

EMPLOYMENT AGREEMENT
DIRECTOR OF INTERCOLLEGIATE ATHLETICS

This Employment Agreement is entered into between THE UNIVERSITY OF TENNESSEE, for and on behalf of The University of Tennessee at Martin ("UTM") and UTM's Department of Intercollegiate Athletics (collectively, the "University"), and Kurt McGuffin ("McGuffin"). This Agreement cancels and supersedes all prior existing oral and written agreements and understandings between the University and McGuffin.

WITNESSETH:

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

ARTICLE I – PURPOSE AND TERM OF AGREEMENT

Section 1.1 Subject to the terms and conditions stated in this Agreement, the University agrees to employ McGuffin, and McGuffin agrees to serve, as the Director of Intercollegiate Athletics for UTM ("Athletics Director").

Section 1.2 The term of this Agreement shall be from June 28, 2017, through June 30, 2021, unless sooner terminated as provided in this Agreement (the "Term"). The parties agree that the effective date of this Agreement shall be June 28, 2017, even if the Agreement's execution date is subsequent thereto. The University may allow this Agreement to expire and elect not to renew McGuffin's employment as Athletics Director without complying with any University Rules applicable to staff-exempt employees who do not serve under a contract of employment for a definite term. McGuffin agrees that oral agreements to renew or extend this Agreement are invalid and nonbinding.

ARTICLE II – COMPENSATION AND BENEFITS

Section 2.1 The University, as payment and consideration for the services to be performed by McGuffin, as set forth herein, agrees to pay McGuffin guaranteed gross base compensation in the amount of One Hundred Fifty Thousand Dollars (\$150,000) per Contract Year (the "Base Pay"). Beginning July 1, 2018, McGuffin shall be eligible for an incentive bonus up to Four Thousand Dollars (\$4,000) based on performance goals established by the Chancellor. Effective July 1, 2018, based on performance as considered in the sole discretion of the Chancellor, McGuffin shall be eligible to receive a merit salary increase authorized for other UTM employees, or an across-the-board salary increase if mandated by state law pursuant to the terms of the mandate. The University shall pay Base Pay to McGuffin in twelve (12) equal monthly installments in accordance with the University's customary monthly payroll procedures, with partial months prorated.

Section 2.2 The University shall provide McGuffin with a one-time gross moving allowance of Ten Thousand Dollars (\$10,000) in accordance with University Rules. The University shall provide McGuffin with a one-time bonus of Four Thousand Dollars (\$4,000) upon his arrival.

Section 2.3 In addition to the benefits set forth in this Agreement, as a regular full-time employee of the University, McGuffin is entitled to the same fringe benefits as other regular full-time employees, which may be amended by the University from time to time. The Base Pay shall be used to determine benefits that are based on salary, including but not limited to compensation for accrued and unused annual leave if McGuffin is entitled to such compensation.

Section 2.4 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 McGuffin. Retirement contributions shall be made periodically in accordance with the University's business practices.

Section 2.5 All compensation and benefits provided to McGuffin pursuant to this Agreement are subject to all applicable state and federal tax reporting and withholding requirements.

ARTICLE III – DUTIES AND AUTHORITY

Subject to the terms and conditions stated in this Agreement, McGuffin shall devote his full time, skill, and attention to the performance of the duties of Athletics Director. McGuffin's duties as Athletics Director shall include:

- (a) Reporting directly to the Chancellor;
- (b) Achieving and maintaining a high level of comprehensive intercollegiate competitive success in the athletics program;
- (c) Recommending and effecting the hiring, termination, terms and conditions of employment of all personnel in the Athletics Department, with the requisite authority to accomplish the same, in consultation and approval by the Chancellor and in accordance with University Rules;
- (d) Becoming knowledgeable of, and complying with, all Governing Athletic Rules and University Rules, and using efforts consistent with those exercised by a reasonably prudent athletics director at a Division I program similar to the University's program to ensure that all coaches, staff, student-athletes, and other persons affiliated or associated with the University's athletics programs do the same;
- (e) Advising the Chancellor on the means and methods necessary to promote and maintain institutional control over the University's intercollegiate athletics program, as defined by Governing Athletic Rules, and ensuring that means and methods approved by the Chancellor are implemented;
- (f) Promptly reporting to the Chancellor and the staff member in the Athletics Department with primary duties for compliance any actual knowledge of, or reasonable cause to believe, that a violation of Governing Athletic Rules more likely than not has been committed or are being committed by himself or others;
- (g) Cooperating fully with and maintaining the integrity of any investigation conducted by the NCAA, the OVC, or the University;
- (h) Supporting the University's educational mission by using efforts consistent with those exercised by a reasonably prudent athletics director at a Division I program similar to the University's program to maintain an environment in which the pursuit of higher education is a priority as reflected by student-athletes' class attendance, academic progress rates, grade point averages, and graduation rates;
- (i) Organizing, managing and directing the administrative and related activities of the

Athletics Department consistent with Governing Athletic Rules, University Rules, and the philosophy and mission of the University;

- (j) Developing and maintaining programs that will assure meaningful, enriching, and rewarding experiences for all student-athletes and students who participate in or are involved with intercollegiate athletics;
- (k) Representing and promoting the Athletics Department and its programs to the public, generating fan interest, and soliciting private gifts for athletics programs and facilities.
- (l) Envisioning and planning for the future direction and needs of the Athletics Department and making recommendations to responsible University administrators;
- (m) Making diligent, good faith efforts to maintain and cultivate effective working relationships with governing boards, associations, conferences, committees, alumni, the media, the public, students, faculty, and staff;
- (n) Developing effective internal communications with all members of the Athletics Department so that an efficient and effective athletics program will be maintained;
- (o) Planning, organizing, and promoting a competitive schedule for all intercollegiate sports, in collaboration with the Athletics Department's head coaches and consistent with head coaches' own duties pertaining to scheduling;
- (p) Serving as the official spokesperson of the Athletics Department in matters of athletics policy in accordance with University Rules and organization;
- (q) Preparing, reviewing, and managing the Athletics Department budget and receiving appropriate administrative support for budget priorities as well as budget approval;
- (r) Reviewing and approving Athletics Department operating expenditures;
- (s) Directing the management, maintenance and development of the Athletic Department's physical plant and facilities;
- (t) Representing the Athletics Department at conference and national levels;
- (u) 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 under the University's Title IX-related policies;
- (v) Performing other duties as described elsewhere in this Agreement;
- (w) Performing other duties and having the authority ordinarily associated with and performed by an athletics director at a Division I program similar to the University's program; and
- (x) Performing other reasonable duties as may be reasonably assigned by the Chancellor from time to time.

ARTICLE IV – COMMERCIAL ENDORSEMENTS

McGuffin shall not, by any statements or appearances on television, on radio, in newspapers, or in magazines or other published media or any promotional material, personally or officially endorse, promote, or advertise for commercial purposes any product, merchandise, or service unless prior written approval has been granted by the Chancellor in accordance with Article V, Section 5.1 of this Agreement, which approval shall not be unreasonably withheld. This requirement of prior written approval also applies to any use, directly or by implication, of the University's name or logo in the endorsement of commercial products or services. With the required prior written approvals, and subject to limitations arising out of any University contracts with third parties concerning media rights or the endorsement, promotion, or advertisement of commercial products, merchandise, or services, McGuffin may undertake commercial endorsements in which he identifies himself as the University's Athletics Director. McGuffin shall include all income and benefits derived from such commercial endorsement activities in the report of all athletically-related income and benefits he must file annually in accordance with Article V, Section 5.2 of this Agreement. At the termination of McGuffin's employment as the University's Athletics Director, McGuffin may continue to fulfill commercial endorsement agreements entered into during his employment as the University's Athletics Director as long as he does not directly or indirectly identify himself as the University's current or former Athletics Director and does not use, directly or by implication, of the University's name or logo in the endorsement of commercial products or services..

ARTICLE V – OUTSIDE INCOME AND ACTIVITIES

Section 5.1. Outside Income

Section 5.1.1. McGuffin understands and agrees that McGuffin shall receive the prior written approval of the Chancellor (not to be unreasonably withheld or delayed) for all athletically-related income and benefits from sources outside the University. Sources of such income and benefits shall include, but are not limited to, income and benefits from: annuities; sports camps; housing benefits (including preferential housing arrangements); country club memberships; complimentary tickets; television, radio, and other media programs; endorsement or consultation contracts with athletics shoe, apparel, or equipment manufacturers; and any other outside activities described in Section 5.2.

Section 5.1.2. McGuffin shall submit an annual written detailed report of all athletically related income and benefits from sources outside the University to the Chancellor, on or before August 1 of each year, consistent with the Athletics Department's collection of this information from other employees. Upon request, the University shall have reasonable access to all records of McGuffin necessary to verify the information contained in such report.

Section 5.2. Outside Activities

Section 5.2.1. McGuffin shall not, by any statements or appearances on television, on radio, in newspapers, or in magazines or other published media or any promotional material, personally or officially endorse, promote, or advertise for commercial purposes any product or service unless prior written approval has been granted by the Athletics Director in accordance with Article V, Section 5.1.1 (said approval not be unreasonably withheld or delayed), and by the University's multi-media rights partner as contemplated by the University's agreement with the University's multi-media rights partner. McGuffin shall also receive annual prior written approval from the Chancellor for any use, directly or by implication, of the University's name, logo, or

other University trademark in the endorsement of commercial products or services. With the required prior written approvals, and subject to limitations arising out of any University contracts with third parties concerning media rights or the endorsement, promotion, or advertisement of commercial products or services, McGuffin may undertake commercial endorsements in which McGuffin identifies as the Athletics Director. McGuffin shall include all income and benefits derived from such endorsement activities in the report of all athletically-related income and benefits McGuffin must file annually in accordance with Article V, Section 5.1.2 of this Agreement.

Section 5.2.2. McGuffin may serve on corporate boards of directors or enter into personal service contracts for outside employment services, provided (a) prior written approval of the Chancellor of the University is received and all income and benefits are reported annually in accordance with Article V, Section 5.1; (b) such activities do not interfere or conflict with McGuffin's duties at the University or contracts entered into by the University or the University's multi-media rights contractor; (c) University facilities and resources are not used; (d) McGuffin takes annual leave to perform those services; and (e) such activities are conducted in accordance with Governing Athletic Rules.

Section 5.2.3. The University further agrees that McGuffin may write for publications and speak before public gatherings, provided said writings and speeches 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 McGuffin in the form of honoraria, royalties, and the like may be retained by McGuffin in addition to compensation set forth herein; provided, however, that if the University reimburses McGuffin or otherwise pays for travel or other expenses associated with the receipt of an honorarium, the honorarium shall be remitted in full to the University.

Section 5.2.4. McGuffin understands and agrees that the University has no responsibility or liability for any claim arising out of McGuffin's performance of the activities described in Section 5.2 or for any other activity outside the scope of McGuffin's University employment. In no event shall McGuffin usurp any corporate opportunities of the University or engage in an activity involving a conflict of interests with McGuffin's University duties. Outside activities are independent of McGuffin's employment with the University, and the University shall have no responsibility or liability for any claims arising from McGuffin's outside activities. In undertaking outside activities, McGuffin shall make clear to any individual or entity with whom McGuffin may be involved that McGuffin is acting in McGuffin's independent, individual capacity and not as an agent, employee, and/or other representative of the University.

ARTICLE VI – INTELLECTUAL PROPERTY

Section 6.1. McGuffin grants the University the right during the Term to use, and the right to grant to others use of, McGuffin's name, nickname, initials, autograph, facsimile signature, voice, video or film portrayals, photographs, likeness, image, or facsimile image in any manner in connection with any radio, television, and other media shows, programs and appearances, or in connection with any contracts, endorsement agreements, sponsorship agreements, or similar arrangements entered into by the University or the University's multi-media rights partner.

Section 6.2. McGuffin covenants and agrees that the University retains, owns, and controls all intellectual property and media rights relating to the University's 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 Athletics Department, whether produced by the University or through a third-party. McGuffin 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.

Section 6.3. McGuffin covenants and agrees that, upon termination of this Agreement, the University shall have the right to continue through completion any contracts, endorsement agreements, sponsorship agreements, or similar arrangements that were entered into during the Term and which contain McGuffin's name, nickname, initials, autograph, facsimile signature, voice, video or film portrayals, photographs, likeness, image, facsimile image, biographical information, or endorsement. McGuffin shall have no further right to any compensation for any such continued use by the University unless expressly provided in this Agreement.

Section 6.4. McGuffin 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 Athletics Department, or McGuffin's employment that were created or produced during the Term, notwithstanding the fact that such intellectual property or media rights may contain McGuffin's name, nickname, initials, autograph, facsimile signature, voice, video or film portrayals, photographs, likeness, image, facsimile image, biographical information, or endorsement. McGuffin shall have no further right to any compensation for any such continued use by the University unless expressly provided in this Agreement.

Section 6.5. Except as otherwise provided in this Agreement, McGuffin shall retain all rights in and to McGuffin's name and endorsement. Upon termination of this Agreement, the University shall have no further right to the continued or future use of McGuffin's name or endorsement, except as provided in this Article VI.

Section 6.6. The rights and obligations described in this Article VI shall survive the termination of this Agreement and shall continue in full force and effect for all purposes notwithstanding the termination of this Agreement.

ARTICLE VII – ENFORCEMENT OF GOVERNING ATHLETIC RULES

Section 7.1 McGuffin agrees that the University, as a member of the NCAA, 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 to include the following stipulation in this Agreement: If McGuffin is found in violation of Governing Athletic Rules or responsible for another person's violation of Governing Athletic Rules, McGuffin shall be subject to disciplinary or corrective action as set forth in the provisions of the NCAA enforcement procedures, including but not limited to suspension without pay or termination of employment for significant or repetitive violations, whether the violation(s) occurred while McGuffin was employed by the University or during prior employment at another NCAA member institution. For the purposes of this Agreement, the phrase "significant or repetitive violations" shall mean any 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, whether or not the violation was committed by McGuffin or is a violation for which McGuffin has been found responsible.

Section 7.2 McGuffin 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 McGuffin 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 McGuffin without pay, or take other disciplinary or corrective action against McGuffin as set forth in the provisions of the NCAA enforcement procedures upon written notice to McGuffin within sixty (60) 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 McGuffin was employed by the University or during prior employment at another NCAA member institution.

Section 7.3 McGuffin agrees to comply with any penalty imposed by the NCAA and/or the OVC pursuant to Governing Athletic Rules, following the exhaustion of any available appeals by McGuffin. Any fine or loss of compensation resulting from a suspension imposed personally on McGuffin by the NCAA and/or the OVC shall be the sole responsibility of McGuffin. This obligation 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 7.4 Upon termination of this Agreement pursuant to this Article VII, McGuffin shall not be entitled to further salary, compensation, benefits, or perquisites from the University. McGuffin waives all rights to receive compensation for accrued and unused annual leave upon termination of this Agreement pursuant to this Article VII.

Section 7.5. In its sole discretion, the University may elect to terminate this Agreement for cause under this Article VII but offer McGuffin continued employment with or without a new employment agreement.

Section 7.6. Prior to implementing any disciplinary or corrective action as contemplated by this Article VII against McGuffin based on a finding by the OVC, NCAA Committee on Infractions, or, if appealed, the NCAA Infractions Appeals Committee, the University shall afford McGuffin notice and a reasonable opportunity to meet with the Chancellor to respond to the proposed disciplinary or corrective action. McGuffin voluntarily waives all rights to a post-termination or post-suspension opportunity to contest a termination or suspension without pay pursuant to this Article VII under University Rules and the Tennessee Uniform Administrative Procedures Act, Tennessee Code Annotated § 4-5-301 *et seq.*

Section 7.7. McGuffin 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 that McGuffin 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 McGuffin under this Section 8.7 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 McGuffin's employment. This obligation 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 7.8. Nothing in this Article VII 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 IX and Article XII.

ARTICLE VIII – TERMINATION BY UNIVERSITY WITHOUT CAUSE

Section 8.1 In its sole discretion and at any time during the Term, the University may elect to terminate this Agreement without cause upon written notice to McGuffin. If the University terminates this Agreement without cause, then the University shall pay McGuffin liquidated damages in an amount equal to one (1) year of McGuffin's Base Pay at the time of the termination of this Agreement, with partial months prorated, subject to McGuffin's mitigation obligation under Section 8.3 (the "Separation Payment"). The Separation Payment shall be paid in twelve (12) equal monthly installments, subject to all applicable state and federal tax reporting and withholding requirements, with the first payment due on or before the last day of the month following the month in which the termination of this Agreement occurred.

Section 8.2 Upon termination of this Agreement pursuant to this Article VIII, McGuffin shall not be entitled to further salary, compensation, benefits, perquisites, or any other athletically related income or benefits derived by virtue of McGuffin's position as Athletics Director other than: (i) amounts earned but not yet paid; and (ii) post-termination benefits applicable to other regular, full-time University employees who terminate employment with the University. Notwithstanding the preceding sentence, McGuffin waives any and all rights to receive compensation for accrued and unused annual leave upon termination of this Agreement pursuant to this Article VIII.

Section 8.3 McGuffin is required to mitigate the University's obligation to pay the Separation Payment by making reasonable and diligent efforts as soon as practicable following termination to obtain other another comparable employment or paid services position. While the University's obligation to pay the Separation Payment is in effect, and for a period of six (6) months thereafter, McGuffin shall promptly report to the University on a quarterly basis all non-passive income received or earned by him relating to all employment, independent contractor and/or paid services. For each month from the date of the termination of this Agreement through the end of the Term, the University shall have the right to deduct or offset all such non-passive income of McGuffin from each monthly Separation Payment installment.

Section 8.4 The parties have bargained for and agreed to the Separation Payment, giving consideration to the fact that termination of this Agreement without cause by the University prior to its expiration may cause McGuffin to lose certain benefits and incentives, supplemental compensation, or other athletically-related compensation associated with McGuffin's employment with the University, which damages are extremely difficult to determine with certainty. The parties further agree that the payment of such Separation Payment by the University and the acceptance thereof by McGuffin shall constitute adequate and reasonable compensation to McGuffin for any damages and injuries suffered by McGuffin because of such termination by the University. The Separation Payment shall not be, nor be construed to be, a penalty.

Section 8.5 The University's decision to terminate this Agreement without cause is not subject to any University Rules.

Section 8.6 The automatic termination of this Agreement upon the death or disability of McGuffin, as provided in Article X of this Agreement, shall not give rise to a right to a Separation Payment pursuant to this Article VIII.

Section 8.7 Nothing in this Article VIII 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 VII, Article IX, and Article XII.

ARTICLE IX – TERMINATION BY UNIVERSITY FOR CAUSE

Section 9.1 In addition to the grounds for termination of this Agreement under any other Article of this Agreement, including but not limited to Article VII and Article XII, McGuffin agrees that the University has the right to terminate this Agreement for cause under this Article IX at any time prior to the expiration of the Term.

Section 9.2 For purposes of this Article IX, the term "for 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:

- (a) Conduct or omission(s) by McGuffin that constitutes a Level I or Level II violation of one or more Governing Athletic Rules or conduct or omission(s) by McGuffin 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, whether or not the conduct or omission(s) occurred while McGuffin was employed by the University or during McGuffin's prior employment at another NCAA member institution;
- (b) Conduct or omission(s) by a coach or another person under McGuffin's supervision or subject to McGuffin's direct or indirect control or authority, which: (1) constitutes a Level I or Level II violation of one or more Governing Athletic Rules or 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; and (2) McGuffin knew or should have known about through the exercise of diligence that would have been exercised by a reasonably prudent athletic director at a Division I program comparable to that of the University, and McGuffin failed to respond consistently with how a reasonably prudent athletic director would have responded;
- (c) Failure of McGuffin to exercise the diligence that would have been exercised by a reasonably prudent athletic director of a Division I program comparable to that of the University to promote and require compliance with Governing Athletic Rules or University Rules, thus resulting in conduct or omission(s) by another person that constitutes a Level I or Level II violation of one or more Governing Athletic Rules or conduct or omission(s) by another person 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;
- (d) Failure of McGuffin to appropriately advise the Chancellor on the means and methods necessary to promote and maintain institutional control over the University's intercollegiate athletics program, as defined by Governing Athletic Rules, or failing to implement the means and methods approved by the Chancellor to promote and maintain institutional control, as defined by Governing Athletic Rules;

- (e) Failure of McGuffin to report immediately to the Chancellor and the staff member in the Athletics Department with primary duties for compliance any actual knowledge of or reasonable cause to believe that a violation of Governing Athletic Rules more likely than not has been committed or are being committed by himself or others;
- (f) Failure of McGuffin to reasonably cooperate with, or maintain the integrity of, a NCAA, OVC, or University investigation, or materially obstructing such an investigation;
- (g) Misrepresentation or withholding of material information, specifically including, but not limited to previous violations or potential violations of Governing Athletic Rules or institutional rules violations, during the University's process of interviewing and hiring McGuffin;
- (h) Conduct by McGuffin constituting a prohibited conflict of interest under the University's conflict of interest policy or applicable state law that is not cured by McGuffin within thirty (30) days after written notice by the University specifying the nature of the conflict, unless, in the University's reasonable and good faith judgment, the conflict is not capable of being cured;
- (i) Fraud or dishonesty by McGuffin in the performance of his duties under this Agreement;
- (j) The provision of false, misleading, or incomplete material information relevant to the conduct of University business or an investigation conducted by the NCAA, the OVC, the University, or law enforcement, if McGuffin knew or should have known that the information was false, misleading, or incomplete;
- (k) Counseling or instructing by McGuffin of any coach, staff member, current or former student-athlete, student, or 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 athletics programs of the University or of another institution of higher education which shall be propounded by the NCAA, OVC, the University, or other governing body having supervision over the athletics program of the University, or as required by law, Governing Athletic Rules, or University Rules, unless McGuffin believed in good faith that the person was not obligated by law, Governing Athletic Rules, or University Rules to respond to the inquiry or request;
- (l) Conviction of McGuffin of a criminal act that constitutes either (i) a felony or (ii) a misdemeanor involving moral turpitude (excluding traffic offenses);
- (m) Failure by McGuffin to 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);
- (n) Prolonged absence by McGuffin from his duties under this Agreement, without the consent of the Chancellor, other than because of a temporary, verifiable illness or because McGuffin becomes Disabled as defined in Article X;
- (o) Soliciting, placing, or accepting by McGuffin 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 knowingly permitting, encouraging, or condoning such acts by any

coach or other employee of the Athletics Department, or any person under McGuffin's control or authority, including without limitation a student-athlete;

- (p) Furnishing by McGuffin of information or data relating in any manner to any sport or student-athlete, to any individual known by McGuffin to be a gambler, bettor, or bookmaker, or an agent of any such person, or the consorting or associating by McGuffin with such person;
- (q) Failure by McGuffin to fully cooperate in the enforcement and implementation of any drug testing program for student-athletes established by the University, the OVC, the NCAA, or any other governing athletic body;
- (r) Shocking and/or reprehensible conduct by McGuffin which brings McGuffin and/or the University into significant public disrepute or scandal;
- (s) Gross misconduct by McGuffin, 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; and other similar acts involving intolerable behavior by the employee; or
- (t) Any other material breach by McGuffin of his duties under this Agreement if (i) in the University's reasonable and good faith judgment, the breach is capable of being cured and McGuffin fails to take action to cure the material breach within thirty (30) 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 9.3 The grounds for termination contained in this Article IX 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 9.4 In its sole discretion, the University may suspend McGuffin with pay pending an investigation or decision relating to termination for cause under this Article IX.

Section 9.5 Upon termination of this Agreement for cause pursuant to this Article IX, McGuffin shall not be entitled to further salary, compensation, benefits, or perquisites from the University, and he waives all rights to receive compensation for his accrued and unused annual leave.

Section 9.6 For any one or more acts, omissions, or events that could be grounds for termination for cause under this Article IX, the University may take other disciplinary or corrective action against McGuffin short of terminating this Agreement. Other disciplinary or corrective action may include, but is not limited to, one or more of the following: (i) written reprimand; (ii) suspension with pay; (iii) suspension without pay (not to exceed sixty (60) days); or (iii) 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 McGuffin to a position that is consistent with his 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. Any University decision to utilize progressive discipline shall not create any future obligation on the University to utilize progressive discipline.

Section 9.7 Prior to terminating McGuffin's employment or suspending McGuffin without pay under this Article IX, the University shall afford McGuffin oral or written notice of the proposed termination or suspension and a reasonable opportunity to meet with the Chancellor to respond to the proposed termination or suspension. If the University terminates McGuffin's employment or suspends McGuffin without pay under this Article IX, the University shall afford McGuffin a post-termination or post-suspension opportunity to contest the University's action in accordance with the University's rules for conducting contested case proceedings under the Tennessee Uniform Administrative Procedures Act, Tennessee Code Annotated 4-5-301 *et seq.* If the Tennessee Claims Commission or a court of competent jurisdiction determines, after any available appeals have been exhausted, that the University's termination of this Agreement was not "for cause," then the termination of this Agreement shall be retroactively converted to a termination without cause pursuant to Article VIII, in which case McGuffin's remedies for the University's termination of this Agreement are limited to the payment of liquidated damages by the University to McGuffin pursuant to Article VIII with Tennessee's statutory post judgment interest rate applied to payments that are owed by the University as of the date of the final decision of the Tennessee Claims Commission or a court of competent jurisdiction, after any available appeals have been exhausted.

Section 9.8 In its sole discretion, the University may elect to terminate this Agreement for cause under this Article IX but offer McGuffin continued employment with or without a new employment agreement.

Section 9.9 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 VII, Article VIII, and Article XII.

ARTICLE X – AUTOMATIC TERMINATION UPON DEATH OR DISABILITY

Section 10.1 This Agreement shall terminate automatically upon the death of McGuffin, and all salary, compensation, benefits, and perquisites shall terminate as of the last day of the calendar month in which death occurs, except that the executor or administrator of McGuffin's estate or other beneficiary specifically designated in writing shall be paid any death benefits due McGuffin under any University policy now in effect or hereafter adopted by the University.

Section 10.2 This Agreement shall terminate automatically if McGuffin becomes disabled. "Disabled" shall mean physical or mental incapacity of a nature that prevents McGuffin, in the reasonable and good faith judgment of the University, from performing his duties under this Agreement for a period of one hundred twenty (120) consecutive calendar days. If this Agreement is terminated because McGuffin becomes Disabled, all salary, compensation, benefits, and perquisites shall terminate, except that McGuffin shall receive any disability benefits to which he is entitled under any disability program in which he is enrolled and any compensation and benefits earned but not yet paid at the time of termination.

Section 10.3 Nothing in this Article X shall be construed to conflict with or limit the University's rights set forth in any other Article of this Agreement.

ARTICLE XI – TERMINATION BY MCGUFFIN WITHOUT CAUSE

Section 11.1 McGuffin shall have the right to terminate this Agreement without cause at any time upon thirty (30) days' written notice to the University. The thirty (30) days' notice requirement may be waived by the University in writing signed by the Chancellor and the University's Chief Financial Officer.

Section 11.2 Upon termination of this Agreement by McGuffin, McGuffin shall not be entitled to further salary, compensation, benefits, or perquisites from the University, and he waives all rights to receive compensation for his accrued and unused annual leave.

ARTICLE XII – MATERIAL INDUCEMENT FOR UNIVERSITY'S AGREEMENT AND RESERVATION OF RIGHTS

Section 12.1. As a material inducement to the University to execute and perform this Agreement, McGuffin represents and warrants the following to the University:

- (a) McGuffin did not knowingly misrepresent material information, knowingly withhold material information, or knowingly provide incomplete or false material information during the University's process of interviewing and hiring McGuffin;
- (b) McGuffin has disclosed to the University all material information known to him concerning previous NCAA, conference, or institutional rules violations or potential violations committed by him or any person under his direct or indirect control prior to the date on which he executed this Agreement;
- (c) McGuffin has not knowingly furnished the NCAA or the University with false, misleading or incomplete information concerning McGuffin, any assistant coaches', any staff members' or representative of an institution's athletics interests' involvement in or knowledge about matters relevant to a possible violation of Governing Athletic Rules or University Rules when requested to do so by the NCAA or the University;
- (d) McGuffin is not restricted from entering into this Agreement by any conflicting obligations to another authority, person, body, or entity; and
- (e) McGuffin has never been convicted of a criminal act that constituted either (i) a felony or (ii) a misdemeanor involving moral turpitude (excluding minor traffic offenses).

Section 12.2. McGuffin agrees that a breach of any representation or warranty contained in Section 12.1 shall be 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 upon written notice to McGuffin. In its sole discretion, the University may elect to terminate this Agreement for cause under this Article XII but continue McGuffin's employment, with McGuffin's agreement, with or without a new employment agreement. McGuffin voluntarily waives all rights to a post-termination opportunity to contest a termination pursuant to this Article XII under University Rules and the Tennessee Uniform Administrative Procedures Act, Tennessee Code Annotated § 4-5-301 *et seq.*

Section 12.3. Upon termination of this Agreement pursuant to this Article XII, McGuffin shall not be entitled to further salary, compensation, benefits, or perquisites from the University, and he waives all rights to receive compensation for his accrued and unused annual leave.

Section 12.4. Nothing in this Article XII 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 VII and Article IX.

ARTICLE XIII – LIMITATION OF REMEDIES AND WAIVER OF CLAIMS

Section 13.1. The financial consequences of the termination of this Agreement pursuant to Article VII, Article VIII, Article IX, Article X, and Article XII are exclusively set forth in this Agreement. In any instance of a termination of this Agreement pursuant to Article VII, Article VIII, Article IX, Article X, and/or Article XII, except as expressly provided for in this Agreement, the University shall have no liability whatsoever to McGuffin, nor shall McGuffin be entitled to receive, and McGuffin hereby waives and releases all claims that McGuffin or his 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 McGuffin's position as the Athletics Director; (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. McGuffin acknowledges that in the event of the termination by the University of this Agreement for cause, without cause, or otherwise, McGuffin shall have no right to occupy the position of the Athletics Director and McGuffin's sole remedies are provided for in this Agreement and shall not extend to injunctive relief.

Section 13.2. The financial consequences of the termination of this Agreement pursuant to Article XI are exclusively set forth in this Agreement. In any instance of a termination of this Agreement pursuant to Article XI, except as expressly provided for in Article XI, McGuffin 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 McGuffin, 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 McGuffin's release of information or documents required by law. Nothing herein shall limit or decrease McGuffin's liability to University for intentional torts, criminal acts, or fraudulent conduct or omissions.

ARTICLE XIV – DEFINITIONS

The following words, terms, or phrases, when used in this Agreement, shall have the following meanings:

Section 14.1 "Contract Year" shall mean a three hundred and sixty-five (365) day period beginning on July 1 of one calendar year and ending on June 30 of the following calendar year; however, the first Contract Year in the Term will begin on June 28, 2017, and end on June 30, 2018.

Section 14.2 "Governing Athletic Rules" shall mean: (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 National Collegiate Athletic Association ("NCAA") or the OVC 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, sports agents, or competition.

Section 14.3 "NCAA" shall mean the National Collegiate Athletic Association and its successors.

Section 14.4 "OVC" shall mean the Ohio Valley Conference and its successors or any other athletic conference of which the University may be a member.

Section 14.5 "University" shall mean The University of Tennessee and its campus located in Martin, Tennessee.

Section 14.6 "University Rules" shall mean all present or future policies, procedures, rules, regulations, and guidelines of the University, including but not limited to policies of the UTM Athletics Department.

Section 14.7 "UTM" shall mean The University of Tennessee at Martin.

ARTICLE XV – MISCELLANEOUS

Section 15.1 This Agreement contains the complete agreement between the parties concerning McGuffin's employment as Athletics Director. 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 15.2 This Agreement may only be modified by a writing signed by McGuffin and the Chief Financial Officer of the University.

Section 15.3 The invalidity of any portion 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 15.4 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.

Section 15.5 This Agreement shall be interpreted in accordance with Tennessee law.

Section 15.6 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 15.7 Upon the expiration of the Term or earlier termination of this Agreement for any reason, McGuffin agrees that the University shall be entitled to withhold and deduct from any final payment of any kind that is owed to McGuffin by the University the amount of any indebtedness owed to the University by McGuffin.

Section 15.8 Any notice required or permitted to be given under this Agreement shall be sufficient if given in writing and either (i) delivered in person, (ii) sent by United States mail, with first class postage

prepaid, (iii) sent by a nationally recognized delivery service, or (iv) sent by e-mail. Notice shall be deemed given when the written notice is (i) delivered in person, (ii) placed in the United States mail, (iii) placed with a nationally recognized delivery service, or (iv) sent by e-mail. Notice to McGuffin shall be sent to his campus office or to his University-provided e-mail account(s). Notice to the University shall be sent to the Chancellor at his or her campus office or to his or her University-provided e-mail account.

Section 15.9 All documents, files, records, materials (in any format, including electronically stored information), equipment, or other property, including without limitation, personnel records, keys, credit cards, laptop computers, software programs, and electronic communication devices, furnished to McGuffin by the University or developed by McGuffin at the University's direction or for the University's use or otherwise in connection with McGuffin's employment with the University are and shall remain the sole and confidential property of the University. Within three (3) business days of the expiration or termination of this Agreement, McGuffin shall complete the University's exit procedure, including returning all University property in his possession. The foregoing provisions shall not apply to McGuffin's personal notes, memorabilia, diaries, and similar personal records of McGuffin, which he is entitled to retain.

Section 15.10 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.

Section 15.11 McGuffin agrees to be responsible for the payment of all taxes due on all compensation or benefits provided by the University. McGuffin 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 due on any compensation or benefit provided by the University pursuant to this Agreement or otherwise in connection with McGuffin's employment. McGuffin 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 McGuffin pursuant to this Agreement or otherwise in connection with McGuffin's employment.

Section 15.12 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.

Section 15.13 The parties may not assign, pledge, or encumber their respective rights, interests, or obligations under this Agreement.

Section 15.14 This Agreement shall be binding upon the parties and their respective successors, assigns, heirs, and personal and legal representatives. McGuffin shall not assign, pledge, or encumber McGuffin's rights, interests, or obligations under this Agreement.

Section 15.15 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.

Section 15.16 McGuffin acknowledges that he has read and understands this Agreement and agrees that its provisions are reasonable and enforceable and that he will abide by them.

Section 15.17 This 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.

**[The remainder of this page has been left blank
intentionally – signature page follows]**

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

THE UNIVERSITY OF TENNESSEE

KURT MCGUFFIN

By:

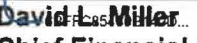

Dr. Keith Carver
Chancellor
The University of Tennessee
at Martin

Date

6/5/17

DocuSigned by:

David Miller


David L. Miller
Chief Financial Officer
The University of Tennessee

6/20/2017 | 08:33:40 PDT

Date


Kurt McGuffin

Date

5/12/2017