

## **FIRST AMENDMENT TO EMPLOYMENT AGREEMENT**

**THIS FIRST AMENDMENT TO EMPLOYMENT AGREEMENT** ("First Amendment") is made this 19th day of December, 2014, by and between West Virginia University Board of Governors for and on behalf of West Virginia University ("University") and Brian Mitchell ("Coach").

**WHEREAS**, University and Coach entered into an Employment Agreement, dated January 15, 2013 (the "Agreement");

**WHEREAS**, in accordance with the terms of the Agreement, Coach is employed as an assistant football coach;

**WHEREAS**, University and Coach now desire to amend the Agreement;

**NOW, THEREFORE, WITNESSETH**, that for and in consideration of the mutual covenants and conditions herein contained, and other good and valuable consideration, the receipt and sufficiency of all of which hereby is acknowledged by the parties hereto, University and Coach agree to amend the Agreement as follows:

1. The Termination Date, as it is defined in Article II, shall be amended to now be 11:59 p.m. on the 30th day of January, 2017.
2. To correct an error made in the drafting of the Agreement, Article II. COMPENSATION AND BENEFITS shall be renumbered as Article III; additionally, subsection C.4. of the renumbered Article III relating to annual incentives shall be deleted and replaced with the following:

**Annual Performance Incentives:** In addition to Base Salary, University shall pay Coach annual performance incentives within One Hundred Twenty (120) consecutive days of the end of the season in which earned, for attainment of and participation in the following:

- a. Regular season victories (not cumulative)
  - i. 12 wins \$15,000.00
  - ii. 11 wins \$10,000.00
  - iii. 10 wins \$ 7,500.00
  - iv. 9 wins \$ 5,000.00
- b. Conference regular season title (or share of title)  
\$ 7,500.00
- c. Non-College Football Playoff bowl appearance  
\$10,000.00

- d. College Football Playoff ("CFP") appearance \$15,000.00
  - e. CFP Semifinal victory \$ 5,000.00
  - f. CFP National Championship game appearance \$20,000.00
  - g. CFP National Championship game victory \$ 5,000.00
- 3. Base Salary, as it is defined in Section A of renumbered Article III, shall be increased to Two Hundred Seventy-Five Thousand (\$275,000.00) beginning January 1, 2015.
- 4. Subsection C.4. of Article III relating to annual incentives shall be contingent on the football team achieving a 930 or higher multi-year Academic Progress Rate (APR). Accordingly, Coach will not receive any annual performance incentives for the upcoming year if the football team does not achieve a 930 or higher APR. For the avoidance of doubt, if the football team fails to achieve a 930 or higher APR, Coach will not receive any annual performance incentives until that mark is reached. By way of example, if the APR is below a 930 when it is announced in the Spring of 2015, the University will award no annual incentives to Coach in the upcoming 2015-16 season or any subsequent year until the APR is 930 or higher.
- 5. To the extent necessary, Section V. PROMOTIONAL ACTIVITIES is amended to include appearances and participation in radio, television and Internet programs produced by the University, its affiliated organizations, and/or other such programs licensed by University.
- 6. Coach represents and warrants that he has not violated any of the rules and regulations of the NCAA, and he is not aware of any threatened or pending NCAA investigation involving his conduct.
- 7. Except as set forth in this First Amendment, the Agreement remains in full force and effect and not amended.

Signatures on the Following Page

**IN WITNESS WHEREOF**, the parties hereto shall consider this First Amendment to be effective on the date first written above.

**West Virginia University Board of Governors  
On behalf of West Virginia University**

By   
Keli Cunningham  
Interim Director of Athletics

  
Brian Mitchell

## **EMPLOYMENT AGREEMENT**

**THIS EMPLOYMENT AGREEMENT** (the "Agreement") is made this 15th day of January, 2013, by and between West Virginia University Board of Governors for and on behalf of West Virginia University (hereinafter "University") and Brian Mitchell (hereinafter "Coach").

**WHEREAS**, University requires the services of an assistant coach for its football team;

**WHEREAS**, effective on the date mentioned above, University and Coach fully intend to replace in its entirety all previous agreements which contain employment provisions with this single superseding Agreement; and

**WHEREAS**, Coach is willing to serve as University's Assistant Football Coach under the following terms and conditions;

**NOW, THEREFORE, WITNESSETH**, that for and in consideration of the mutual covenants and conditions herein contained, and other good and valuable consideration, the receipt and sufficiency of all of which hereby is acknowledged by the parties hereto, University and Coach agree as follows:

### **I. EMPLOYMENT**

Subject to the terms and conditions contained herein, University hereby agrees to employ Coach as University's Assistant Football Coach and Coach agrees to perform in this capacity. Coach shall be employed as a full-time, exempt, Faculty Equivalent Academic Professional employee, by and subject to the rules and policies adopted by the University's Board of Governors and any other policies and procedures adopted by the University, all as they may be modified from time to time. Subject to the provisions of Articles II and VI below, the term of the appointment is made by the Director of Intercollegiate Athletics at West Virginia University in consultation with the Head Football Coach.

### **II. TERM**

The Agreement shall be for a term beginning on the 15th day of January, 2013 and terminating at 11:59 p.m. on the 30th day of January, 2015 ("the Termination Date"). However, that nothing contained herein waives the right of Coach and University to exercise their respective rights as outlined in Article VI of this Agreement. The one-year period beginning February 1st each year shall be deemed to be an "Agreement Year" as that term is used in this Agreement.

### **II. COMPENSATION AND BENEFITS**

**A. Base Salary**. In consideration of services and satisfactory performance of the terms and conditions of this Agreement by Coach, University agrees to pay Coach an annual Base Salary of Two Hundred Twenty Five Thousand Dollars (\$225,000.00) (the "Base Salary"). Base Salary shall be payable in semi-monthly installments.

Payment of all Base Salary shall be in accordance with the payroll policies of University and subject to such deductions as may be required by applicable state and federal laws and regulations, and such employee benefit plans in which Coach elects to participate. Under no circumstances, however, shall the Base Salary ever be decreased during the term of this Agreement.

**B. Employee Benefits.** Coach will be eligible to participate in all employee benefit programs available to other University employees of like status. Such benefits shall be governed by University policies and the laws of the State of West Virginia and will include, among others, health insurance, retirement, annual leave, sick leave and all other standard benefits.

**C. Other Compensation and Incentives**

**1. Courtesy Automobile:** Coach shall receive one (1) courtesy automobile; provided, however, prior to receipt of the automobile, Coach shall separately agree to the terms and conditions of the Department of Intercollegiate Athletics' Wheels Club Driver Agreement.

**2. Tickets:** Coach shall be provided four (4) tickets for each home football game, two (2) tickets for each home men's basketball game, two (2) tickets for each home women's basketball game, and, if applicable, four (4) tickets for each post-season bowl game in which the University's football team participates. Such tickets shall be distributed by Coach as allowed by law and by the rules and regulations of the University, the Big 12 Conference and the NCAA, and are subject to applicable taxes.

**3. Camps:** Coach may be entitled to additional compensation for services performed related to the football youth camp(s) and/or clinic(s) held on campus as part of the Department of Intercollegiate Athletics' operations consistent with the provisions of West Virginia University Board of Governors' Policy No. 16 and other applicable state law. Compensation will be dependant upon total net revenue generated by the camp and subject to the approval of the Head Football Coach, acting as the Camp Director, and the Director of Intercollegiate Athletics. Coach will be required to use vacation time while working said camp(s) and/or clinic(s).

**4. Annual Incentives:** In addition to Base Salary, University shall pay Coach annual incentives within One Hundred Twenty (120) consecutive days of the end of the season in which earned, for attainment of and participation in the following:

- |   |              |
|---|--------------|
| <b>a. Regular season victories (not cumulative)</b>           |              |
| i. 12 wins  | \$ 15,000.00 |
| ii. 11 wins   | \$ 10,000.00 |
| iii. 10 wins  | \$ 7,500.00  |
| iv. 9 wins  | \$ 5,000.00  |
| <b>b. Conference regular season title (or share of title)</b> | \$ 7,500.00  |
| <b>c. Non-Bowl Championship Series appearance</b>             | \$ 10,000.00 |

|  |              |
|--|--------------|
| d. Bowl Championship Series appearance       | \$ 15,000.00 |
| e. Bowl Championship Series victory          | \$ 5,000.00  |
| f. BCS National Championship game appearance | \$ 20,000.00 |
| g. BCS National Championship title           | \$ 5,000.00  |

5. **Athletic Apparel:** The University shall provide an athletic apparel allocation of One Thousand Dollars (\$1,000.00) retail value from the University's team apparel supplier which will be subject to applicable taxes, if any.

#### IV. PERFORMANCE

In the performance of his duties, Coach shall be responsible to and under the direct supervision of the Head Football Coach. Without limiting the foregoing, Coach shall conduct himself at all times in a manner which is consistent with his position as an instructor of students and which presents a positive representation of West Virginia University. The parties agree that, although this Agreement is sports related, the primary purpose of the University and this Agreement is to support the University's educational mission. The educational purposes of the University shall have priority in the various provisions of this Agreement. Coach will perform his duties as assigned by the Head Football Coach and/or Director of Intercollegiate Athletics and will otherwise perform the requirements of the job description for the position of Assistant Football Coach as they may from time to time be changed at the sole discretion of the Head Coach and/or Director of Intercollegiate Athletics (to the extent not inconsistent with the terms of this Agreement) attached as Exhibit 1 hereto and incorporated herein by reference. Coach will use best efforts to comply with the reasonable goals and objectives established annually by the Head Football Coach.

Coach shall not breach any local, state or federal laws, ordinances, rules or regulations, or of any of the written rules, regulations, policies, procedures or standards of the University, the Big 12 Conference (or any other athletic conference of which the University may become a member) or the National Collegiate Athletic Association ("NCAA"). Coach shall adhere to NCAA Bylaw 11.1 Conduct of Athletics Personnel in the performance of his duties as Assistant Football Coach. Pursuant to NCAA Bylaw 11.2.1, it is stipulated by the parties that if Coach is found in violation of NCAA regulations, he shall be subject to disciplinary or corrective action as set forth in the provisions of the NCAA enforcement procedures, including suspension without pay or termination of employment as set forth in Article VI herein.

Additionally, Coach shall not knowingly permit or condone directly or indirectly, or by negligent supervision, any student, employee or other individual subject to his control or supervision, to perform any act which reflects adversely on the University, its athletic programs, or otherwise affects the operations of the football program or Coach's responsibilities under this Agreement. In the event Coach violates the foregoing, Coach may be subject to disciplinary action, consistent with the terms of this Agreement, including, but not limited to, public or private reprimand, or, if appropriate, termination as determined by the Director of Intercollegiate Athletics, and/or the Head Football Coach, after consultation and review with the Director of Intercollegiate Athletics.

## **V. PROMOTIONAL ACTIVITIES**

As part of Coach's responsibilities under this Agreement, Coach shall perform the following promotional activities as directed by the Head Football Coach or Director of Intercollegiate Athletics, or his designee:

A. Appearances at events sponsored by the Mountaineer Athletic Club or University affiliated organizations and sponsors.

B. Appearances and participation in radio, television and Internet programs produced by the University's Mountaineer Sports Network or its affiliated organizations, and/or other such programs. Such appearances and participation may include, but shall not necessarily be limited to, radio talk shows, pregame/postgame radio shows, television shows, Internet audio programs and occasional Internet features. University shall own all rights to radio, television, Internet and other programs that are broadcast or otherwise disseminated to the public in which Coach serves as a participant. University retains exclusive rights to services in the areas as specified herein.

C. Coach shall be allowed to retain any income received from coaching clinics and camps in which he participates. Coach shall be allowed to retain any income received from speaking engagements. Coach acknowledges and agrees that prior to accepting any speaking engagement, he must notify the Director of Intercollegiate Athletics, or his designee, of the clinic, camp or speaking engagement and obtain approval. The Director of Intercollegiate Athletics may refuse to provide approval at its discretion but will not unreasonably withhold such approval. Coach may not make speaking engagements with business or corporations that compete with the University's official corporate sponsors.

D. Participation in promotional and other activities as may be reasonably requested by University.

With respect to subsections A, B and D above, University agrees to consult and coordinate with Coach before scheduling such promotional activities, which consent shall not be unreasonably withheld. Except as limited or restricted by the provisions of this Article V and Article IX, and further subject to Coach's obligation to satisfy the terms and conditions of this Agreement, nothing contained herein shall be deemed to prevent Coach from arranging or participating in, and deriving personal income from personal speaking engagements or other endeavors unrelated to his service as Assistant Football Coach, subject to prior approval of University, such approval not to be unreasonably withheld.

## **VI. TERMINATION**

A. **Termination for Cause by University.** The University specifically reserves the right to terminate this Agreement without further obligation at any time for cause, which shall be deemed to include, but is not limited to, the following:

1. The commission by Coach of a serious or major violation, whether intentional or negligent, or a pattern of any violations, of the written rules,

regulations, policies, procedures or standards of the NCAA, the University or the Big 12 Conference (or any other athletic conference of which University may become a member), or the allowing or condoning, whether directly or by negligent supervision, of any such violation by a student, coach or other individual subject to his control or supervision, or otherwise soliciting, directing or condoning such violation by any person;

2. Conviction (including a plea of no contest) of Coach for a felony or a conviction (including a plea of no contest) of Coach for a misdemeanor involving moral turpitude;

3. Substance abuse or habitual insobriety;

4. Material and substantial breach of any term of this Agreement by Coach, which breach has gone uncured for thirty (30) consecutive days after written notice thereof by University to Coach;

5. Willful, negligent or intentional disregard and/or insubordination by Coach of the reasonable instructions of the Head Football Coach, the Director of Intercollegiate Athletics or the President of University, which disregard has gone uncured for thirty (30) consecutive days after written notice thereof by University to Coach;

6. Willful misconduct and gross negligence in performance of duties;  
or

7. Misconduct by Coach of such a nature that the misconduct offends the traditions of the University, or brings discredit to the University, or harms the University's reputation.

In the event that Coach is terminated for cause by University, Coach shall not be entitled to, nor shall University be required to provide, any portion of the compensation, benefits and/or incentives as set forth in Article III of this Agreement, or any other entitlements under this Agreement, except Base Salary, benefits and incentive compensation actually earned and accrued but unpaid through the date of termination, all of which shall be paid within thirty (30) consecutive days of termination less all applicable taxes and other withholdings.

**B. Termination for Convenience by University.** In addition to the provision set forth above, the University also reserves the right to terminate this Agreement without cause, at University's convenience. In the event that University terminates Coach without cause, University will, within thirty (30) consecutive days of termination pay Coach all Base Salary, benefits and incentive compensation actually earned and accrued but unpaid through the date of termination, and, with regard to Article III (A) only, any or all other amounts University is legally obligated to pay to Coach pursuant to the terms of this Agreement, as if the Coach had fully performed through and until Termination Date as defined by Article II of this Agreement, less all applicable taxes and other withholdings.



**C. Termination for Convenience by Coach.** In the event Coach terminates this Agreement without cause, at Coach's convenience, not including any reason stipulated in Article VI (D), Coach shall within thirty (30) consecutive days of termination receive payment from University for all Base Salary, supplemental and incentive compensation actually earned and accrued but unpaid under the terms of this Agreement and not paid as of the date of such termination, less all applicable taxes and other withholdings.

**D. Death, Disability or Retirement.** In the event of the inability of Coach to continue to perform the essential functions of his position under this Agreement by reason of death, disability or permanent retirement, this Agreement shall thereupon terminate and all future obligations between the parties hereto shall cease. The parties further agree that in the event that Coach is unable to continue to perform his obligations under this Agreement and the Agreement is terminated pursuant to this Article VI (D), Coach shall be entitled to all earned and accrued Base Salary, benefits and incentive compensation earned but unpaid as of the date of death, final determination of disability or permanent retirement. Such compensation shall be paid to Coach or his estate or beneficiaries, as the case may be, in addition to standard University benefits, if any.

**E. Resignation of Head Football Coach.** If during the term of this Agreement the Head Football Coach voluntarily terminates his respective employment with the University (a "Resignation Event") then this Agreement shall automatically terminate whether on the one hundred eightieth (180<sup>th</sup>) day following the Resignation Event, or on the Termination Date stated in Article II, whichever comes first without breach by the University. During the remaining term of this Agreement, Coach or University may still exercise their respective rights as outlined in Article VI(A) to (C) of this Agreement. University will pay to Coach all Base Salary and incentive compensation actually earned and accrued but unpaid under the terms of this Agreement and not paid as of the date of such termination, less all applicable taxes and other withholdings.

**F. Coach's Obligation Upon Termination.** All materials or articles of information, including without limitation, keys, keycards, cell phones, computers, equipment, parking passes, unused athletic event tickets and the like, the right to claim such tickets or the like, automobiles, personnel records, recruiting records, team information, video, statistics or any other material documents, correspondence, or other data furnished to the Coach by the University or developed by the Coach, whether directly or by others under his supervision and control, on behalf of the University for the University's use or otherwise in connection with the Coach's employment hereunder shall remain the sole property of the University. Coach shall cause any and all such materials in his possession or control to be delivered to the University by or before close of business on the date of his termination of employment. This provision shall apply equally to written and electronic materials and records.

## **VII. GRIEVANCE PROCESS**

Resolution of any employment grievance that Coach may desire to raise shall be governed by the West Virginia Public Employees Grievance Procedure (W.Va. Code §6C-2-1 et seq.).

## **VIII. OUTSIDE INCOME**

Coach shall receive written approval from the Director of Intercollegiate Athletics or his designee prior to entering into any agreement for income and benefits from sources outside University, such approval not to be unreasonably withheld. Further, in accordance with NCAA Bylaw 11.2.2 regarding athletically-related income, Coach agrees to provide a written detailed account to the Director of Intercollegiate Athletics or his designee, at least once annually, or more frequently upon written request, for all athletically-related income, compensation, gratuities or benefits from any and all sources outside the institution.

## **IX. PUBLIC APPEARANCES**

Coach shall make no public appearance, either in person or by means of radio, television, Internet or other means or medium, or willingly allow the use of his name in connection with his relationship to the University, when any such appearance or use of name will result in unfavorable reflection upon University or conflict with Coach's duties or University's rights under this Agreement.

## **X. DRIVING STANDARDS**

Coach shall be subject to the driving standards and provisions set forth in the University's Department of Intercollegiate Athletics Pilot Student Transportation Reporting Program as it may be amended from time to time.

## **XI. REPRESENTATIONS**

Coach represents and warrants that he has not violated any of the rules and regulations of the NCAA, and that he is not aware of any threatened or pending NCAA investigation involving his conduct at any other NCAA member institution.

## **XII. HEADINGS**

The headings of the articles and sections contained in this Agreement are for reference purposes only and shall not be deemed to control or affect the meaning or construction of any provision of this Agreement.

## **XIII. ENTIRE AGREEMENT; AMENDMENT**

It is mutually understood that this Agreement contains all of the terms and conditions to which the parties have agreed and that no other understandings or representations, either oral or written, unless referenced in the preceding paragraphs, regarding the subject matter of this Agreement shall be deemed to exist or to bind the

parties hereto. Any modification, amendment or addendum to this Agreement shall be effective only if made in writing and signed by both parties hereto.

#### **XIV. SEVERABILITY**

If any provision of this Agreement is held invalid or otherwise unenforceable, the enforceability of the remaining provisions shall not be impaired thereby, and such remaining provisions shall remain in full force and effect.

#### **XV. APPLICABLE LAW**

This Agreement is made and entered in Monongalia County in the State of West Virginia, and the laws of West Virginia shall govern its validity, interpretation, performance, and enforcement by the parties of their respective duties and obligations hereunder.

#### **XVI. VOLUNTARY AGREEMENT**

This Agreement is the result of arm's-length negotiation between the parties, and the parties have had the opportunity to be represented by counsel of their own choosing. Each party enters into this Agreement freely and voluntarily and with the full intent to be bound hereby.

#### **XVII. NOTICE**

Any and all notices required or permitted to be given under this Agreement will be sufficient if furnished in writing and sent by registered or certified mail to the other party at the address stated here:

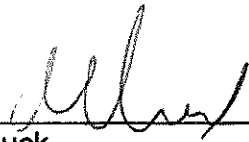
COACH: Last Address on File with the University

UNIVERSITY: Original to:  
Director of Intercollegiate Athletics  
West Virginia University  
PO Box 0877, Morgantown, WV 26507-0877

Copy to:  
Vice President for Legal Affairs  
West Virginia University  
105 Stewart Hall, PO Box 6201, Morgantown, WV 26506-6201

By their signatures below, the parties hereto have executed this Agreement as of the day and year first above written.

**WEST VIRGINIA UNIVERSITY BOARD  
OF GOVERNORS FOR AND ON BEHALF  
OF WEST VIRGINIA UNIVERSITY  
JAMES P. CLEMENTS, President**

By   
Oliver Luck  
Director of Intercollegiate Athletics

  
BRIAN MITCHELL

Exhibit 1

**WEST VIRGINIA UNIVERSITY**  
**Intercollegiate Athletics**

**Position Description**  
**Assistant Football Coach**

|             |                |                |                           |
|-------------|----------------|----------------|---------------------------|
| Incumbent:  | Brian Mitchell | Position #:    | AsstCoach.23              |
| Job Type:   | FEAP           | Department:    | Intercollegiate Athletics |
| FLSA:       | Exempt         | Date Reviewed: | January 11, 2013          |
| Emp Status: | FTR            |                |                           |

**Summary:**

Assist the Head Football Coach with the coaching, recruiting and operation of the football program and team at West Virginia University, within the guidelines, rules and regulations of West Virginia University, the Big 12 Conference and the NCAA.

**Relationships:**

Reports To: Head Football Coach

**Duties and Responsibilities:**

1. Perform duties as assigned by the Head Football Coach, per NCAA Bylaw 11.7.
2. Assist the Head Football Coach with regular practice sessions in and out of season, as permitted. Coach the team during scheduled events. Implement strategies necessary to motivate the players to maximum levels of individual and team performance.
3. Maintain continual knowledge of all applicable NCAA, Big 12 Conference, University and department rules and regulations.
4. Assist the Head Football Coach with the recruitment of quality student-athletes and coordinate said recruiting activities with the athletic compliance staff.
5. Demonstrate an active involvement in the academic progress of student-athletes. Work with Department of Intercollegiate Athletics' student services staff to prevent academic eligibility problems.
6. Assist with the establishment of communication and enforcement of rules and regulations regarding student conduct, appearance and behavior.
7. Coordinate personal travel plans for recruiting with the Athletic Travel Coordinator.

## Exhibit 1

8. Perform interviews with the news media as needed by the sports information staff.
9. Participate in development activities on behalf of the Mountaineer Athletic Club.
10. Participate in radio, television and/or internet programs produced by the Mountaineer Sports Network.
11. Participate in the marketing and promotion of the football program, including, but not limited to corporate sponsorships and public relations appearances.
12. Report directly to the Head Football Coach; must also work closely with all others involved with carrying out the philosophy and objectives of the intercollegiate athletic program.
13. Maintain knowledge of and comply with all rules, regulations, policies and guidelines of West Virginia University, the Big 12 Conference and the NCAA; must be certified per NCAA Bylaw 11.5.1.1 each year; must adhere to NCAA Bylaw 11.1 Conduct of Athletic Personnel. Failure to adhere to these policies will result in appropriate disciplinary action including possible suspension and termination.
14. Exhibit a level of expertise in their professional fields; must also treat the academic requirements necessary for progress toward a degree as a matter of the highest priority for the student-athletes in their charge and must actively encourage student-athletes to succeed academically and graduate.
15. Represent the University on the highest professional level with dignity, integrity, and strength of character and will exhibit ethical behavior; must respect the rights and dignity of individuals with sensitivity to problems that may arise from racial and ethnic differences.
16. Demonstrate a cooperative attitude towards the news media and external consistencies in order to promote the football program.
17. Demonstrate a cooperative attitude towards all other sports within the intercollegiate athletic program.
18. Possess the ability to adapt to any situation, make decisions and work independently; position must have the ability to build and maintain relationships with student-athletes, coaches, staff members and constituencies; required to use creative abilities to develop new techniques and approaches in dealing with many issues controlled by this position; responsibilities of the position are ever-changing and require constant education; requires the ability to adapt to any situation and make decisions.
19. Manage sensitive and confidential information related to student-athletes, coaches and staff utilizing discretion and correct decisions. Failure to use proper discretion

## Exhibit 1

at required level could result in major and significant embarrassment to the University and/or have a significant impact on image, revenues and eligibility of student-athletes.

20. Manage professional and personal time to handle time sensitive-issues, tight deadlines, extended hours beyond the normal workday, weekend work, extensive travel and on-call availability.
21. Faithfully and diligently execute related duties of the Department of Intercollegiate Athletics, as requested or assigned by the Head Football Coach.

### Requirements:

- Maintain high standard of ethics and integrity related to intercollegiate athletics
- Demonstrated knowledge of NCAA Division I intercollegiate athletics
- Demonstrated knowledge of NCAA and conference guidelines, policies, rules and regulations with the ability to interpret, apply, enforce and explain such policies and rules
- Successfully complete NCAA certification exam annually
- Maintain knowledge of state and University policies and procedures
- Exhibit strong creative, organizational and interpersonal skills
- Demonstrated knowledge of correct English, grammar, spelling, punctuation and sentence structure
- Demonstrated ability in public speaking skills
- Demonstrated ability to function professionally under high stress and confrontational circumstances
- Demonstrated ability to manage multiple tasks for extended period of time
- Demonstrated ability to independently plan and organize work
- Proactive attitude towards work and assignments
- Demonstrated ability to maintain and develop personal contacts with outside groups, i.e. student-athletes, professional representatives, fans, media, donors, University community
- Demonstrated interpersonal and communication skills and the ability to work effectively with a wide range of constituencies in a diverse community
- Demonstrated knowledge of record keeping and adherence to schedule
- Ability to stay abreast of information impacting the affected area
- Demonstrated ability to organize and motivate groups and individuals
- Ability to maintain proper unit attendance and punctuality standards, work extended hours including nights and weekends (often with extensive walking and standing).
- Demonstrated skills in management of an intercollegiate football program
- Demonstrated knowledge of effected areas of involvement
- Demonstrated ability to manage personnel
- Ability to make administrative / procedural decisions and judgments
- Demonstrated ability to drive and travel via motor vehicle
- Maintain a valid driver's licence

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## Exhibit 1

### **Education:**

- Bachelor's degree is required

### **Experience:**

- Adequate coaching experience required, preferably at the NCAA Division I level
- A proven success rate in recruiting prospective student-athletes



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**WHEREAS**, in accordance with the terms of the Agreement, Coach is employed as an assistant football coach;

**WHEREAS**, University and Coach now desire to amend the Agreement;

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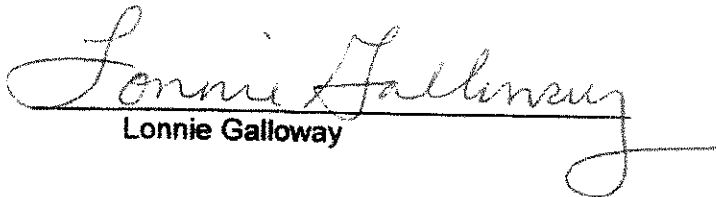
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  6. Except as set forth in this First Amendment, the Agreement remains in full force and effect and not amended.

Signatures on the Next Page

**IN WITNESS WHEREOF**, the parties hereto shall consider this First Amendment to be effective on the date first written above.

**West Virginia University Board of Governors  
On behalf of West Virginia University**

By:   
Kell Cunningham  
Interim Director of Athletics

  
Lonnie Galloway

## **EMPLOYMENT AGREEMENT**

**THIS EMPLOYMENT AGREEMENT** (the "Agreement") is made this 17 day of January, 2013, by and between West Virginia University Board of Governors for and on behalf of West Virginia University (hereinafter "University") and Alonso Galloway (hereinafter "Coach").

**WHEREAS**, University requires the services of an assistant head coach/receivers coach for its football team;

**WHEREAS**, effective on the date mentioned above, University and Coach fully intend to replace in its entirety all previous agreements which contain employment provisions with this single superseding Agreement; and

**WHEREAS**, Coach is willing to serve as University's Assistant Head Football Coach/Receivers Coach under the following terms and conditions;

**NOW, THEREFORE, WITNESSETH**, that for and in consideration of the mutual covenants and conditions herein contained, and other good and valuable consideration, the receipt and sufficiency of all of which hereby is acknowledged by the parties hereto, University and Coach agree as follows:

### **I. EMPLOYMENT**

Subject to the terms and conditions contained herein, University hereby agrees to employ Coach as University's Assistant Head Football Coach/Receivers Coach and Coach agrees to perform in this capacity. Coach shall be employed as a full-time, exempt, Faculty Equivalent Academic Professional employee, by and subject to the rules and policies adopted by the University's Board of Governors and any other policies and procedures adopted by the University, all as they may be modified from time to time. Subject to the provisions of Articles II and VI below, the term of the appointment is made by the Director of Intercollegiate Athletics at West Virginia University in consultation with the Head Football Coach.

### **II. TERM**

The Agreement shall be for a term beginning on the 17 day of January, 2013 and terminating at 11:59 p.m. on the 30th day of January, 2015 ("the Termination Date"). However, that nothing contained herein waives the right of Coach and University to exercise their respective rights as outlined in Article VI of this Agreement. The one-year period beginning February 1st each year shall be deemed to be an "Agreement Year" as that term is used in this Agreement.

### **II. COMPENSATION AND BENEFITS**

**A. Base Salary.** In consideration of services and satisfactory performance of the terms and conditions of this Agreement by Coach, University agrees to pay Coach an annual Base Salary of Three Hundred Thousand Dollars (\$300,000.00) (the "Base

Salary"). Base Salary shall be payable in semi-monthly installments. Payment of all Base Salary shall be in accordance with the payroll policies of University and subject to such deductions as may be required by applicable state and federal laws and regulations, and such employee benefit plans in which Coach elects to participate. Under no circumstances, however, shall the Base Salary ever be decreased during the term of this Agreement.

**B. Employee Benefits.** Coach will be eligible to participate in all employee benefit programs available to other University employees of like status. Such benefits shall be governed by University policies and the laws of the State of West Virginia and will include, among others, health insurance, retirement, annual leave, sick leave and all other standard benefits.

**C. Other Compensation and Incentives**

**1. Courtesy Automobile:** Coach shall receive one (1) courtesy automobile; provided, however, prior to receipt of the automobile, Coach shall separately agree to the terms and conditions of the Department of Intercollegiate Athletics' Wheels Club Driver Agreement.

**2. Tickets:** Coach shall be provided four (4) tickets for each home football game, two (2) tickets for each home men's basketball game, two (2) tickets for each home women's basketball game, and, if applicable, four (4) tickets for each post-season bowl game in which the University's football team participates. Such tickets shall be distributed by Coach as allowed by law and by the rules and regulations of the University, the Big 12 Conference and the NCAA, and are subject to applicable taxes.

**3. Camps:** Coach may be entitled to additional compensation for services performed related to the football youth camp(s) and/or clinic(s) held on campus as part of the Department of Intercollegiate Athletics' operations consistent with the provisions of West Virginia University Board of Governors' Policy No. 16 and other applicable state law. Compensation will be dependant upon total net revenue generated by the camp and subject to the approval of the Head Football Coach, acting as the Camp Director, and the Director of Intercollegiate Athletics. Coach will be required to use vacation time while working said camp(s) and/or clinic(s).

**4. Annual Incentives:** In addition to Base Salary, University shall pay Coach annual incentives within One Hundred Twenty (120) consecutive days of the end of the season in which earned, for attainment of and participation in the following:

**a. Regular season victories (not cumulative)**

|              |              |
|--------------|--------------|
| i. 12 wins   | \$ 15,000.00 |
| ii. 11 wins  | \$ 10,000.00 |
| iii. 10 wins | \$ 7,500.00  |
| iv. 9 wins   | \$ 5,000.00  |

|  |              |
|--|--------------|
| b. Conference regular season title (or share of title) | \$ 7,500.00  |
| c. Non-Bowl Championship Series appearance             | \$ 10,000.00 |
| d. Bowl Championship Series appearance                 | \$ 15,000.00 |
| e. Bowl Championship Series victory                    | \$ 5,000.00  |
| f. BCS National Championship game appearance           | \$ 20,000.00 |
| g. BCS National Championship title                     | \$ 5,000.00  |

5. **Athletic Apparel:** The University shall provide an athletic apparel allocation of One Thousand Dollars (\$1,000.00) retail value from the University's team apparel supplier which will be subject to applicable taxes, if any.

#### IV. PERFORMANCE

In the performance of his duties, Coach shall be responsible to and under the direct supervision of the Head Football Coach. Without limiting the foregoing, Coach shall conduct himself at all times in a manner which is consistent with his position as an instructor of students and which presents a positive representation of West Virginia University. The parties agree that, although this Agreement is sports related, the primary purpose of the University and this Agreement is to support the University's educational mission. The educational purposes of the University shall have priority in the various provisions of this Agreement. Coach will perform his duties as assigned by the Head Football Coach and/or Director of Intercollegiate Athletics and will otherwise perform the requirements of the job description for the position of Assistant Head Football Coach/Receivers Coach as they may from time to time be changed at the sole discretion of the Head Coach and/or Director of Intercollegiate Athletics (to the extent not inconsistent with the terms of this Agreement) attached as Exhibit 1 hereto and incorporated herein by reference. Coach will use best efforts to comply with the reasonable goals and objectives established annually by the Head Football Coach.

Coach shall not breach any local, state or federal laws, ordinances, rules or regulations, or of any of the written rules, regulations, policies, procedures or standards of the University, the Big 12 Conference (or any other athletic conference of which the University may become a member) or the National Collegiate Athletic Association ("NCAA"). Coach shall adhere to NCAA Bylaw 11.1 Conduct of Athletics Personnel in the performance of his duties as Assistant Head Football Coach/Receivers Coach. Pursuant to NCAA Bylaw 11.2.1, it is stipulated by the parties that if Coach is found in violation of NCAA regulations, he shall be subject to disciplinary or corrective action as set forth in the provisions of the NCAA enforcement procedures, including suspension without pay or termination of employment as set forth in Article VI herein.

Additionally, Coach shall not knowingly permit or condone directly or indirectly, or by negligent supervision, any student, employee or other individual subject to his control or supervision, to perform any act which reflects adversely on the University, its athletic programs, or otherwise affects the operations of the football program or Coach's responsibilities under this Agreement. In the event Coach violates the foregoing, Coach may be subject to disciplinary action, consistent with the terms of this Agreement, including, but not limited to, public or private reprimand, or, if appropriate, termination as determined by the Director of Intercollegiate Athletics, and/or the Head Football Coach, after consultation and review with the Director of Intercollegiate Athletics.

## **V. PROMOTIONAL ACTIVITIES**

As part of Coach's responsibilities under this Agreement, Coach shall perform the following promotional activities as directed by the Head Football Coach or Director of Intercollegiate Athletics, or his designee:

A. Appearances at events sponsored by the Mountaineer Athletic Club or University affiliated organizations and sponsors.

B. Appearances and participation in radio, television and Internet programs produced by the University's Mountaineer Sports Network or its affiliated organizations, and/or other such programs. Such appearances and participation may include, but shall not necessarily be limited to, radio talk shows, pregame/postgame radio shows, television shows, Internet audio programs and occasional Internet features. University shall own all rights to radio, television, Internet and other programs that are broadcast or otherwise disseminated to the public in which Coach serves as a participant. University retains exclusive rights to services in the areas as specified herein.

C. Coach shall be allowed to retain any income received from coaching clinics and camps in which he participates. Coach shall be allowed to retain any income received from speaking engagements. Coach acknowledges and agrees that prior to accepting any speaking engagement, he must notify the Director of Intercollegiate Athletics, or his designee, of the clinic, camp or speaking engagement and obtain approval. The Director of Intercollegiate Athletics may refuse to provide approval at its discretion but will not unreasonably withhold such approval. Coach may not make speaking engagements with business or corporations that compete with the University's official corporate sponsors.

D. Participation in promotional and other activities as may be reasonably requested by University.

With respect to subsections A, B and D above, University agrees to consult and coordinate with Coach before scheduling such promotional activities, which consent shall not be unreasonably withheld. Except as limited or restricted by the provisions of this Article V and Article IX, and further subject to Coach's obligation to satisfy the terms and conditions of this Agreement, nothing contained herein shall be deemed to prevent Coach from arranging or participating in, and deriving personal income from personal speaking engagements or other endeavors unrelated to his service as Assistant Head Football Coach/Receivers Coach, subject to prior approval of University, such approval not to be unreasonably withheld.

## **VI. TERMINATION**

A. **Termination for Cause by University.** The University specifically reserves the right to terminate this Agreement without further obligation at any time for cause, which shall be deemed to include, but is not limited to, the following:

1. The commission by Coach of a serious or major violation, whether intentional or negligent, or a pattern of any violations, of the written rules, regulations, policies, procedures or standards of the NCAA, the University or the Big 12 Conference (or any other athletic conference of which University may become a member), or the allowing or condoning, whether directly or by negligent supervision, of any such violation by a student, coach or other individual subject to his control or supervision, or otherwise soliciting, directing or condoning such violation by any person;

2. Conviction (including a plea of no contest) of Coach for a felony or a conviction (including a plea of no contest) of Coach for a misdemeanor involving moral turpitude;

3. Substance abuse or habitual insobriety;

4. Material and substantial breach of any term of this Agreement by Coach, which breach has gone uncured for thirty (30) consecutive days after written notice thereof by University to Coach;

5. Willful, negligent or intentional disregard and/or insubordination by Coach of the reasonable instructions of the Head Football Coach, the Director of Intercollegiate Athletics or the President of University, which disregard has gone uncured for thirty (30) consecutive days after written notice thereof by University to Coach;

6. Willful misconduct and gross negligence in performance of duties;  
or

7. Misconduct by Coach of such a nature that the misconduct offends the traditions of the University, or brings discredit to the University, or harms the University's reputation.

In the event that Coach is terminated for cause by University, Coach shall not be entitled to, nor shall University be required to provide, any portion of the compensation, benefits and/or incentives as set forth in Article III of this Agreement, or any other entitlements under this Agreement, except Base Salary, benefits and incentive compensation actually earned and accrued but unpaid through the date of termination, all of which shall be paid within thirty (30) consecutive days of termination less all applicable taxes and other withholdings.

**B. Termination for Convenience by University.** In addition to the provision set forth above, the University also reserves the right to terminate this Agreement without cause, at University's convenience. In the event that University terminates Coach without cause, University will, within thirty (30) consecutive days of termination pay Coach all Base Salary, benefits and incentive compensation actually earned and accrued but unpaid through the date of termination, and, with regard to Article III (A) only, any or all other amounts University is legally obligated to pay to Coach pursuant to the terms of this Agreement, as if the Coach had fully performed through and until



Termination Date as defined by Article II of this Agreement, less all applicable taxes and other withholdings.

**C. Termination for Convenience by Coach.** In the event Coach terminates this Agreement without cause, at Coach's convenience, not including any reason stipulated in Article VI (D), Coach shall within thirty (30) consecutive days of termination receive payment from University for all Base Salary, supplemental and incentive compensation actually earned and accrued but unpaid under the terms of this Agreement and not paid as of the date of such termination, less all applicable taxes and other withholdings.

**D. Death, Disability or Retirement.** In the event of the inability of Coach to continue to perform the essential functions of his position under this Agreement by reason of death, disability or permanent retirement, this Agreement shall thereupon terminate and all future obligations between the parties hereto shall cease. The parties further agree that in the event that Coach is unable to continue to perform his obligations under this Agreement and the Agreement is terminated pursuant to this Article VI (D), Coach shall be entitled to all earned and accrued Base Salary, benefits and incentive compensation earned but unpaid as of the date of death, final determination of disability or permanent retirement. Such compensation shall be paid to Coach or his estate or beneficiaries, as the case may be, in addition to standard University benefits, if any.

**E. Resignation of Head Football Coach.** If during the term of this Agreement the Head Football Coach voluntarily terminates his respective employment with the University (a "Resignation Event") then this Agreement shall automatically terminate whether on the one hundred eightieth (180<sup>th</sup>) day following the Resignation Event, or on the Termination Date stated in Article II, whichever comes first without breach by the University. During the remaining term of this Agreement, Coach or University may still exercise their respective rights as outlined in Article VI(A) to (C) of this Agreement. University will pay to Coach all Base Salary and incentive compensation actually earned and accrued but unpaid under the terms of this Agreement and not paid as of the date of such termination, less all applicable taxes and other withholdings.

**F. Coach's Obligation Upon Termination.** All materials or articles of information, including without limitation, keys, keycards, cell phones, computers, equipment, parking passes, unused athletic event tickets and the like, the right to claim such tickets or the like, automobiles, personnel records, recruiting records, team information, video, statistics or any other material documents, correspondence, or other data furnished to the Coach by the University or developed by the Coach, whether directly or by others under his supervision and control, on behalf of the University for the University's use or otherwise in connection with the Coach's employment hereunder shall remain the sole property of the University. Coach shall cause any and all such materials in his possession or control to be delivered to the University by or before close of business on the date of his termination of employment. This provision shall apply equally to written and electronic materials and records.

## **VII. GRIEVANCE PROCESS**

Resolution of any employment grievance that Coach may desire to raise shall be governed by the West Virginia Public Employees Grievance Procedure (W.Va. Code §6C-2-1 et seq.).

## **VIII. OUTSIDE INCOME**

Coach shall receive written approval from the Director of Intercollegiate Athletics or his designee prior to entering into any agreement for income and benefits from sources outside University, such approval not to be unreasonably withheld. Further, in accordance with NCAA Bylaw 11.2.2 regarding athletically-related income, Coach agrees to provide a written detailed account to the Director of Intercollegiate Athletics or his designee, at least once annually, or more frequently upon written request, for all athletically-related income, compensation, gratuities or benefits from any and all sources outside the institution.

## **IX. PUBLIC APPEARANCES**

Coach shall make no public appearance, either in person or by means of radio, television, Internet or other means or medium, or willingly allow the use of his name in connection with his relationship to the University, when any such appearance or use of name will result in unfavorable reflection upon University or conflict with Coach's duties or University's rights under this Agreement.

## **X. DRIVING STANDARDS**

Coach shall be subject to the driving standards and provisions set forth in the University's Department of Intercollegiate Athletics Pilot Student Transportation Reporting Program as it may be amended from time to time.

## **XI. REPRESENTATIONS**

Coach represents and warrants that he has not violated any of the rules and regulations of the NCAA, and that he is not aware of any threatened or pending NCAA investigation involving his conduct at any other NCAA member institution.

## **XII. HEADINGS**

The headings of the articles and sections contained in this Agreement are for reference purposes only and shall not be deemed to control or affect the meaning or construction of any provision of this Agreement.

## **XIII. ENTIRE AGREEMENT; AMENDMENT**

It is mutually understood that this Agreement contains all of the terms and conditions to which the parties have agreed and that no other understandings or representations, either oral or written, unless referenced in the preceding paragraphs, regarding the subject matter of this Agreement shall be deemed to exist or to bind the

parties hereto. Any modification, amendment or addendum to this Agreement shall be effective only if made in writing and signed by both parties hereto.

#### **XIV. SEVERABILITY**

If any provision of this Agreement is held invalid or otherwise unenforceable, the enforceability of the remaining provisions shall not be impaired thereby, and such remaining provisions shall remain in full force and effect.

#### **XV. APPLICABLE LAW**

This Agreement is made and entered in Monongalia County in the State of West Virginia, and the laws of West Virginia shall govern its validity, interpretation, performance, and enforcement by the parties of their respective duties and obligations hereunder.

#### **XVI. VOLUNTARY AGREEMENT**

This Agreement is the result of arm's-length negotiation between the parties, and the parties have had the opportunity to be represented by counsel of their own choosing. Each party enters into this Agreement freely and voluntarily and with the full intent to be bound hereby.

#### **XVII. NOTICE**

Any and all notices required or permitted to be given under this Agreement will be sufficient if furnished in writing and sent by registered or certified mail to the other party at the address stated here:

COACH: Last Address on File with the University

UNIVERSITY: Original to:  
Director of Intercollegiate Athletics  
West Virginia University  
PO Box 0877, Morgantown, WV 26507-0877

Copy to:  
Vice President for Legal Affairs  
West Virginia University  
105 Stewart Hall, PO Box 6201, Morgantown, WV 26506-6201

By their signatures below, the parties hereto have executed this Agreement as of the day and year first above written.

**WEST VIRGINIA UNIVERSITY BOARD  
OF GOVERNORS FOR AND ON BEHALF  
OF WEST VIRGINIA UNIVERSITY  
JAMES P. CLEMENTS, President**

By

  
\_\_\_\_\_  
Oliver Luck

Director of Intercollegiate Athletics

  
\_\_\_\_\_  
ALONSO GALLOWAY

Exhibit 1

**WEST VIRGINIA UNIVERSITY**  
**Intercollegiate Athletics**

**Position Description**  
**Assistant Head Football Coach/Receivers Coach**

|             |                 |                |                           |
|-------------|-----------------|----------------|---------------------------|
| Incumbent:  | Alonso Galloway | Position #:    | AsstCoach.23              |
| Job Type:   | FEAP            | Department:    | Intercollegiate Athletics |
| FLSA:       | Exempt          | Date Reviewed: | January 11, 2013          |
| Emp Status: | FTR             |                |                           |

**Summary:**

Assist the Head Football Coach with the coaching, recruiting and operation of the football program and team at West Virginia University, within the guidelines, rules and regulations of West Virginia University, the Big 12 Conference and the NCAA.

**Relationships:**

Reports To: Head Football Coach

**Duties and Responsibilities:**

1. Perform duties as assigned by the Head Football Coach, per NCAA Bylaw 11.7.
2. Assist the Head Football Coach with regular practice sessions in and out of season, as permitted. Coach the team during scheduled events. Implement strategies necessary to motivate the players to maximum levels of individual and team performance.
3. Serve as the assistant head football coach and coach the receiver positions.
4. Maintain continual knowledge of all applicable NCAA, Big 12 Conference, University and department rules and regulations.
5. Assist the Head Football Coach with the recruitment of quality student-athletes and coordinate said recruiting activities with the athletic compliance staff.
6. Demonstrate an active involvement in the academic progress of student-athletes. Work with Department of Intercollegiate Athletics' student services staff to prevent academic eligibility problems.
7. Assist with the establishment of communication and enforcement of rules and regulations regarding student conduct, appearance and behavior.

## Exhibit 1

8. Coordinate personal travel plans for recruiting with the Athletic Travel Coordinator.
9. Perform interviews with the news media as needed by the sports information staff.
10. Participate in development activities on behalf of the Mountaineer Athletic Club.
11. Participate in radio, television and/or internet programs produced by the Mountaineer Sports Network.
12. Participate in the marketing and promotion of the football program, including, but not limited to corporate sponsorships and public relations appearances.
13. Report directly to the Head Football Coach; must also work closely with all others involved with carrying out the philosophy and objectives of the intercollegiate athletic program.
14. Maintain knowledge of and comply with all rules, regulations, policies and guidelines of West Virginia University, the Big 12 Conference and the NCAA; must be certified per NCAA Bylaw 11.5.1.1 each year; must adhere to NCAA Bylaw 11.1 Conduct of Athletic Personnel. Failure to adhere to these policies will result in appropriate disciplinary action including possible suspension and termination.
15. Exhibit a level of expertise in their professional fields; must also treat the academic requirements necessary for progress toward a degree as a matter of the highest priority for the student-athletes in their charge and must actively encourage student-athletes to succeed academically and graduate.
16. Represent the University on the highest professional level with dignity, integrity, and strength of character and will exhibit ethical behavior; must respect the rights and dignity of individuals with sensitivity to problems that may arise from racial and ethnic differences.
17. Demonstrate a cooperative attitude towards the news media and external consistencies in order to promote the football program.
18. Demonstrate a cooperative attitude towards all other sports within the intercollegiate athletic program.
19. Possess the ability to adapt to any situation, make decisions and work independently; position must have the ability to build and maintain relationships with student-athletes, coaches, staff members and constituencies; required to use creative abilities to develop new techniques and approaches in dealing with many issues controlled by this position; responsibilities of the position are ever-changing and require constant education; requires the ability to adapt to any situation and make decisions.

## Exhibit 1

20. Manage sensitive and confidential information related to student-athletes, coaches and staff utilizing discretion and correct decisions. Failure to use proper discretion at required level could result in major and significant embarrassment to the University and/or have a significant impact on image, revenues and eligibility of student-athletes.
21. Manage professional and personal time to handle time sensitive-issues, tight deadlines, extended hours beyond the normal workday, weekend work, extensive travel and on-call availability.
22. Faithfully and diligently execute related duties of the Department of Intercollegiate Athletics, as requested or assigned by the Head Football Coach.

### Requirements:

- Maintain high standard of ethics and integrity related to intercollegiate athletics
- Demonstrated knowledge of NCAA Division I intercollegiate athletics
- Demonstrated knowledge of NCAA and conference guidelines, policies, rules and regulations with the ability to interpret, apply, enforce and explain such policies and rules
- Successfully complete NCAA certification exam annually
- Maintain knowledge of state and University policies and procedures
- Exhibit strong creative, organizational and interpersonal skills
- Demonstrated knowledge of correct English, grammar, spelling, punctuation and sentence structure
- Demonstrated ability in public speaking skills
- Demonstrated ability to function professionally under high stress and confrontational circumstances
- Demonstrated ability to manage multiple tasks for extended period of time
- Demonstrated ability to independently plan and organize work
- Proactive attitude towards work and assignments
- Demonstrated ability to maintain and develop personal contacts with outside groups, i.e. student-athletes, professional representatives, fans, media, donors, University community
- Demonstrated interpersonal and communication skills and the ability to work effectively with a wide range of constituencies in a diverse community
- Demonstrated knowledge of record keeping and adherence to schedule
- Ability to stay abreast of information impacting the affected area
- Demonstrated ability to organize and motivate groups and individuals
- Ability to maintain proper unit attendance and punctuality standards, work extended hours including nights and weekends (often with extensive walking and standing).
- Demonstrated skills in management of an intercollegiate football program
- Demonstrated knowledge of effected areas of involvement
- Demonstrated ability to manage personnel
- Ability to make administrative / procedural decisions and judgments
- Demonstrated ability to drive and travel via motor vehicle
- Maintain a valid driver's licence

## Exhibit 1

### **Education:**

- Bachelor's degree is required

### **Experience:**

- Adequate coaching experience required, preferably at the NCAA Division I level
- A proven success rate in recruiting prospective student-athletes



**FIRST AMENDMENT TO EMPLOYMENT AGREEMENT**

**THIS FIRST AMENDMENT TO EMPLOYMENT AGREEMENT** ("First Amendment") is made this 11<sup>th</sup> day of December, 2014, by and between West Virginia University Board of Governors for and on behalf of West Virginia University ("University") and JaJuan Seider ("Coach").

**WHEREAS**, University and Coach entered into an Employment Agreement, dated March 7, 2014 (the "Agreement");

**WHEREAS**, in accordance with the terms of the Agreement, Coach is employed as an assistant football coach;

**WHEREAS**, University and Coach now desire to amend the Agreement;

**NOW, THEREFORE, WITNESSETH**, that for and in consideration of the mutual covenants and conditions herein contained, and other good and valuable consideration, the receipt and sufficiency of all of which hereby is acknowledged by the parties hereto, University and Coach agree to amend the Agreement as follows:

1. The Termination Date, as it is defined in Article II, shall be amended to now be 11:59 p.m. on the 30th day of January, 2017.
2. To correct an error made in the drafting of the Agreement, Article II. COMPENSATION AND BENEFITS shall be renumbered as Article III; additionally, subsection C.4. of the renumbered Article III relating to annual incentives shall be deleted and replaced with the following:

**Annual Performance Incentives:** In addition to Base Salary, University shall pay Coach annual performance incentives within One Hundred Twenty (120) consecutive days of the end of the season in which earned, for attainment of and participation in the following:

- a. Regular season victories (not cumulative)
  - i. 12 wins \$15,000.00
  - ii. 11 wins \$10,000.00
  - iii. 10 wins \$ 7,500.00
  - iv. 9 wins \$ 5,000.00
- b. Conference regular season title (or share of title)  
\$ 7,500.00
- c. Non-College Football Playoff bowl appearance  
\$10,000.00

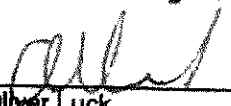
- d. College Football Playoff ("CFP") appearance \$15,000.00
  - e. CFP Semifinal victory \$ 5,000.00
  - f. CFP National Championship game appearance \$20,000.00
  - g. CFP National Championship game victory \$ 5,000.00
3. Base Salary, as it is defined in Section A of renumbered Article III, shall be increased to Two Hundred Seventy Five Thousand (\$275,000.00) beginning January 1, 2015; and Two Hundred Seventy Five Thousand (\$275,000.00) beginning January 1, 2016.
  4. Subsection C.4. of Article III relating to annual incentives shall be contingent on the football team achieving a 930 or higher multi-year Academic Progress Rate (APR). Accordingly, Coach will not receive any annual performance incentives for the upcoming year if the football team does not achieve a 930 or higher APR. For the avoidance of doubt, if the football team fails to achieve a 930 or higher APR, Coach will not receive any annual performance incentives until that mark is reached. By way of example, if the APR is below a 930 when it is announced in the Spring of 2015, the University will award no annual incentives to Coach in the upcoming 2015-16 season or any subsequent year until the APR is 930 or higher.
  5. To the extent necessary, Section V. PROMOTIONAL ACTIVITIES is amended to include appearances and participation in radio, television and Internet programs produced by the University, its affiliated organizations, and/or other such programs licensed by University.
  6. Coach represents and warrants that he has not violated any of the rules and regulations of the NCAA, and he is not aware of any threatened or pending NCAA investigation involving his conduct.
  7. Except as set forth in this First Amendment, the Agreement remains in full force and effect and not amended.

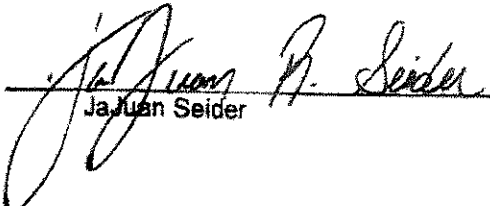
Signatures on the Following Page

IN WITNESS WHEREOF, the parties hereto shall consider this First Amendment to be effective on the date first written above.

**West Virginia University Board of Governors**  
**On behalf of West Virginia University**

By: \_\_\_\_\_

  
Oliver Luck  
Director of Athletics

  
JaJuan Seider

## **EMPLOYMENT AGREEMENT**

THIS EMPLOYMENT AGREEMENT (the "Agreement") is made this 9 day of March, 2013, by and between West Virginia University Board of Governors for and on behalf of West Virginia University (hereinafter "University") and JaJuan Seider (hereinafter "Coach").

**WHEREAS**, University requires the services of an assistant coach for its football team;

**WHEREAS**, effective on the date mentioned above, University and Coach fully intend to replace in its entirety all previous agreements which contain employment provisions with this single superseding Agreement; and

**WHEREAS**, Coach is willing to serve as University's Assistant Football Coach under the following terms and conditions;

**NOW, THEREFORE, WITNESSETH**, that for and in consideration of the mutual covenants and conditions herein contained, and other good and valuable consideration, the receipt and sufficiency of all of which hereby is acknowledged by the parties hereto, University and Coach agree as follows:

### **I. EMPLOYMENT**

Subject to the terms and conditions contained herein, University hereby agrees to employ Coach as University's Assistant Football Coach and Coach agrees to perform in this capacity. Coach shall be employed as a full-time, exempt, Faculty Equivalent Academic Professional employee, by and subject to the rules and policies adopted by the University's Board of Governors and any other policies and procedures adopted by the University, all as they may be modified from time to time. Subject to the provisions of Articles II and VI below, the term of the appointment is made by the Director of Intercollegiate Athletics at West Virginia University in consultation with the Head Football Coach.

### **II. TERM**

The Agreement shall be for a term beginning on the 10th day of March, 2013 and terminating at 11:59 p.m. on the 30th day of January, 2015 ("the Termination Date"). However, that nothing contained herein waives the right of Coach and University to exercise their respective rights as outlined in Article VI of this Agreement. The one-year period beginning February 1st each year shall be deemed to be an "Agreement Year" as that term is used in this Agreement.

### **II. COMPENSATION AND BENEFITS**

**A. Base Salary**. In consideration of services and satisfactory performance of the terms and conditions of this Agreement by Coach, University agrees to pay Coach an annual Base Salary of Two Hundred Thousand Dollars (\$200,000.00) (the "Base

Salary"). Base Salary shall be payable in semi-monthly installments. Payment of all Base Salary shall be in accordance with the payroll policies of University and subject to such deductions as may be required by applicable state and federal laws and regulations, and such employee benefit plans in which Coach elects to participate. Under no circumstances, however, shall the Base Salary ever be decreased during the term of this Agreement.

**B. Employee Benefits.** Coach will be eligible to participate in all employee benefit programs available to other University employees of like status. Such benefits shall be governed by University policies and the laws of the State of West Virginia and will include, among others, health insurance, retirement, annual leave, sick leave and all other standard benefits.

**C. Other Compensation and Incentives**

**1. Courtesy Automobile:** Coach shall receive one (1) courtesy automobile; provided, however, prior to receipt of the automobile, Coach shall separately agree to the terms and conditions of the Department of Intercollegiate Athletics' Wheels Club Driver Agreement.

**2. Tickets:** Coach shall be provided four (4) tickets for each home football game, two (2) tickets for each home men's basketball game, two (2) tickets for each home women's basketball game, and, if applicable, four (4) tickets for each post-season bowl game in which the University's football team participates. Such tickets shall be distributed by Coach as allowed by law and by the rules and regulations of the University, the Big 12 Conference and the NCAA, and are subject to applicable taxes.

**3. Camps:** Coach may be entitled to additional compensation for services performed related to the football youth camp(s) and/or clinic(s) held on campus as part of the Department of Intercollegiate Athletics' operations consistent with the provisions of West Virginia University Board of Governors' Policy No. 16 and other applicable state law. Compensation will be dependant upon total net revenue generated by the camp and subject to the approval of the Head Football Coach, acting as the Camp Director, and the Director of Intercollegiate Athletics. Coach will be required to use vacation time while working said camp(s) and/or clinic(s).

**4. Annual Incentives:** In addition to Base Salary, University shall pay Coach annual incentives within One Hundred Twenty (120) consecutive days of the end of the season in which earned, for attainment of and participation in the following:

|   |              |
|---|--------------|
| <b>a. Regular season victories (not cumulative)</b> |              |
| i. 12 wins  | \$ 15,000.00 |
| ii. 11 wins   | \$ 10,000.00 |
| iii. 10 wins  | \$ 7,500.00  |
| iv. 9 wins  | \$ 5,000.00  |

|  |              |
|--|--------------|
| b. Conference regular season title (or share of title) | \$ 7,500.00  |
| c. Non-Bowl Championship Series appearance             | \$ 10,000.00 |
| d. Bowl Championship Series appearance                 | \$ 15,000.00 |
| e. Bowl Championship Series victory                    | \$ 5,000.00  |
| f. BCS National Championship game appearance           | \$ 20,000.00 |
| g. BCS National Championship title                     | \$ 5,000.00  |

5. **Athletic Apparel:** The University shall provide an athletic apparel allocation of One Thousand Dollars (\$1,000.00) retail value from the University's team apparel supplier which will be subject to applicable taxes, if any.

#### IV. PERFORMANCE

In the performance of his duties, Coach shall be responsible to and under the direct supervision of the Head Football Coach. Without limiting the foregoing, Coach shall conduct himself at all times in a manner which is consistent with his position as an instructor of students and which presents a positive representation of West Virginia University. The parties agree that, although this Agreement is sports related, the primary purpose of the University and this Agreement is to support the University's educational mission. The educational purposes of the University shall have priority in the various provisions of this Agreement. Coach will perform his duties as assigned by the Head Football Coach and/or Director of Intercollegiate Athletics and will otherwise perform the requirements of the job description for the position of Assistant Football Coach as they may from time to time be changed at the sole discretion of the Head Coach and/or Director of Intercollegiate Athletics (to the extent not inconsistent with the terms of this Agreement) attached as Exhibit 1 hereto and incorporated herein by reference. Coach will use best efforts to comply with the reasonable goals and objectives established annually by the Head Football Coach.

Coach shall not breach any local, state or federal laws, ordinances, rules or regulations, or of any of the written rules, regulations, policies, procedures or standards of the University, the Big 12 Conference (or any other athletic conference of which the University may become a member) or the National Collegiate Athletic Association ("NCAA"). Coach shall adhere to NCAA Bylaw 11.1 Conduct of Athletics Personnel in the performance of his duties as Assistant Football Coach. Pursuant to NCAA Bylaw 11.2.1, it is stipulated by the parties that if Coach is found in violation of NCAA regulations, he shall be subject to disciplinary or corrective action as set forth in the provisions of the NCAA enforcement procedures, including suspension without pay or termination of employment as set forth in Article VI herein.

Additionally, Coach shall not knowingly permit or condone directly or indirectly, or by negligent supervision, any student, employee or other individual subject to his control or supervision, to perform any act which reflects adversely on the University, its athletic programs, or otherwise affects the operations of the football program or Coach's responsibilities under this Agreement. In the event Coach violates the foregoing, Coach may be subject to disciplinary action, consistent with the terms of this Agreement, including, but not limited to, public or private reprimand, or, if appropriate, termination as determined by the Director of Intercollegiate Athletics, and/or the Head Football Coach, after consultation and review with the Director of Intercollegiate Athletics.

## **V. PROMOTIONAL ACTIVITIES**

As part of Coach's responsibilities under this Agreement, Coach shall perform the following promotional activities as directed by the Head Football Coach or Director of Intercollegiate Athletics, or his designee:

**A.** Appearances at events sponsored by the Mountaineer Athletic Club or University affiliated organizations and sponsors.

**B.** Appearances and participation in radio, television and Internet programs produced by the University's Mountaineer Sports Network or its affiliated organizations, and/or other such programs. Such appearances and participation may include, but shall not necessarily be limited to, radio talk shows, pregame/postgame radio shows, television shows, Internet audio programs and occasional Internet features. University shall own all rights to radio, television, Internet and other programs that are broadcast or otherwise disseminated to the public in which Coach serves as a participant. University retains exclusive rights to services in the areas as specified herein.

**C.** Coach shall be allowed to retain any income received from coaching clinics and camps in which he participates. Coach shall be allowed to retain any income received from speaking engagements. Coach acknowledges and agrees that prior to accepting any speaking engagement, he must notify the Director of Intercollegiate Athletics, or his designee, of the clinic, camp or speaking engagement and obtain approval. The Director of Intercollegiate Athletics may refuse to provide approval at its discretion but will not unreasonably withhold such approval. Coach may not make speaking engagements with business or corporations that compete with the University's official corporate sponsors.

**D.** Participation in promotional and other activities as may be reasonably requested by University.

With respect to subsections A, B and D above, University agrees to consult and coordinate with Coach before scheduling such promotional activities, which consent shall not be unreasonably withheld. Except as limited or restricted by the provisions of this Article V and Article IX, and further subject to Coach's obligation to satisfy the terms and conditions of this Agreement, nothing contained herein shall be deemed to prevent Coach from arranging or participating in, and deriving personal income from personal speaking engagements or other endeavors unrelated to his service as Assistant Football Coach, subject to prior approval of University, such approval not to be unreasonably withheld.

## **VI. TERMINATION**

**A. Termination for Cause by University.** The University specifically reserves the right to terminate this Agreement without further obligation at any time for cause, which shall be deemed to include, but is not limited to, the following:

1. The commission by Coach of a serious or major violation, whether intentional or negligent, or a pattern of any violations, of the written rules, regulations, policies, procedures or standards of the NCAA, the University or the Big 12 Conference (or any other athletic conference of which University may become a member), or the allowing or condoning, whether directly or by negligent supervision, of any such violation by a student, coach or other individual subject to his control or supervision, or otherwise soliciting, directing or condoning such violation by any person;
2. Conviction (including a plea of no contest) of Coach for a felony or a conviction (including a plea of no contest) of Coach for a misdemeanor involving moral turpitude;
3. Substance abuse or habitual insobriety;
4. Material and substantial breach of any term of this Agreement by Coach, which breach has gone uncured for thirty (30) consecutive days after written notice thereof by University to Coach;
5. Willful, negligent or intentional disregard and/or insubordination by Coach of the reasonable instructions of the Head Football Coach, the Director of Intercollegiate Athletics or the President of University, which disregard has gone uncured for thirty (30) consecutive days after written notice thereof by University to Coach;
6. Willful misconduct and gross negligence in performance of duties;  
or
7. Misconduct by Coach of such a nature that the misconduct offends the traditions of the University, or brings discredit to the University, or harms the University's reputation.

In the event that Coach is terminated for cause by University, Coach shall not be entitled to, nor shall University be required to provide, any portion of the compensation, benefits and/or incentives as set forth in Article III of this Agreement, or any other entitlements under this Agreement, except Base Salary, benefits and incentive compensation actually earned and accrued but unpaid through the date of termination, all of which shall be paid within thirty (30) consecutive days of termination less all applicable taxes and other withholdings.

**B. Termination for Convenience by University.** In addition to the provision set forth above, the University also reserves the right to terminate this Agreement without cause, at University's convenience. In the event that University terminates Coach without cause, University will, within thirty (30) consecutive days of termination pay Coach all Base Salary, benefits and incentive compensation actually earned and accrued but unpaid through the date of termination, and, with regard to Article III (A) only, any or all other amounts University is legally obligated to pay to Coach pursuant to the terms of this Agreement, as if the Coach had fully performed through and until



Termination Date as defined by Article II of this Agreement, less all applicable taxes and other withholdings.

**C. Termination for Convenience by Coach.** In the event Coach terminates this Agreement without cause, at Coach's convenience, not including any reason stipulated in Article VI (D), Coach shall within thirty (30) consecutive days of termination receive payment from University for all Base Salary, supplemental and incentive compensation actually earned and accrued but unpaid under the terms of this Agreement and not paid as of the date of such termination, less all applicable taxes and other withholdings.

**D. Death, Disability or Retirement.** In the event of the inability of Coach to continue to perform the essential functions of his position under this Agreement by reason of death, disability or permanent retirement, this Agreement shall thereupon terminate and all future obligations between the parties hereto shall cease. The parties further agree that in the event that Coach is unable to continue to perform his obligations under this Agreement and the Agreement is terminated pursuant to this Article VI (D), Coach shall be entitled to all earned and accrued Base Salary, benefits and incentive compensation earned but unpaid as of the date of death, final determination of disability or permanent retirement. Such compensation shall be paid to Coach or his estate or beneficiaries, as the case may be, in addition to standard University benefits, if any.

**E. Resignation of Head Football Coach.** If during the term of this Agreement the Head Football Coach voluntarily terminates his respective employment with the University (a "Resignation Event") then this Agreement shall automatically terminate whether on the one hundred eightieth (180<sup>th</sup>) day following the Resignation Event, or on the Termination Date stated in Article II, whichever comes first without breach by the University. During the remaining term of this Agreement, Coach or University may still exercise their respective rights as outlined in Article VI(A) to (C) of this Agreement. University will pay to Coach all Base Salary and incentive compensation actually earned and accrued but unpaid under the terms of this Agreement and not paid as of the date of such termination, less all applicable taxes and other withholdings.

**F. Coach's Obligation Upon Termination.** All materials or articles of information, including without limitation, keys, keycards, cell phones, computers, equipment, parking passes, unused athletic event tickets and the like, the right to claim such tickets or the like, automobiles, personnel records, recruiting records, team information, video, statistics or any other material documents, correspondence, or other data furnished to the Coach by the University or developed by the Coach, whether directly or by others under his supervision and control, on behalf of the University for the University's use or otherwise in connection with the Coach's employment hereunder shall remain the sole property of the University. Coach shall cause any and all such materials in his possession or control to be delivered to the University by or before close of business on the date of his termination of employment. This provision shall apply equally to written and electronic materials and records.

## **VII. GRIEVANCE PROCESS**

Resolution of any employment grievance that Coach may desire to raise shall be governed by the West Virginia Public Employees Grievance Procedure (W.Va. Code §6C-2-1 et seq.).

## **VIII. OUTSIDE INCOME**

Coach shall receive written approval from the Director of Intercollegiate Athletics or his designee prior to entering into any agreement for income and benefits from sources outside University, such approval not to be unreasonably withheld. Further, in accordance with NCAA Bylaw 11.2.2 regarding athletically-related income, Coach agrees to provide a written detailed account to the Director of Intercollegiate Athletics or his designee, at least once annually, or more frequently upon written request, for all athletically-related income, compensation, gratuities or benefits from any and all sources outside the institution.

## **IX. PUBLIC APPEARANCES**

Coach shall make no public appearance, either in person or by means of radio, television, Internet or other means or medium, or willingly allow the use of his name in connection with his relationship to the University, when any such appearance or use of name will result in unfavorable reflection upon University or conflict with Coach's duties or University's rights under this Agreement.

## **X. DRIVING STANDARDS**

Coach shall be subject to the driving standards and provisions set forth in the University's Department of Intercollegiate Athletics Pilot Student Transportation Reporting Program as it may be amended from time to time.

## **XI. REPRESENTATIONS**

Coach represents and warrants that he has not violated any of the rules and regulations of the NCAA, and that he is not aware of any threatened or pending NCAA investigation involving his conduct at any other NCAA member institution.

## **XII. HEADINGS**

The headings of the articles and sections contained in this Agreement are for reference purposes only and shall not be deemed to control or affect the meaning or construction of any provision of this Agreement.

## **XIII. ENTIRE AGREEMENT; AMENDMENT**

It is mutually understood that this Agreement contains all of the terms and conditions to which the parties have agreed and that no other understandings or representations, either oral or written, unless referenced in the preceding paragraphs, regarding the subject matter of this Agreement shall be deemed to exist or to bind the

parties hereto. Any modification, amendment or addendum to this Agreement shall be effective only if made in writing and signed by both parties hereto.

#### **XIV. SEVERABILITY**

If any provision of this Agreement is held invalid or otherwise unenforceable, the enforceability of the remaining provisions shall not be impaired thereby, and such remaining provisions shall remain in full force and effect.

#### **XV. APPLICABLE LAW**

This Agreement is made and entered in Monongalia County in the State of West Virginia, and the laws of West Virginia shall govern its validity, interpretation, performance, and enforcement by the parties of their respective duties and obligations hereunder.

#### **XVI. VOLUNTARY AGREEMENT**

This Agreement is the result of arm's-length negotiation between the parties, and the parties have had the opportunity to be represented by counsel of their own choosing. Each party enters into this Agreement freely and voluntarily and with the full intent to be bound hereby.

#### **XVII. NOTICE**

Any and all notices required or permitted to be given under this Agreement will be sufficient if furnished in writing and sent by registered or certified mail to the other party at the address stated here:

COACH: Last Address on File with the University

UNIVERSITY: Original to:  
Director of Intercollegiate Athletics  
West Virginia University  
PO Box 0877, Morgantown, WV 26507-0877

Copy to:  
Vice President for Legal Affairs  
West Virginia University  
105 Stewart Hall, PO Box 6201, Morgantown, WV 26506-6201

By their signatures below, the parties hereto have executed this Agreement as of the day and year first above written.

**WEST VIRGINIA UNIVERSITY BOARD  
OF GOVERNORS FOR AND ON BEHALF  
OF WEST VIRGINIA UNIVERSITY  
JAMES P. CLEMENTS, President**

By

  
\_\_\_\_\_  
Oliver Luck

Director of Intercollegiate Athletics

  
\_\_\_\_\_  
JUAN SEIDER

Exhibit 1

**WEST VIRGINIA UNIVERSITY**  
**Intercollegiate Athletics**

**Position Description**  
**Assistant Football Coach**

|             |               |                |                           |
|-------------|---------------|----------------|---------------------------|
| Incumbent:  | JaJuan Seider | Position #:    | AsstCoach.24              |
| Job Type:   | FEAP          | Department:    | Intercollegiate Athletics |
| FLSA:       | Exempt        | Date Reviewed: | March 9, 2013             |
| Emp Status: | FTR           |                |                           |

**Summary:**

Assist the Head Football Coach with the coaching, recruiting and operation of the football program and team at West Virginia University, within the guidelines, rules and regulations of West Virginia University, the Big 12 Conference and the NCAA.

**Relationships:**

Reports To: Head Football Coach

**Duties and Responsibilities:**

1. Perform duties as assigned by the Head Football Coach, per NCAA Bylaw 11.7.
2. Assist the Head Football Coach with regular practice sessions in and out of season, as permitted. Coach the team during scheduled events. Implement strategies necessary to motivate the players to maximum levels of individual and team performance.
3. Maintain continual knowledge of all applicable NCAA, Big 12 Conference, University and department rules and regulations.
4. Assist the Head Football Coach with the recruitment of quality student-athletes and coordinate said recruiting activities with the athletic compliance staff.
5. Demonstrate an active involvement in the academic progress of student-athletes. Work with Department of Intercollegiate Athletics' student services staff to prevent academic eligibility problems.
6. Assist with the establishment of communication and enforcement of rules and regulations regarding student conduct, appearance and behavior.
7. Coordinate personal travel plans for recruiting with the Athletic Travel Coordinator.

## Exhibit 1

8. Perform interviews with the news media as needed by the sports information staff.
9. Participate in development activities on behalf of the Mountaineer Athletic Club.
10. Participate in radio, television and/or internet programs produced by the Mountaineer Sports Network.
11. Participate in the marketing and promotion of the football program, including, but not limited to corporate sponsorships and public relations appearances.
12. Report directly to the Head Football Coach; must also work closely with all others involved with carrying out the philosophy and objectives of the intercollegiate athletic program.
13. Maintain knowledge of and comply with all rules, regulations, policies and guidelines of West Virginia University, the Big 12 Conference and the NCAA; must be certified per NCAA Bylaw 11.5.1.1 each year; must adhere to NCAA Bylaw 11.1 Conduct of Athletic Personnel. Failure to adhere to these policies will result in appropriate disciplinary action including possible suspension and termination.
14. Exhibit a level of expertise in their professional fields; must also treat the academic requirements necessary for progress toward a degree as a matter of the highest priority for the student-athletes in their charge and must actively encourage student-athletes to succeed academically and graduate.
15. Represent the University on the highest professional level with dignity, integrity, and strength of character and will exhibit ethical behavior; must respect the rights and dignity of individuals with sensitivity to problems that may arise from racial and ethnic differences.
16. Demonstrate a cooperative attitude towards the news media and external consistencies in order to promote the football program.
17. Demonstrate a cooperative attitude towards all other sports within the intercollegiate athletic program.
18. Possess the ability to adapt to any situation, make decisions and work independently; position must have the ability to build and maintain relationships with student-athletes, coaches, staff members and constituencies; required to use creative abilities to develop new techniques and approaches in dealing with many issues controlled by this position; responsibilities of the position are ever-changing and require constant education; requires the ability to adapt to any situation and make decisions.
19. Manage sensitive and confidential information related to student-athletes, coaches and staff utilizing discretion and correct decisions. Failure to use proper discretion at required level could result in major and significant embarrassment to the

## Exhibit 1

University and/or have a significant impact on image, revenues and eligibility of student-athletes.

20. Manage professional and personal time to handle time sensitive-issues, tight deadlines, extended hours beyond the normal workday, weekend work, extensive travel and on-call availability.
21. Faithfully and diligently execute related duties of the Department of Intercollegiate Athletics, as requested or assigned by the Head Football Coach.

### Requirements:

- Maintain high standard of ethics and integrity related to intercollegiate athletics
- Demonstrated knowledge of NCAA Division I intercollegiate athletics
- Demonstrated knowledge of NCAA and conference guidelines, policies, rules and regulations with the ability to interpret, apply, enforce and explain such policies and rules
- Successfully complete NCAA certification exam annually
- Maintain knowledge of state and University policies and procedures
- Exhibit strong creative, organizational and interpersonal skills
- Demonstrated knowledge of correct English, grammar, spelling, punctuation and sentence structure
- Demonstrated ability in public speaking skills
- Demonstrated ability to function professionally under high stress and confrontational circumstances
- Demonstrated ability to manage multiple tasks for extended period of time
- Demonstrated ability to independently plan and organize work
- Proactive attitude towards work and assignments
- Demonstrated ability to maintain and develop personal contacts with outside groups, i.e. student-athletes, professional representatives, fans, media, donors, University community
- Demonstrated interpersonal and communication skills and the ability to work effectively with a wide range of constituencies in a diverse community
- Demonstrated knowledge of record keeping and adherence to schedule
- Ability to stay abreast of information impacting the affected area
- Demonstrated ability to organize and motivate groups and individuals
- Ability to maintain proper unit attendance and punctuality standards, work extended hours including nights and weekends (often with extensive walking and standing).
- Demonstrated skills in management of an intercollegiate football program
- Demonstrated knowledge of effected areas of involvement
- Demonstrated ability to manage personnel
- Ability to make administrative / procedural decisions and judgments
- Demonstrated ability to drive and travel via motor vehicle
- Maintain a valid driver's licence

## Exhibit 1

### **Education:**

- Bachelor's degree is required

### **Experience:**

- Adequate coaching experience required, preferably at the NCAA Division I level
- A proven success rate in recruiting prospective student-athletes



## **EMPLOYMENT AGREEMENT**

**THIS EMPLOYMENT AGREEMENT** (the "Agreement") is made this 7<sup>th</sup> day of January, 2015, by and between West Virginia University Board of Governors for and on behalf of West Virginia University (hereinafter "University") and **Bruce Tall** (hereinafter "Coach").

**NOW, THEREFORE, WITNESSETH**, that for and in consideration of the mutual covenants and conditions herein contained, and other good and valuable consideration, the receipt and sufficiency of all of which hereby is acknowledged by the parties hereto, University and Coach agree as follows:

### **I. EMPLOYMENT**

Subject to the terms and conditions contained herein, University hereby agrees to employ Coach as assistant coach and Coach agrees to perform in this capacity. Coach shall be employed as a full-time, exempt, Faculty Equivalent Academic Professional employee, by and subject to the rules and policies adopted by the University's Board of Governors and any other policies and procedures adopted by the University, all as they may be modified from time to time. Subject to the provisions of Articles II and VI below, the term of the appointment is made by the Director of Intercollegiate Athletics at West Virginia University in consultation with the Head Football Coach.

### **II. TERM**

The Agreement shall be for a term beginning on the date first written above, and terminating at 11:59 p.m. on the 30th day of January, 2017 ("the Termination Date") unless the current Head Coach is no longer employed at University in which case the Termination Date shall be 11:59 p.m. on the 30th day of January, 2016 or the date when the current Head Coach is no longer employed at University, whichever is later. However, that nothing contained herein waives the right of Coach and University to exercise their respective rights as outlined in Article VI of this Agreement.

### **III. COMPENSATION AND BENEFITS**

**A. Base Salary.** In consideration of services and satisfactory performance of the terms and conditions of this Agreement by Coach, University agrees to pay Coach an annual base salary of Two Hundred Fifty Thousand Dollars (\$250,000.00). Base Salary shall be payable in semi-monthly installments. Payment of all Base Salary shall be in accordance with the payroll policies of University and subject to such deductions as may be required by applicable state and federal laws and regulations, and such employee benefit plans in which Coach elects to participate.

**B. Employee Benefits.** Coach will be eligible to participate in all employee benefit programs available to other University employees of like status. Such benefits shall be governed by University policies and the laws of the State of West Virginia and will include, among others, health insurance, retirement, annual leave, sick leave and all other standard benefits.

**C. Other Compensation and Incentives.**

1. **Courtesy Automobile:** Coach shall receive one (1) courtesy vehicle; provided, however, that prior to receipt of the vehicle, Coach shall separately agree to the terms and conditions of the Department of Intercollegiate Athletics' Wheels Club Driver Agreement.

2. **Tickets:** Coach shall be provided four (4) tickets for each home football game, two (2) tickets for each home men's basketball game, two (2) tickets for each home women's basketball game, and, if applicable, four (4) tickets for each post-season bowl game in which the University's football team participates. Such tickets shall be distributed by Coach as allowed by law and by the rules and regulations of the University, the athletic conference in which the University is a member and participates in for football and the NCAA, and are subject to applicable taxes.

3. **Camps:** Coach may be entitled to additional compensation for services performed related to the football youth camp(s) and/or clinic(s) held on campus as part of the Department of Intercollegiate Athletics' operations consistent with the provisions of West Virginia University Board of Governors' Policy No. 16 and other applicable state law. Compensation will be dependent upon total net revenue generated by the camp and subject to the approval of the Head Football Coach, acting as the Camp Director, and the Director of Intercollegiate Athletics. Coach will be required to use vacation time while working said camp(s) and/or clinic(s).

4. **Annual Performance Incentives:** In addition to Base Salary, University shall pay Coach annual performance incentives within One Hundred Twenty (120) consecutive days of the end of the season in which earned, for attainment of and participation in the following:

|    |   |             |
|----|---|-------------|
| a. | Regular season victories (not cumulative)           |             |
|    | i. 12 wins  | \$15,000.00 |
|    | ii. 11 wins   | \$10,000.00 |
|    | iii. 10 wins  | \$ 7,500.00 |
|    | iv. 9 wins  | \$ 5,000.00 |
| b. | Conference regular season title (or share of title) | \$ 7,500.00 |
| c. | Non-College Football Playoff bowl appearance        | \$10,000.00 |
| d. | College Football Playoff ("CFP") appearance         | \$15,000.00 |
| e. | CFP Semifinal victory                               | \$ 5,000.00 |
| f. | CFP National Championship game appearance           | \$20,000.00 |
| g. | CFP National Championship game victory              | \$ 5,000.00 |

Notwithstanding the foregoing, Coach and University agree that annual performance incentives shall be contingent on the football team achieving a 930 or higher multi-year Academic Progress Rate (APR). Accordingly, Coach will not receive any annual performance incentives for the upcoming year if the football team does not achieve a 930 or higher APR. For the avoidance of doubt, if the football team fails to achieve a 930 or higher APR, Coach will not receive any annual performance incentives until that mark is reached. By way of example, if the APR is below a 930 when it is announced in the Spring of 2015, the University will award no annual incentives to Coach in the upcoming 2015-16 season or any subsequent year until the APR is 930 or higher.

5. **Athletic Apparel:** The University shall provide an athletic apparel allocation of One Thousand Dollars (\$1,000.00) retail value from the University's team apparel supplier which will be subject to applicable taxes, if any.

#### **IV. PERFORMANCE**

In the performance of his duties, Coach shall be responsible to and under the direct supervision of the Head Football Coach. Without limiting the foregoing, Coach shall conduct himself at all times in a manner which is consistent with his position as an instructor of students and which presents a positive representation of West Virginia University. The parties agree that, although this Agreement is to support the University's educational mission. The educational purposes of the University shall have priority in the various provisions of this Agreement. Coach will perform the duties of the position as they are described in Exhibit 1, attached hereto and incorporated herein by express referenced, as they may from time to time be changed at the sole discretion of the Head Football Coach and/or Director of Intercollegiate Athletics (to the extent not inconsistent with the terms of this Agreement). In doing so, Coach will use best efforts to comply with the reasonable goals and objectives established annually by the Head Football Coach.

Coach shall not breach any local, state or federal laws, ordinances, rules or regulations, or of any of the written rules, regulations, policies, procedures or standards of the University, the Big 12 Conference (or any other athletic conference of which the University may become a member) or the National Collegiate Athletic Association (the "NCAA"). Coach shall adhere to NCAA Bylaw 1.1 Conduct of Athletics Personnel in the performance of his duties as Assistant Football Coach. Pursuant to NCAA Bylaw 11.2.1, it is stipulated by the parties that if Coach is found in violation of NCAA regulations, he shall be subject to disciplinary or corrective action as set forth in the provisions of the NCAA enforcement procedures, including suspension without pay or termination of employment as set forth in Article VI herein.

Additionally, Coach shall not knowingly permit or condone directly or indirectly, or by negligent supervision, any student, employee or other individual subject to his control or supervision, to perform any act which reflects adversely on the University, its athletic programs, or otherwise affects the operations of the football program or Coach's responsibilities under this Agreement. In the event Coach violates the foregoing, Coach may be subject to disciplinary action, consistent with the terms of this Agreement, including, but not limited to, public or private reprimand, or, if appropriate, termination as determined by the Director of Intercollegiate Athletics, and/or the Head Football Coach, after consultation and review with the Director of Intercollegiate Athletics.

#### **V. PROMOTIONAL ACTIVITIES**

As part of Coach's responsibilities under this Agreement, Coach shall perform the following promotional activities as directed by the Head Football Coach or Director of Intercollegiate Athletics, or their designees:

A. Appearances at events sponsored by the Mountaineer Athletic Club or University affiliated organizations and sponsors.

B. Appearances and participation in radio, television and Internet programs produced by the University's Mountaineer Sports Network or its affiliated organizations, and/or other such programs. Such appearances and participation may include, but shall not necessarily be limited to, radio talk shows, pregame/postgame radio shows, television shows, Internet audio programs and occasional Internet features. University shall own all rights to radio, television, Internet and other programs that are broadcast or otherwise disseminated to the public in which Coach serves as a participant. University retains exclusive rights to services in the areas as specified herein.

C. Coach shall be allowed to retain and income received from coaching clinics and camps in which he participates. Coach shall be allowed to retain any income received from speaking engagements. Coach acknowledges and agrees that prior to accepting any speaking engagement, he must notify the Director of Intercollegiate Athletics, or his designee, or the clinic, camp or speaking engagement and obtain approval. The Director of Intercollegiate Athletics may refuse to provide approval at his discretion but will not unreasonably withhold such approval. Coach may not make speaking engagements with business or corporations that compete with the University's official corporate sponsors. Coach will report any and all income derived in accordance with Article VIII.

D. Participation in promotional and other activities as may be reasonably requested by University.

With respect to subsections A, B and D above, University agrees to consult and coordinate with Coach before scheduling such promotional activities, which consent shall not be unreasonably withheld. Except as limited or restricted by the provisions of this Article V and Article IX, and further subject to Coach's obligation to satisfy the terms and conditions of this Agreement, nothing contained herein shall be deemed to prevent Coach from arranging or participating in, and deriving personal income from personal speaking engagements or other endeavors unrelated to his service as Assistant Football Coach, subject to prior approval of University, such approval not to be unreasonably withheld.

## **VI. TERMINATION**

A. **Termination for Cause by University.** The University specifically reserves the right to terminate this Agreement without further obligation at any time for cause, which shall be deemed to include, but is not limited to, the following:

1. The commission by Coach of a serious or major violation, whether intentional or negligent, or a pattern of any violations, of the written rules, regulations, policies, procedures or standards of the NCAA, the University or, the Big 12 Conference (or any other conference of which University may become a member), or the allowing or condoning, whether directly or by negligent supervision, of any such violation by a student, coach or other individual subject to his control or supervision, or otherwise soliciting, directing or condoning such violation by any person;

2. Conviction (including a plea of no contest) of Coach for a felony or a conviction (including plea of no contest) of Coach for a misdemeanor involving moral turpitude;

3. Substance abuse or habitual insobriety;
4. Material and substantial breach of any term of this Agreement by Coach, which breach has gone uncured for thirty (30) consecutive days after written notice thereof by University to Coach;
5. Willful, negligent or intentional disregard and/or insubordination by Coach of the reasonable instruction of the Head Football Coach, the Director of Intercollegiate Athletics or their designees, which disregard has gone uncured for thirty (30) consecutive days after written notice thereof by University to Coach;
6. Willful misconduct and gross negligence in performance of duties; or
7. Misconduct by Coach of such a nature that the misconduct offends that traditions of the University, or brings discredit to the University, or harms the University's reputation.

In the event that Coach is terminated for cause by University, Coach shall not be entitled to, nor shall University be required to provide, any portion of the compensation, benefits and/or incentives as set forth in Article III of this Agreement, or any other entitlements under this Agreement, except Base Salary, benefits and incentive compensation actually earned and accrued but unpaid through the date of termination, all of which shall be paid within thirty (30) consecutive days of termination less all applicable taxes and other withholdings.

**B. Termination for Convenience by University.** In addition to the provision set forth above, the University also reserves the right to terminate this Agreement with cause, at University's convenience. In the event that University terminates Coach without cause, University will, within thirty (30) consecutive days of termination pay Coach all Base Salary, benefits and incentive compensation actually earned and accrued but unpaid through the date of termination, and, with regard to Article III (A) only, any or all other amounts University is legally obligated to pay to Coach pursuant to the terms of this Agreement, as if the Coach had fully performed through and until Termination Date as defined by Article II of this Agreement, less all applicable taxes and other withholdings.

**C. Termination for Convenience by Coach.** In the event Coach terminates this Agreement without cause, at Coach's convenience, not including any reason stipulated in Article VI (D), Coach shall within thirty (30) consecutive days of termination receive payment from University for all Base Salary, supplemental and incentive compensation actually earned and accrued but unpaid under the terms of this Agreement and not paid as of the date of such termination, less all applicable taxes and other withholdings.

**D. Death, Disability or Retirement.** In the event of the inability of Coach to continue to perform the essential functions of his position under this Agreement by reason of death, disability or permanent retirement, this Agreement shall thereupon terminate and all future obligations between the parties hereto shall cease. The parties further agree that in the event that Coach is unable to continue to perform his obligations under this Agreement and the Agreement is terminated pursuant to this Article VI (D), Coach shall be entitled to all earned and accrued Base

Salary, benefits and incentive compensation earned but unpaid as of the date of death, final determination of disability or permanent retirement. Such compensation shall be paid to Coach or his estate or beneficiaries, as the case may be, in addition to standard University benefits, if any.

**E. Reserved.**

**F. Coach's Obligation Upon Termination.** All materials or articles of information, including without limitation, keys, keycards, cell phones, computers, equipment, parking passes, unused athletic event tickets and the like, the right to claim such tickets of the like, automobiles, personnel records, recruiting records, team information, video, statistics or any other material documents, correspondence, or other data furnished to the Coach by the University or developed by the Coach, whether directly or by others under his supervision and control, on behalf of the University for the University's use or otherwise in connection with the Coach's employment hereunder shall remain the sole property of the University. Coach shall cause any and all such materials in his possession or control to be delivered to the University by or before close of business on the date of his termination of employment. This provision shall apply equally to written and electronic materials and records.

**VII. GRIEVANCE PROCESS**

Resolution of any employment grievance that Coach may desire to raise shall be governed by the West Virginia Public Employees Grievance Procedure (W.Va. Code §6C-2-1 et seq.).

**VIII. OUTSIDE INCOME**

Coach shall receive written approval from the Director of Intercollegiate Athletics or his designee prior to entering into any agreement for income and benefits from sources outside University, such approval not to be unreasonably withheld. Further, in accordance with NCAA Bylaw 11.2.2 regarding athletically-related income, Coach agrees to provide a written detailed account to the Director of Intercollegiate Athletics or his designee, at least once annually, or more frequently upon request, for all athletically-related income, compensation, gratuities or benefits from any and all sources outside the institution.

**IX. PUBLIC APPEARANCES**

Coach shall make no public appearance, either in person or by means of radio, television, Internet or other means or medium, or willingly allow the use of his name in connection with his relationship to the University, when any such appearance or use of name will result in unfavorable reflection upon University or conflict with Coach's duties or University's rights under this Agreement.

**X. DRIVING STANDARDS**

Coach shall be subject to the driving standards and provisions set forth in the University's Department of Intercollegiate Athletics Pilot Student Transportation Reporting Program as it may be amended from time to time.

## **XI. REPRESENTATIONS**

Coach represents and warrants that he has not violated any of the rules and regulations of the NCAA, and that he is aware of any threatened or pending NCAA investigation involving his conduct at any other NCAA member institution.

## **XII. HEADINGS**

The headings of the articles and sections contained in this Agreement are for reference purposes only and shall not be deemed to control or affect the meaning or construction of any provision of this Agreement.

## **XIII. ENTIRE AGREEMENT; AMENDMENT**

It is mutually understood that this Agreement contains all of the terms and conditions to which the parties have agreed and that no other understandings or representations, either oral or written, unless referenced in the preceding paragraphs, regarding the subject matter of this Agreement shall be deemed to exist or to bind the parties hereto. Any modification, amendment or addendum to this Agreement shall be effective only if made in writing and signed by both parties hereto.

## **XIV. SEVERABILITY**

If any provision of this Agreement is held invalid or otherwise unenforceable, the enforceability of the remaining provisions shall not be impaired thereby, and such remaining provisions shall remain in full force and effect.

## **XV. APPLICABLE LAW**

This Agreement is made and entered in Monongalia County in the State of West Virginia, and the laws of West Virginia shall govern its validity, interpretation, performance, and enforcement by the parties of their respective duties and obligations hereunder.

## **XVI. VOLUNTARY AGREEMENT**

This Agreement is the result of arm's-length negotiation between the parties, and the parties have had the opportunity to be represented by counsel of their own choosing. Each party enters into this Agreement freely and voluntarily and with the full intent to be bound hereby.

## **XVII. NOTICE**


Any and all notices required or permitted to be given under this Agreement will be sufficient if furnished in writing and sent by registered or certified mail to the other party at the address stated here:

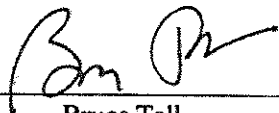
|             |   |
|-------------|---|
| COACH:      | Last Address on File with the University  |
| UNIVERSITY: | Director of Intercollegiate Athletics<br>West Virginia University<br>PO Box 0877, Morgantown, WV 26507-0877 |

With a Copy to:  
Vice President for Legal Affairs  
West Virginia University  
105 Stewart Hall, PO Box 6201, Morgantown, WV 26506-6201

**BY THEIR SIGNATURES BELOW**, the parties hereto have executed this Agreement  
as of the day and year first above written.

**WEST VIRGINIA UNIVERSITY BOARD  
OF GOVERNORS FOR AND ON BEHALF  
OF WEST VIRGINIA UNIVERSITY**

By   
Keli Cunningham  
Interim Director of Athletics

  
Bruce Tall