

**WESTERN KENTUCKY UNIVERSITY
ATHLETIC EMPLOYMENT CONTRACT**

This Employment Contract is made this 11th day of February, 2019, between **WESTERN KENTUCKY UNIVERSITY ("UNIVERSITY")** and **TYSON HELTON, ("COACH")**.

**ARTICLE I
PURPOSE**

The **UNIVERSITY** and the **COACH** have entered into a Memorandum of Understanding dated November 25, 2018. The Memorandum of Understanding provided that the **UNIVERSITY** and the **COACH** would execute a formal Employment Contract for the **COACH** to serve as the head coach of the **UNIVERSITY's** football program. The **UNIVERSITY** and the **COACH** agree that head coaches of intercollegiate athletic teams at Western Kentucky University conduct their professional activities under circumstances unique in the family of **UNIVERSITY** employees, including evaluation and scrutiny of team performances by the public and the media and control by external rules and regulations. The **UNIVERSITY** has agreed to employ and the **COACH** has promised to be employed by the **UNIVERSITY** upon the following terms and conditions.

**ARTICLE II
POSITION**

2.01 DESCRIPTION OF COACH RESPONSIBILITIES

A. RECOGNITION OF DUTIES

The **COACH** agrees to be a loyal employee of the **UNIVERSITY**, and to use his best efforts and good judgment not to bring disrepute or criticism upon the **UNIVERSITY**. The **COACH** agrees to devote his best efforts full time to the performance of his duties for the **UNIVERSITY**, to give proper time and attention to furthering his responsibilities to the **UNIVERSITY** and to comply with all rules, regulations, policies, and decisions established or issued by the **UNIVERSITY**. The **COACH** also agrees that, notwithstanding the provisions of Section 4.05, during the term of this Employment Contract, he will not engage,

directly or indirectly, in any business or conduct which would detract from his ability to apply his best efforts to the performance of duties hereunder. **COACH** further acknowledges that the integrity and image of the **UNIVERSITY** are of paramount importance, and agrees that he shall act and speak positively about the **UNIVERSITY** and the **UNIVERSITY's** athletic program in private and public forums; and that he will support the **UNIVERSITY's** mission, policies, and decisions in all interactions with the public.

B. GENERAL DUTIES AND RESPONSIBILITIES OF COACH

During the period in which the **UNIVERSITY** employs the **COACH** as Head Football Coach, the **COACH** agrees to undertake and perform all duties and responsibilities attendant to the position of Head Football Coach as set forth in Section 2.01C. The **COACH** further agrees to abide by and comply with the constitution, bylaws, and interpretations of the National Collegiate Athletic Association (NCAA) and Conference USA, or any other football conference the **UNIVERSITY** may choose to enter, as well as all **UNIVERSITY** rules and regulations relating to the conduct and administration of the football program. In the event that the **COACH** becomes aware, or has a reasonable cause to believe, that violations of such constitution, bylaws, interpretations, rules, or regulations may have taken place, he shall report the same promptly to the Athletics Director of the **UNIVERSITY**. All academic standards, requirements, and policies of the **UNIVERSITY** shall also be observed by the **COACH** and members of his staff at all times and shall not be compromised or violated at any time.

C. SPECIFIC DUTIES AND RESPONSIBILITIES WHILE EMPLOYED AS COACH

As of the beginning of this Employment Contract, the duties and responsibilities assigned to the **COACH** in connection with the position as Head Football Coach are as set forth below.

This list of specific duties and responsibilities supplement, and is not exclusive of, the other general duties and responsibilities provided for elsewhere in this Employment Contract.

1. General Description: The position of Head Coach for the Football program is a specialized professional position. The **COACH** is responsible for evaluating, recruiting, training, and coaching student athletes to compete successfully against college competition and to successfully progress toward obtaining a college degree.
2. Responsibilities: In his position as Head Football Coach, the **COACH** shall be responsible for all aspects of the football program including budget, recruiting, training, supervision, evaluation, and performance of student athletes and coaching staff, subject to the terms of 2.03 below. The **UNIVERSITY** Athletics Director shall have sole responsibility and discretion for scheduling for the program, and will make reasonable efforts to consult with **COACH** regarding same.

2.02 **COACH MAY BE DISCIPLINED FOR VIOLATIONS OF UNIVERSITY RULES, REGULATIONS, OR POLICIES; NCAA OR CONFERENCE RULES AND REGULATIONS**

If the **COACH** is found to be in violation of a **UNIVERSITY** rule, regulation or policy, or an NCAA or Conference rule or regulation, the **COACH** shall be subject to disciplinary and/or corrective actions.

2.03 **REPORTING RELATIONSHIPS**

The parties (without delineating the particular terms and conditions) acknowledge that each party will use its best efforts and will cooperate with the other to provide the following support for the **UNIVERSITY's** football program.

- A. The **COACH's** immediate supervisor for purposes of implementing the Contract shall be the Athletics Director of the **UNIVERSITY**; notwithstanding anything to the contrary herein, all matters pertaining to the operation of the **UNIVERSITY's** football program shall be subject to the direction and control of the Athletics Director.
- B. The overall policy of the entire athletics program, including the football program, shall remain the exclusive prerogative of the **UNIVERSITY**. The Head **COACH** shall administer the daily routine and organization of the program as he deems necessary to effectuate its success, provided such administration shall be in accordance with the policies established by and under the direction of the Athletics Director.
- C. The **UNIVERSITY**, through the Athletics Director, shall permit the **COACH** to participate in decisions relating to choice and scheduling of football opponents, means of travel to be employed, hotel, food accommodations, size and content of the travel squad and party, and all other matters pertaining to the operation of similar phases of the football program, but final decisions in such matters shall be with the Athletics Director. It is specifically agreed and understood that travel arrangements shall be made in conformance with any contractual agreements between the **UNIVERSITY** and any travel agency.
- D. The **COACH** shall have the right to release, hire, and retain assistant football coaches subject to the **UNIVERSITY's** recruitment and hiring procedures and policies, and subject to the approval of the Athletics Director, and Kentucky law. In accordance with Kentucky law, the **UNIVERSITY's** Board of Regents must approve any recommended hire or appointment.

ARTICLE III TERMS OF EMPLOYMENT

The term of this Employment Contract shall begin on the 27th day of November, 2018, and shall continue for a term of four (4) years through February 28, 2023. The parties agree that if circumstances do not exist that would justify dismissal for cause as defined in 5.02 herein, the term of this Contract shall

allow for automatic one-year extensions, effective on the last day of each contract year, on the same annual terms. Provided, however, that this extension provision shall not be construed to create an employment term that exceeds four (4) years at any given time, in accordance with the provisions of KRS 164.360(2).

ARTICLE IV COMPENSATION

In consideration for the promises he has made in entering into this Employment Contract, the **COACH** shall be entitled to the following forms of compensation: base salary payments, season tickets, and outside income.

4.01 BASE SALARY

The base salary paid by the **UNIVERSITY** to the **COACH** for services and satisfactory performance of the terms and conditions of this Employment Contract shall be \$800,000.00 effective November 27, 2018, which shall be payable in equal monthly installments during the period of this Contract and made in conformity with the payroll procedure of the **UNIVERSITY**. Payment will be annualized for the first contract year, **execution hereof through** February 29, 2020. The parties will use best efforts to structure the payment of the foregoing guaranteed compensation in as tax-efficient a manner as possible, subject to all applicable laws, rules and regulations, and consistent with common practices in the industry.

The **COACH** shall be eligible to participate in a group insurance, retirement, and voluntary payroll deduction program on the same basis and with the same **UNIVERSITY** contributions that apply to the **UNIVERSITY**'s non-academic administrative staff.

The **COACH** will be reviewed for his performance on an annual basis. The parties agree that the **COACH**'s base salary shall be adjusted in accordance with the **UNIVERSITY** performance evaluation policies and salary adjustment pools in effect at the time.

4.02 REIMBURSEMENT FOR MOVING EXPENSES

UNIVERSITY agrees to reimburse **COACH** for all household moving expenses in accordance with University policy and state law.

4.03 **SEASON TICKETS**

The **UNIVERSITY** will provide the **COACH** without charge ten (10) chair-seat football tickets and four (4) chair-seat reserved men's and women's basketball tickets. The **COACH** shall have the option to buy twelve (12) additional football tickets if available. The **COACH** shall be provided ten (10) football tickets for bowl/playoff games. It is agreed and understood that all tickets are provided to aid the **COACH** in the performance of his job (recruiting, etc.). It is intended that the value of the tickets be excluded from compensation under the Internal Revenue Code Section 132(a)(3) as a working fringe benefit.

4.04 **COACH'S BONUS / VEHICLE**

A. Beginning with the 2019 football season and continuing thereafter for the term of the

Contract, the **COACH** shall be entitled to the following bonuses:

- | | |
|-----------------------------------------------------|-----------|
| 1. Season ticket sales in excess of 12,000 per year | \$25,000 |
| 2. New Year's Six Bowl Appearance | \$100,000 |
| 3. CUSA Coach of the year | \$25,000 |
| 4. Winning percentage greater than .500 | \$50,000 |
| 5. Victory in Bowl Game | \$50,000 |
| 6. Conference USA Championship | \$50,000 |
| 7. Single-Year APR 950-969 | \$50,000 |
| 8. Single-Year APR 970+ | \$50,000 |

All payments referenced above, including any payments to assistant coaches and/or staff, shall be paid in the form of salary and in accordance with the **UNIVERSITY's** payroll procedures.

B. The **UNIVERSITY** shall furnish to the **COACH**, for his use on a loan basis during the term of his Employment Agreement, one (1) automobile and shall pay for automobile liability and comprehensive insurance and taxes, if applicable, upon the vehicle. **COACH** shall be solely responsible for all upkeep, maintenance, and/or repair of vehicle. If possible, the **UNIVERSITY** shall provide **COACH** a second vehicle, under the same terms and conditions.

4.05 **OPPORTUNITIES TO EARN OUTSIDE INCOME**

While the **COACH** is representing the **UNIVERSITY** as Head Football Coach, he shall have the opportunity to earn outside income as a result thereof, but only upon the following terms and conditions:

General provisions concerning outside income. The following general terms and conditions shall apply to each case in which the **COACH** seeks to or makes arrangements to earn outside income as a result of his being Head Football Coach:

- A. **UNIVERSITY OBLIGATIONS ARE PRIMARY.** Such outside activities shall not interfere with the full and complete performance by the **COACH** of his duties and obligations as the **UNIVERSITY COACH**, recognizing always that the **COACH's** primary obligations lie with the **UNIVERSITY** and its students;
- B. **NCAA RULES CONTROL.** In no event shall the **COACH** accept or receive directly or indirectly any monies, benefit, or any other gratuity whatsoever from any person, group, corporation, Hilltopper Athletic Foundation, or Alumni Association if such action would violate NCAA legislation. The constitution, bylaws, rules and regulations, or interpretations thereof shall automatically apply to the agreement;
- C. **UNIVERSITY APPROVAL IS REQUIRED.** The **COACH** shall obtain the advance written approval from the President and Athletics Director of the **UNIVERSITY** before entering into such agreements. Approval shall not be unreasonably withheld;

- D. **UNIVERSITY IS NOT LIABLE.** Such activities are independent of the **COACH's UNIVERSITY** employment and the **UNIVERSITY** shall have no responsibility nor bear any liability for any claims arising therefrom;
- E. **COACH RETAINS ALL REVENUES.** Except for the limitations on such outside compensation as established by or set forth in this Agreement and in the constitution, bylaws, rules and regulations, and interpretations thereof of the **UNIVERSITY**; Conference USA, or any other conference the **UNIVERSITY** may choose to enter; and the NCAA, the **COACH** shall be entitled to retain all revenues generated by such outside activities (i.e., shoe contracts, speaking engagements, outside camps, etc.). **COACH** shall have the sole right to determine the brand of shoe wear, uniforms, and athletic equipment to be used by the **UNIVERSITY** football team.
- F. **SUMMER CAMPS.** **COACH** shall be entitled to at least three (3) weeks of football camps using **UNIVERSITY's** athletic facilities and equipment. **COACH** shall have priority to conduct at least two weeks of camp (i.e., fourteen days) in the month of June after the regular term of public school in Kentucky has concluded. The operation of camp(s) will be conducted under the auspices of **UNIVERSITY** Athletic Department and shall be conducted in accordance with general policies of the **UNIVERSITY**. **COACH** will be obligated to pay the **UNIVERSITY** the sum of one dollar (\$1) for the use of its intercollegiate athletic facilities and equipment for each of the football camps, and said equipment and facilities shall be available for use for a minimum of three (3) weeks per year. A separate rate will be determined for the use of the Raymond B. Preston Health and Activities Center, which rate will not be unreasonable and which shall be determined by September 30 of the preceding year. Rates for room and meals to be charged by **UNIVERSITY** for such student camps shall be the lowest rate charged for student camps generally by the **UNIVERSITY**, which

may vary from year to year. **COACH** agrees and understands that the **UNIVERSITY** will place a surcharge on each camper enrolled in the camps, and **UNIVERSITY** agrees to give **COACH** notice of the amount of the surcharge on or before September 30 of the preceding year. Such surcharge commence at \$3 per camper, effective with the summer of 2010. Should there be a conflict between **UNIVERSITY's** men's football program and any other **UNIVERSITY** athletic team or **UNIVERSITY** sponsored or affiliated program or organization concerning the use of the above facilities and equipment, this conflict shall be resolved by and in the sole discretion of the Athletics Director, who shall have the final determination on all matters. The **UNIVERSITY** agrees that it will cap the per camper fee at \$5 per camper throughout the term of this Agreement.

G. **RADIO AND TELEVISION.** The **UNIVERSITY** will use its best efforts to secure a **COACH's** radio and/or television program to air weekly for thirty (30) minutes during the football season. The compensation payable to the **COACH** will be negotiated at such time as the plan(s) for the radio and/or television program are finalized.

ARTICLE V TERMINATION

The **COACH** recognizes that his promise to remain the **UNIVERSITY's COACH** through the entire term of this Employment Contract is of the essence. It is also recognized, however, that certain limited circumstances may make it appropriate for the **UNIVERSITY** to terminate this Contract prior to the completion of its entire term.

5.01 BUYOUT TO CURRENT INSTITUTION

UNIVERSITY agrees to pay the buyout owed to your current institution . The University will make a good faith attempt to minimize tax liability to the coach but the coach will ultimately be responsible for all personal tax obligations.

5.02 **TERMINATION BY UNIVERSITY FOR JUST CAUSE**

The **UNIVERSITY** shall have the right to terminate this Employment Contract for just cause prior to its normal expiration on February 28, 2023 (or 2024 or 2025, in the event of extension). The term "just cause" shall include, in addition to normally understood meaning in Employment Contracts, any of the following:

- A. Conviction of a felony or declared by a court of competent jurisdiction to be guilty of a crime involving moral turpitude;
- B. Serious violation of any law, rule, regulation, constitutional provision, bylaw, or interpretation of the **UNIVERSITY**; Conference USA, or any other football conference the **UNIVERSITY** may choose to enter, or the NCAA;
- C. Serious violation of any law, rule, regulation, constitutional provision, bylaw or interpretation of the **UNIVERSITY**, the Conference USA or the NCAA by a member of the football coaching staff, student athletes in the football program, or any other person under the **COACH's** supervision and direction, with the knowledge or consent of the **COACH**;
- D. Prolonged absence from duty without the consent of the Athletic Director or his designee; or,
- E. Engaging in conduct, as solely determined by the **UNIVERSITY**, which is clearly contrary to the character and responsibilities of a person occupying the position of Head Football Coach or which negatively or adversely affects the reputation of the **UNIVERSITY's** Athletics Program in any way, as determined by the **UNIVERSITY**.

5.03 **UNIVERSITY'S OBLIGATIONS UPON TERMINATION FOR CAUSE**

In the event this Employment Contract is terminated for cause in accordance with the provisions of Section 5.02 hereof, and at the time of such termination if there is more than one (1) month of unexpired term of this Contract, the "severance fee" shall be computed and paid as if the unexpired term of this Contract was only one (1) month. The "severance fee" will be calculated solely on the base salary

shown in Section 4.01. The **COACH** shall not be required or obligated to perform any further service or duties for the **UNIVERSITY** to be entitled to the “severance fee.” In any meeting between **UNIVERSITY** official(s) and **COACH**, relating to termination for cause, both the **UNIVERSITY** and **COACH** have the right to have representation by legal counsel present.

5.04 **TERMINATION WITHOUT CAUSE BY UNIVERSITY OR COACH**

The **UNIVERSITY** and **COACH** shall have the right to terminate this Employment Contract prior to its normal expiration on February 28, 2023, (or 2024 or 2025, in the event of extension), without cause. Termination “without cause” shall mean termination of this Contract on any basis other than those set forth in Section 5.02. Termination by either party without cause shall be effectuated by delivering to the other party written notice of the terminating party’s intent to terminate this Contract without cause.

5.05 **LIQUIDATED DAMAGES UPON TERMINATION WITHOUT CAUSE**

A. If **COACH** terminates the contract without cause he will pay the **UNIVERSITY**, in equal payments over a twelve (12) month period, according to the following schedule:

1. Prior to March 1, 2020 - \$1.2 million
2. From March 1, 2020 to February 28, 2021 - \$900,000
3. After February 28, 2021 - \$600,000

B. If **UNIVERSITY** terminates the contract without cause at any time, it will pay **COACH**, in equal payments over a twelve (12) month period, according to the following schedule:

1. Prior to March 1, 2020 - \$1.2 million
2. From March 1, 2020 to February 28, 2021 - \$900,000
3. After February 28, 2021 - \$600,000

C. If **COACH** is terminated without cause and obtains employment within 12 months (“Offset Period”), each subsequent monthly payment will be reduced by the amount of

monthly compensation **COACH** receives from the new employer with respect to the Offset Period.

- D. Failure to timely pay such liquidated damages shall constitute a breach of this Contract and such sum shall be recoverable together with reasonable attorney fees.
- E. In no case shall the **UNIVERSITY** be liable for the loss of any collateral business opportunities or any other benefits, perquisites, or income resulting from activities such as, but not limited to, camps, clinics, media appearance, apparel or shoe contracts, consulting relationships, or from any other sources that may ensue as a result of the **UNIVERSITY's** termination of this Contract without cause.
- F. Should **COACH** decide to resign or retire from collegiate men's football and thereafter does not accept employment as a head men's football coach for at least one full year following the date of his resignation or retirement, these provisions shall not apply.

5.06 **ADDITIONAL CONSIDERATION UPON TERMINATION BY COACH WITHOUT CAUSE**

In addition to the provisions of paragraph 5.05, if **COACH** terminates this Contract without cause prior to its expiration date and within one (1) year of his termination accepts employment as Head Coach of the football program with any other college/university with a Division I-A (FBS) football program, **COACH** agrees to use his best efforts to schedule a (2) two-year home/home game series (i.e., one game to take place at Western Kentucky University, and one game to occur at hiring college/university) between the football team of the college/university which employs him and the **UNIVERSITY's** football team, with no requirement for financial remuneration on the part of that college/university or the **UNIVERSITY**. Said series will be scheduled within 12 months of termination of **COACH's** employment with **UNIVERSITY**, but in no event to begin later than twelve (12) years following the date of termination of **COACH's** employment with **UNIVERSITY**.

5.07. **TERMINATION BY DISABILITY OR DEATH**

It is expressly understood and agreed that this Contract constitutes a personal service agreement between the **UNIVERSITY** and **COACH**. In the event a disability prevents **COACH** from performing the duties and responsibilities specified in this Contract, as certified by two (2) physicians selected or approved by the **UNIVERSITY**, or in the event of **COACH**'s untimely demise, this Employment Contract shall terminate and neither party, including **COACH**'s estate, shall have any further rights or obligations hereunder, the same as though termination were by the **COACH** were a resignation or retirement from collegiate men's football; provided, however, that in the event of a disability as set forth herein, **COACH** shall be entitled to apply for and, if eligible, participate in the Kentucky Teachers Retirement System disability retirement program and the **UNIVERSITY**'s Long Term Disability Insurance Program.

5.08 **UNIVERSITY APPROVAL REQUIRED PRIOR TO NEGOTIATION WITH OTHER SCHOOLS OR EMPLOYERS**

The parties agree that should another coaching or sports related employment opportunity be presented to **COACH** or should **COACH** be interested in another coaching position during the term of his Employment Agreement, **COACH** must notify the **UNIVERSITY**'s Athletics Director of such opportunity or interest, and obtain permission from the Athletics Director before any discussions can be held by **COACH** with anticipated coaching position principals, which permission shall not be unreasonably withheld.

5.09 **WAIVER OF JURY TRIAL AND RESOLUTION OF DISPUTES**

Parties to this agreement agree to waive trial by jury for any claim arising out of or relating in any way to this agreement or breach of this agreement.

**ARTICLE VI
MISCELLANEOUS**

6.01 **AMENDMENTS TO AGREEMENT**

This Agreement and the exhibits attached hereto contain the entire agreement of the parties with respect to the subject matter of this Agreement, and supersede all prior negotiations, agreements and understandings with respect thereto. This Contract can only be altered or amended by written agreement between the **COACH** and the **UNIVERSITY's** designated representative.

6.02 **UNIVERSITY RETAINS ALL MATERIALS AND RECORDS**

All materials or articles of information, including, without limitations, personnel records, team information, films, tapes, statistics, or any other material or data furnished to the **COACH** by the **UNIVERSITY** or developed by the **COACH** on behalf of the **UNIVERSITY** or at the **UNIVERSITY's** direction of the **UNIVERSITY's** use or otherwise in connection with the **COACH's** employment hereunder are and shall remain the sole and confidential property of the **UNIVERSITY**. Within thirty (30) days of the expiration of the term of this Contract or its earlier termination as provided herein, the **COACH** shall immediately cause any such materials in his possession or control to be delivered to the **UNIVERSITY**.

6.03 **TAX LIABILITIES**

The **COACH** shall be responsible for any and all income tax liabilities, interest, and/or penalties related to any benefits received pursuant to this contract.

6.04 **LAWS OF THE COMMONWEALTH OF KENTUCKY**

This Contract shall be interpreted under the Laws of the Commonwealth of Kentucky, and if any provision of the Contract may be prohibited, this shall not invalidate the remaining provisions of the Contract.

6.05 **ACKNOWLEDGMENT**

COACH acknowledges that he has read and understands the foregoing provisions of this Contract, that he has had the opportunity to consult with legal counsel, and that such provisions are

reasonable and enforceable, and he agrees to abide by this Contract and the terms and conditions set forth herein.

IN WITNESS WHEREOF, the parties hereto set forth their respective signatures on this

Contract as of the date set forth below.

BY:


TODD STEWART
ATHLETICS DIRECTOR

Date

2-18-19

BY:


TYSON HELTON
HEAD FOOTBALL COACH

Date

2/18/19