPS.** All women's basketball camps conducted by Coach at University facilities shall be operated through the University and in accordance with Governing Athletic Rules and University Rules, and all compensation for coaches and staff shall be paid through the University's payroll or its disbursement voucher system. Coach may use the University's name and logo in connection with any women's basketball camps or clinics she conducts at University facilities with prior written approval from the Athletics Director. The University shall use its best efforts to minimize camp operational costs relating to housing, facilities, and food, in accordance with University Rules.

**SECTION 6.6. WRITTEN PUBLICATIONS AND PUBLIC SPEAKING.** Coach may write for publications and speak before public gatherings, provided said writings and speeches comply with Governing Athletic Rules and are made in the same professional way and manner expected of any member of the administrative staff of the University. The University expressly agrees that any compensation received for such speeches and writings by Coach in the form of honoraria, royalties, and the like may be retained by her in addition to compensation set forth herein; provided, however, that if the University reimburses Coach or otherwise pays for travel or other expenses associated with the receipt of an honorarium, Coach agrees to use the honorarium to promptly reimburse the University for any such expenses.

**SECTION 6.7. NO UNIVERSITY LIABILITY FOR OUTSIDE ACTIVITIES.** The University shall have no responsibility or liability for any claim arising out of Coach's performance of outside activities or for any other activity outside the scope of her University employment. In undertaking outside activities, Coach shall make clear to any individual or entity with whom Coach may be involved that Coach is acting in her independent, individual capacity and not as an agent, employee, and/or other representative of the University.

## **ARTICLE VII – INTELLECTUAL PROPERTY**

**SECTION 7.1. RIGHT TO USE COACH'S NAME.** Coach grants the University the right during the Term to use,

and the right to grant to others (where such right is contractually required), use of, her name, nickname, initials, autograph, facsimile signature, voice, video or film portrayals, photographs, likeness, image, logo, facsimile image, logos, and/or trademarks (collectively, Coach's "Name") in any manner in connection with: all radio, television, internet, and other media shows, programs and appearances; all endorsement or consultation contracts entered into by the University or the University's multi-media rights partner (but not as an endorsement by Coach of any product or service absent Coach's written consent, which consent shall not be unreasonably withheld); and all University contracts with athletics shoe, equipment, and apparel manufacturers.

**SECTION 7.2. UNIVERSITY RESERVATION OF RIGHTS.** Coach covenants and agrees that the University retains, owns, and controls all intellectual property and media rights relating to the University's women's basketball program and Athletics Department, including but not limited to all television, radio, internet, and any other form of written or electronic media now known or developed in the future related to the University's women's basketball program and Athletics Department, whether produced by the University or through a third-party. Coach further covenants and agrees that the University shall have the exclusive right to designate the media rights and intellectual property holder for all forms of media created during the Term and the exclusive right to designate the apparel, shoes, and equipment to be used by the Athletics Department.

**SECTION 7.3. POST-TERMINATION RIGHTS - UNIVERSITY.** Coach covenants and agrees that, upon termination of this Agreement, the University shall have the right, but not the obligation, to continue to use, and to authorize, license, or grant any sponsor, manufacturer, media rights company, or vendor the right to use, any intellectual property or media rights relating to the women's basketball program, the Athletics Department, or Coach's employment that were created or produced during the Term, notwithstanding the fact that such intellectual property or media rights may contain Coach's Name. Coach shall have no further right to any compensation for any such continued use of her Name by the University unless expressly provided in this Agreement. The use of Coach's Name shall cease upon termination of this Agreement except the University may use, and grant to others the right to use, Coach's Name for factual, historical, archival, and/or documentary purposes.

**SECTION 7.4. POST-TERMINATION RIGHTS - COACH.** Except as otherwise provided in this Agreement, Coach shall retain all rights in and to her name and endorsement. Upon expiration or termination of this Agreement, the University shall have no further right to the continued or future use Coach's name and/or endorsement, except as provided in this Article VII.

**SECTION 7.5. SURVIVAL.** The rights and obligations described in this Article VII shall survive the termination or expiration of this Agreement and shall continue in full force and effect for all purposes notwithstanding the termination or expiration of this Agreement.

## **ARTICLE VIII – LIMITATION OF REMEDIES AND WAIVER OF CLAIMS**

**SECTION 8.1. LIMITATION OF REMEDIES AND WAIVER OF CLAIMS – UNIVERSITY TERMINATION.** The financial consequences of the termination of this Agreement pursuant to Section 3.1, Section 3.2, Section 3.4, Article V, and/or Article IX are exclusively set forth in this Agreement. In any instance of a termination of this Agreement pursuant to Section 3.1, Section 3.2, Section 3.4, Article V, and/or Article IX, except as expressly provided for in this Agreement, the University shall have no liability whatsoever to Coach, nor shall Coach be entitled to receive, and Coach hereby waives and releases all claims that Coach or her personal representatives may have against the University, its trustees, officers, employees, or agents, and their respective successors, heirs, and assigns for: (i) payment of fringe benefits; (ii) accrued and unused annual leave; (iii) the amounts payable under Article II or any other athletically related income or benefits derived by virtue of Coach's position as the Head Women's Basketball Coach; (iv) any direct

or consequential damages by reason of any economic loss, including, but without limitation, loss of outside or collateral business income or opportunities, talent fees, earning capacity, incentive and supplemental income, benefits, or perquisites; and/or (v) alleged humiliation or defamation resulting from the fact of termination or suspension, the public announcement thereof, or the University's release of information or documents required by law. Coach acknowledges that in the event of the termination by the University of this Agreement for cause, without cause, or otherwise, Coach shall have no right to occupy the position of the Head Women's Basketball Coach and Coach's sole remedies are provided for in this Agreement and shall not extend to injunctive relief.

**SECTION 8.2. LIMITATION OF REMEDIES AND WAIVER OF CLAIMS - COACH TERMINATION.** The financial consequences of the termination of this Agreement pursuant to Section 3.3 are exclusively set forth in this Agreement. In any instance of a termination of this Agreement pursuant to Section 3.3, except as expressly provided for in Section 3.3, Coach shall have no liability whatsoever to University, nor shall University be entitled to receive, and University hereby waives and releases all claims that University may have against the Coach, said claims to include, without limitation, claims for: (i) any direct or consequential damages; and/or (ii) alleged reputational damage, humiliation or defamation resulting from the fact of such termination, the public announcement thereof, or Coach's release of information or documents required by law. Nothing herein shall limit or decrease Coach's liability to University for intentional torts, criminal acts, or fraudulent conduct or omissions.

#### **ARTICLE IX – MATERIAL INDUCEMENT FOR UNIVERSITY'S AGREEMENT AND RESERVATION OF RIGHTS**

**SECTION 9.1. COACH'S REPRESENTATIONS AND WARRANTIES.** As a material inducement to the University to execute and perform this Agreement, Coach represents and warrants the following to the University:

- (a) Neither she nor any person acting on her 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;
- (b) She has disclosed to the University all material information known to her concerning previous NCAA, conference, or institutional rules violations or potential violations committed by her or any person under her direct or indirect control at any other NCAA member institution prior to the date on which she executed this Agreement;
- (c) She has no knowledge of or reasonable cause to believe there exists an unreported violation or potential violation of any Governing Athletic Rules or University Rules by the head coach, any assistant coach, staff member, or any other person associated with UTK's women's basketball program prior to the date on which she executed this Agreement;
- (d) She has not knowingly furnished the NCAA or the University with false, misleading or incomplete information concerning her, any assistant coach's, any staff member's, or any other person's involvement in or knowledge about matters relevant to a possible violation of an NCAA regulation or University Rule when requested to do so by the NCAA or the University;
- (e) She has disclosed to the University all material information about any known physical or mental conditions that are reasonably likely to materially prevent Coach from coaching,

recruiting, or performing other essential functions of the position of Head Women's Basketball Coach;

- (f) She is not restricted from entering into this Agreement by any conflicting obligations to another authority, person, body, or entity; and
- (g) She 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).

**SECTION 9.2. BREACH OF REPRESENTATION OR WARRANTY; NOTICE AND REASONABLE OPPORTUNITY TO MEET; WAIVER OF UAPA RIGHTS.** Coach agrees that a breach of any representation or warranty contained in Section 9.1 shall be a material breach of this Agreement that is not capable of being cured, and the University in its sole and reasonable discretion may elect to terminate this Agreement upon written notice to Coach. In its sole and reasonable discretion, the University may elect to terminate this Agreement under this Article IX but continue Coach's employment, with Coach's agreement, with or without a new employment agreement. Prior to the effective date of termination this Agreement pursuant to this Article IX, the University shall afford Coach notice and a reasonable opportunity to meet with the Athletics Director and the Chancellor to respond to the proposed termination or suspension. Coach voluntarily waives all rights to a post-termination opportunity to contest a termination pursuant to this Article IX, including but not limited to her rights under the Tennessee Uniform Administrative Procedures Act, Tennessee Code Annotated § 4-5-301 et seq.

**SECTION 9.3. NO FURTHER OBLIGATIONS.** Upon termination of this Agreement pursuant to this Article IX, Coach shall not be entitled to further salary, compensation, benefits, perquisites, or any other athletically related income or benefits derived by virtue of Coach's position as Head Women's Basketball Coach from the University (except for payments earned or accrued prior to the effective date of termination). Coach waives all rights to receive compensation for her accrued and unused annual leave upon termination of this Agreement pursuant to this Article IX.

**SECTION 9.4. NO CONFLICTS.** Coach agrees that nothing in this Article IX shall be construed to conflict with or limit the University's rights set forth in any other Article of this Agreement, including but not limited to Article III and Article V.

## **ARTICLE X – DEFINITIONS**

In addition to words, terms, or phrases defined elsewhere in this Agreement, the following words, terms, or phrases shall have the following meanings in this Agreement:

**SECTION 10.1. ATHLETICS DIRECTOR.** "Athletics Director" means UTK's Director of Athletics and his/her designee.

**SECTION 10.2. CHANCELLOR.** "Chancellor" means UTK's Chancellor and his/her designee.

**SECTION 10.3. GOVERNING ATHLETIC RULES.** "Governing Athletic Rules" means: (1) all present or future legislation, rules, regulations, directives, written policies, bylaws, and constitutions, and official or authoritative interpretations thereof, and all amendments, supplements, or modifications thereto, promulgated by the NCAA or the Southeastern Conference or any successor of such association or conference, or by any other athletic conference or governing body hereafter having regulatory power or authority relating to the University's intercollegiate athletics program; and (2) all state or federal laws or



regulations regulating college athletics, coaches, staff, student-athletes, or competition.

**SECTION 10.4. NCAA.** "NCAA" means the National Collegiate Athletic Association and its successors and assigns, or any other athletic association of which the University, subsequent to the execution of this Agreement, may be a member.

**SECTION 10.5. SEC.** "Southeastern Conference" or "SEC" means the Southeastern Conference and its successors and assigns, or any other athletic conference of which UTK, subsequent to the execution of this Agreement, may be a member.

**SECTION 10.6. UNIVERSITY.** "University" means The University of Tennessee and its campus located in Knoxville, Tennessee.

**SECTION 10.7. UNIVERSITY RULES.** "University Rules" means all present or future policies, procedures, rules, regulations, and guidelines of the University, including but not limited to policies of UTK.

**SECTION 10.8. UTK.** "UTK" means The University of Tennessee, Knoxville and its Athletics Department.

## **ARTICLE XI – CONFIDENTIAL INFORMATION**

**Section 11.1. Definition of Confidential Information.** By virtue of her position as Head Women's Basketball Coach, Coach agrees that non-public information, which provides a competitive advantage to UTK's women's basketball program, will be created, developed, learned by, and entrusted to her during the course of her employment with the University. Coach agrees that such information is specialized, unique in nature, and of great value to the University. Such information includes, but is not limited to, the following relating to UTK's Athletics Department and/or women's basketball program (collectively, "Confidential Information"): methods; processes; operations: recruiting programs, strategies, and evaluations; computer and video programs; future plans; prospective student-athlete contact lists; coaching contact lists; current student-athlete contact lists; playbooks; signals; recruiting techniques; player development programs (including, but not limited to, nutrition programs, strength-building, and position coaching); coaching and leadership philosophies and practices; practice drills; training techniques; offensive and defensive schemes; game plans and game plan techniques; prospect and player evaluation systems and associated data; pre-game, in-game, and post-game coaching practices and strategies; training sequences and methodologies; financial statements, budgets, projections, or other financial information; and other information generally treated by as confidential. Coach acknowledges and agrees that all such information constitutes Confidential Information protected under Tennessee law and has an independent economic value to the University and the University's competitors within the NCAA Division I.

**Section 11.2. Protection of Confidential Information.** Coach agrees that the Confidential Information gives the University's women's basketball program a competitive advantage over its competitors, and Coach, therefore, covenants to treat Confidential Information confidentially under this Agreement and to protect the University. Coach covenants not to misappropriate, use, share or disclose any Confidential Information to any of the University's competitors within the NCAA Division I or any of their respective personnel, including, but not limited to, any coaches, during the Term (regardless of whether Coach remains employed for the length of the Term). Coach further agrees that, because Coach's services under this Agreement are of a special, unique, unusual, extraordinary and intellectual character which gives those services special value, the loss to the University of which cannot be reasonably or adequately compensated in damages in an action at law, and because disclosing any such Confidential Information would place the University at significant competitive disadvantage, the University shall have the right to obtain from any court such equitable, injunctive, or other relief as may be appropriate if

Coach violates this Section 11.2, including a decree enjoining Coach from sharing or disclosing any Confidential Information with any NCAA Division I college or university or any of their respective personnel. Coach shall not be prohibited from making truthful statements: to her personal legal counsel; when defending himself in litigation or NCAA proceedings; or if required to testify by a court or a governmental or regulatory body or agency.

**SECTION 11.3. SURVIVAL.** This Section 11 shall survive the termination or expiration of this Agreement.

**SECTION 11.4. BLUE PENCIL PROVISION.** If it is determined by a court of competent jurisdiction that any provision of this Section 11 is excessive in duration or scope or is otherwise unenforceable, then it is the intention of the University and Coach that such provision be modified by the court to render the provision enforceable to the maximum extent permitted by law.

## **ARTICLE XII – MISCELLANEOUS**

**SECTION 12.1. COMPLETE AGREEMENT.** This Agreement contains the complete agreement between the parties concerning Coach's employment as the Head Women's Basketball Coach. Neither party has made any representation with respect to the subject matter of this Agreement not specifically included in this Agreement, nor has either party relied on any such representation in entering into this Agreement.

**SECTION 12.2. MODIFICATION.** This Agreement may only be modified by a writing signed by Coach and the University's Chief Financial Officer.

**SECTION 12.3. EFFECT OF INVALIDITY OF PROVISION.** The invalidity of any provision of this Agreement shall not and shall not be deemed to affect the validity of any other provision. In the event any provision of this Agreement is held to be invalid, the parties agree that the remaining provisions shall be deemed to be in full force and effect as if they had been executed by both parties subsequent to the expungement of the invalid provision.

**SECTION 12.4. NO EXPRESS OR IMPLIED CONTRACT; NO TENURE.** Coach acknowledges that no policy or procedures manual, faculty or staff handbook, course of conduct, practice, award, commendation, promotion, transfer, or length of service creates any express or implied contract modifying any part of this Agreement. Coach acknowledges that her employment with the University is not a tenure-track position and shall not lead to tenure, nor shall Coach be afforded any rights under UTK's Faculty Handbook.

**SECTION 12.5. TENNESSEE LAW.** This Agreement shall be interpreted in accordance with Tennessee law.

**SECTION 12.6. CAPTIONS.** The captions of the various provisions contained in this Agreement are not a part of this Agreement and shall not be deemed in any manner to modify, explain, enlarge, or restrict any of the provisions of this Agreement.

**SECTION 12.7. NOTICE.** Any notice required or permitted to be given under this Agreement shall be sufficient if given in writing and either (a) delivered in person, (b) sent via electronic mail, or (c) sent by a nationally recognized delivery service (e.g., FedEx, etc.). Notice shall be deemed given when the written notice is (a) delivered in person, (b) sent via electronic mail, or (c) placed with a nationally recognized delivery service. Notice to Coach shall be sent to her campus office or to her University-provided e-mail account(s). Notice to the University shall be delivered to the Athletics Director at his/her campus office.

**SECTION 12.8. RETURN OF UNIVERSITY PROPERTY.** All documents, files, records, materials (in any format, including electronically stored information), equipment, or other property, including without limitation, personnel records, recruiting records, team information (excluding on-field property such as Coach's plays, defenses, etc.), athletic equipment, films, videos, statistics, keys, credit cards, laptop computers, software programs, and electronic communication devices, furnished to Coach by the University or developed by Coach at the University's direction or for the University's use or otherwise in connection with Coach's employment with the University are and shall remain the sole and confidential property of the University. Within three (3) calendar days of the expiration or termination of this Agreement, Coach shall, upon initiation by the University in writing, complete the University's exit procedure, including returning all University property in her possession. The foregoing provisions shall not apply to Coach's personal notes, personal playbooks, memorabilia, diaries, and similar personal records of Coach, which she is entitled to retain.

**SECTION 12.9. DEDUCTION FOR DEBTS.** Upon the expiration or earlier termination of this Agreement for any reason, Coach agrees that the University shall be entitled to withhold and deduct from any final payment of any kind that is owed to Coach by the University the amount of any indebtedness owed to the University by Coach, in accordance with the procedures described in University Human Resources Policy 0515.

**SECTION 12.10. NO WAIVERS.** The failure of either party to this Agreement to insist upon the performance of any of the terms and conditions of this Agreement, or the waiver of any breach of any of the terms and conditions of this Agreement, shall not be construed as subsequently waiving any such terms and conditions, but the same shall continue and remain in full force and effect as if no forbearance or waiver had occurred. Nothing contained in this Agreement shall be construed to constitute a waiver or relinquishment by the University of any rights to claim such exemptions, privileges, and immunities as may be provided by law, including without limitation the University's sovereign immunity and the University's immunity under the Eleventh Amendment to the United States Constitution. This Section 12.10 shall survive the termination or expiration of this Agreement.

**SECTION 12.11. TAXES.** Coach agrees to be responsible for the payment of all taxes required by law on all compensation or benefits provided by the University. Coach agrees to defend, indemnify, and hold harmless the University, its trustees, officers, employees, or agents, and their respective successors, heirs, and assigns from all claims or penalties asserted against them for any failure to pay taxes required by law on any compensation or benefit provided by the University pursuant to this Agreement. Coach expressly acknowledges that the University has not made, nor herein makes, any representation about the tax consequences of any consideration provided by the University to Coach pursuant to this Agreement or otherwise in connection with her employment, except where otherwise explicitly noted.

**SECTION 12.12. EFFECT ON OTHER PERSONS; NO ASSIGNMENT.** This Agreement shall be binding upon the parties and their respective successors, assigns, heirs, and personal and legal representatives, but neither party may assign, pledge, or encumber its respective rights, interests, or obligations under this Agreement.

**SECTION 12.13. DRAFTING - NO PRESUMPTION.** Each party hereto shall be viewed as an equal participant to the drafting of this Agreement, and each party agrees that there shall be no presumption against the drafting party. Coach acknowledges that she has consulted with counsel before executing this Release Agreement, that her attorney was involved in drafting this Release Agreement, that she has read and understands this Agreement, and that its provisions are reasonable and enforceable and that she shall abide by them.

**SECTION 12.15. AUTHORITY.** This Agreement shall not be binding on the University until signed by the University's Chief Financial Officer. Coach expressly acknowledges that neither the Athletics Director nor the Chancellor has the authority to bind the University with respect to this Agreement, any amendment of this Agreement, or Coach's employment as the Head Women's Basketball Coach.

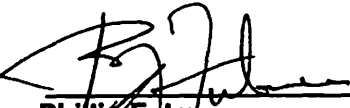
**SECTION 12.16. COUNTERPARTS.** This Agreement may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but all such counterparts shall together constitute one and the same Agreement. The exchange of copies of this Agreement and of signature pages by facsimile transmission, by electronic mail in "portable document format ("pdf") form, or by any other electronic means intended to preserve the graphic and pictorial appearance of a document, or by combination of such means, shall constitute effective execution and delivery of this Agreement as to the parties and may be used in lieu of the original Agreement for all purposes. Signatures of the parties transmitted by the foregoing means shall be deemed to be the original signatures for all purposes.

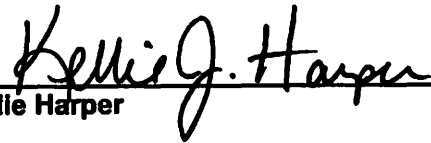
***[signature page follows - remainder of page intentionally left blank]***

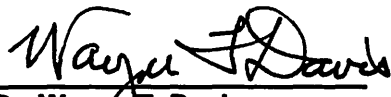
IN WITNESS WHEREOF, the parties hereto have executed this Employment Agreement on the dates shown below.

THE UNIVERSITY OF TENNESSEE

KELLIE HARPER

By:   
Phillip Fulmer  
Director of Athletics  
The University of Tennessee,  
Knoxville  
6/3/2017  
Date

  
Kellie Harper  
5/22/19  
Date

  
Dr. Wayne T. Davis  
Interim Chancellor  
The University of Tennessee,  
Knoxville  
6/5/19  
Date

\_\_\_\_\_  
David L. Miller  
Chief Financial Officer  
The University of Tennessee  
\_\_\_\_\_  
Date

## APPENDIX A

### RELEASE AGREEMENT

This Release Agreement ("Release Agreement") is entered into by and between **THE UNIVERSITY OF TENNESSEE** ("University"), an instrumentality of the State of Tennessee, for and on behalf of The University of Tennessee, Knoxville ("UTK") and UTK's Athletics Department, (collectively, the "University"), and **KELLIE HARPER** ("Coach") (collectively, the "Parties").

WHEREAS, the University and Coach are parties to an Employment Agreement fully executed on *[INSERT DATE]*, and subsequently amended by *[INSERT APPROPRIATE REFERENCES TO AMENDMENTS TO EMPLOYMENT AGREEMENT]* (collectively, "Employment Agreement"), pursuant to which Coach has been employed as the head coach of UTK's intercollegiate women's basketball team; and

WHEREAS, the University has terminated Coach's employment without cause (as that term is defined in the Employment Agreement) effective on *[INSERT DATE]* ("Separation Date"); and

WHEREAS, pursuant to the Employment Agreement, the University is obligated, subject to the terms and conditions found therein, to make certain payments to Coach; and

WHEREAS, as one condition precedent to the University's payment obligations to Coach, Coach shall execute this Release Agreement in favor of the University;

NOW, THEREFORE, in consideration of the promises herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

#### Consideration

1. Coach acknowledges that the compensation and other consideration set forth in Section 3.1 of the Employment Agreement is sufficient consideration to support this Release Agreement and that there is consideration supporting this Release Agreement that is in addition to anything to which Coach is already entitled. Coach represents that she has not suffered or sustained any work-related injury or illness that would give rise to a claim under worker's compensation laws. Coach further represents that, if applicable, she has received all leave and benefits to which she may have been entitled under the Family and Medical Leave Act. The University acknowledges that the consideration set forth in Section 3.1 of the Employment Agreement is sufficient consideration to support this Release Agreement.

#### Release of All Claims by Coach

2. Coach irrevocably and unconditionally releases the University, its current and former Trustees, Presidents, Chancellors, officers, employees, agents, representatives, successors, assigns, and related entities (the "Released Parties") from any and all causes of action, suits, claims, liabilities, damages, demands, costs, attorneys' fees, agreements, promises, rights, obligations, debts, equities, and actions, under all legal theories of whatever kind, in law or in equity, in contract or tort or public policy, both known and unknown, suspected and unsuspected, disclosed and undisclosed, actual or consequential, specific and general, however denominated against the Released Parties that are or were related to Coach's employment by the University. Coach acknowledges and agrees that she is releasing all known and unknown claims, promises, causes of action, or similar rights of any type that she may have against the Released Parties, except that she does not release any claim relating to: (i)

the right to enforce Section 3.1 of the Employment Agreement; (ii) the right, if any, to claim government-provided unemployment benefits; or (iii) any rights or claims which may arise or accrue after she signs this Release Agreement.

3. Coach acknowledges that the claims she is releasing may arise under many different laws (including statutes, regulations, other administrative guidance, and common law doctrines), including, but by no means limited to: the Age Discrimination in Employment Act ("ADEA") and the Older Workers Benefit Protection Act ("OWBPA"); Title VII of the Civil Rights Act of 1964; the Tennessee Human Rights Act; Section 1983 of the Civil Rights Act of 1866; the Equal Pay Act; the Americans With Disabilities Act ("ADA") and the Rehabilitation Act of 1973; the Fair Labor Standards Act of 1938 or state laws regulating wage and hour matters; the Family and Medical Leave Act of 1993 and any corresponding state laws; USERRA and any other laws relating to veterans' reemployment rights; and any claims under any tort or contract theory, including without limitation for breach of the Employment Agreement.

4. Coach acknowledges that she is entering into this Release Agreement voluntarily. She understands and acknowledges that she is releasing claims of which she may not be aware, that this is her knowing and voluntary intent, even though she may claim in the future to regret having signed this Release Agreement. Coach expressly waives all rights under any law that is intended to protect her from waiving unknown claims and is aware of the significance of doing so.

5. Coach asserts and acknowledges that she has not filed or caused to be filed any lawsuit, complaint, claim, or demand with respect to any claim this Release Agreement purports to waive. Coach further agrees never to file or prosecute a lawsuit based on such claims and never to seek any damages, injunctive, or other relief against the Released Parties with respect to claims released in this Release Agreement. Coach further agrees never to file or prosecute a lawsuit, complaint, claim or demand against the University, whether in state or federal court, in the Tennessee Claims Commission or elsewhere, based upon any acts or omissions released by this Release Agreement and agrees never to seek any damages, injunctive, or other relief against the University or any of its agents with respect to acts or omissions released by this Release Agreement. Coach has not assigned or transferred any claim covered by this Release Agreement, and she has not attempted or purported to do so. In the event Coach nevertheless institutes a lawsuit against any of the Released Persons that is expressly prohibited pursuant to the terms of this Release Agreement, or accepts recovery under one brought on her behalf, Coach agrees, only to the extent permitted by law: (i) to immediately return to the University all financial and other consideration provided by the University pursuant to Section 3.1 of the Employment Agreement; and (ii) to pay the University its damages, costs and attorneys' fees incurred in enforcing this Release Agreement.

6. The parties acknowledge that although Coach waives her right to recover money damages for any claim in any forum, she does not waive her right to initiate or participate in any investigation by the EEOC or Tennessee Human Rights Commission regarding a claim of discrimination or her right to initiate or participate in an investigation by any other government agency.

7. Coach represents and warrants that she has disclosed to the University any and all violations of any Governing Athletic Rules or University Rules, as defined in the Employment Agreement, by himself or by others of which she has knowledge; and that, other than what she has disclosed to the University, she has no knowledge of or reasonable cause to believe there exists any other violation or potential violation of any Governing Athletic Rules or University Rule by himself or any other University employee or representative of the University's athletics interests prior to the date on which she executed this Release Agreement.

8. The University hereby expressly advises Coach to consult with an attorney before executing this Release Agreement. Coach acknowledges that she has consulted with counsel before executing this Release Agreement, and that her attorney was involved in drafting this Release Agreement.

9. Coach acknowledges that she was provided with this Release Agreement more than twenty-one (21) calendar days in advance of the Separation Date, and that she has had more than twenty-one (21) calendar days to consider and accept the terms of this Release Agreement by signing below, and returning it to the University's Office of the General Counsel.

10. Coach acknowledges that her decision to execute this Release Agreement is revocable for a period of seven (7) calendar days following her execution of this Release Agreement. To revoke this Release Agreement, Coach shall deliver a revocation letter, in the manner specified below, to the University's Office of the General Counsel no later than 5:00 p.m. on the seventh (7th) day after the date Coach has signed this Release Agreement. This Release Agreement becomes effective and enforceable only if the seven-day revocation period has expired without revocation. The parties acknowledge that the seven-day revocation period cannot be waived.

**Release of Claims by the University**

11. The University, for itself, its assigns, and successors, hereby releases Coach, her heirs, assigns, and executors from any and all actions, causes of action, claims, demands, damages, costs, attorneys' fees, expenses, compensation, benefits, leave, wages, and all other damages, and all incidental or consequential damages on account of, or related to, any and all actions or omissions of Coach which are suspected and unsuspected, disclosed and undisclosed, actual or consequential, specific and general, however denominated against the Coach, known or unknown by the University, or reasonably should be known by the University, and have occurred at any time up to the date on which the University signs this Release Agreement.

**Miscellaneous**

12. Effective notice to the University shall be accomplished only by delivering a document in person or by tracked carrier to Office of the General Counsel, 719 Andy Holt Tower, Knoxville, Tennessee 37996-0170, or by fax to (865) 974-0100.

13. Coach and the University shall be subject to other provisions of the Employment Agreement that survive the termination of the Employment Agreement.

14. This Agreement is intended to finally and fully conclude the employment relationship between Coach and the University and shall not be interpreted as an admission by either Coach or the University of any wrongdoing or any violation of federal, state or local law, regulation, or ordinance. The University specifically denies that it, or any of the Released Parties, has ever committed any wrongdoing whatsoever against Coach.

15. The Employment Agreement and this Release Agreement constitute the entire agreement between the parties with respect to the subject matter of the Employment Agreement and this Release Agreement. This Release Agreement may not be modified or canceled in any manner except in writing, signed by Coach and an authorized official of the University. Coach acknowledges that the University has made no representations or promises to her, other than those in this Release



Agreement or the Employment Agreement. If any provision in this Release Agreement is found to be unenforceable, all other provisions shall remain fully enforceable. The covenants set forth in this Release Agreement shall be considered and construed as separate and independent covenants.

16. This Release Agreement shall be construed as a whole according to its fair meaning. It shall not be construed strictly for or against either party.

17. This Release Agreement shall be governed by the law of the State of Tennessee. The parties acknowledge that the University is subject to the provisions of the Tennessee Public Records Act, particularly Tenn. Code Ann. §§ 10-7-503 to 10-7-506, and that in accordance with that Act, copies of this Release Agreement shall be available to the public upon appropriate request.

18. This Release Agreement may be executed in multiple counterparts, each of which shall be regarded for all purposes as an original constituting but one and the same instrument.

**READ THIS ENTIRE RELEASE AGREEMENT AND CAREFULLY CONSIDER ALL OF ITS PROVISIONS BEFORE SIGNING IT. IT INCLUDES A RELEASE OF KNOWN AND UNKNOWN CLAIMS. YOU SHOULD CONSULT YOUR ATTORNEY BEFORE SIGNING THIS RELEASE AGREEMENT.**

*[signature page follows - remainder of page intentionally left blank]*

**IN WITNESS WHEREOF**, the parties hereto have executed this Release Agreement on the dates shown below.

**THE UNIVERSITY OF TENNESSEE**

**KELLIE HARPER**

**By:**

\_\_\_\_\_  
**Director of Athletics  
The University of Tennessee,  
Knoxville**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Chancellor  
The University of Tennessee,  
Knoxville**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Chief Financial Officer  
The University of Tennessee**

\_\_\_\_\_  
**Date**

*Kellie J. Harper*  
\_\_\_\_\_  
**Kellie Harper**

*5/22/19*  
\_\_\_\_\_  
**Date**