

**UNIVERSITY OF NEBRASKA-LINCOLN
RETENTION BONUS AGREEMENT**

THIS RETENTION BONUS AGREEMENT (this “Agreement”) is made effective as of March 18, 2024 (the “Effective Date”), by and between THE BOARD OF REGENTS OF THE UNIVERSITY OF NEBRASKA, a public body corporate (“University”), for and on behalf of the Department of Intercollegiate Athletics of the University of Nebraska-Lincoln (“Athletics”) and FRED HOIBERG (“Coach” or “Coach Hoiberg”). The University and Coach may sometimes be referred to herein collectively as the “Parties.”

Recitals

WHEREAS, the University is an organization described in Section 501(c)(3) of the Internal Revenue Code (“Code”) and, as such, is organized and operated exclusively for charitable and educational purposes; and

WHEREAS, the University and Coach have entered into a First Amended and Restated Employment Agreement with an effective date of March 18, 2024 (“Employment Contract”), for Coach to serve as Athletics’ Head Men’s Basketball Coach (“Head Men’s Basketball Coach”); and

WHEREAS, Athletics desires to assure that Coach shall continue as Head Men’s Basketball Coach for the Men’s Basketball Program (the “Program”) through March 31, 2029 and

WHEREAS, the University would suffer loss if Coach were to accept another offer of employment, and it is thus ordinary, necessary and reasonable to provide Coach with additional compensation on a deferred basis to induce him to serve and continue to serve as Coach; and

WHEREAS, the parties desire to enter into this Agreement to provide Coach with certain incentive compensation benefits, as set forth herein, that shall be in addition to his current compensation and any future increase thereof; and

WHEREAS, the Parties previously entered into the Contract of Employment with an effective date of May 20, 2019 (the “Initial Employment Contract”), as amended by the First Addendum to Contract of Employment with an effective date of June 9, 2020 (the “Contract of Employment First Addendum”) and the Second Addendum to Contract of Employment with an effective date of February 26, 2022 (the “Contract of Employment Second Addendum; together with the Initial Employment Contract and the Contract of Employment First Addendum, the “Previous Employment Contracts”), as well as the Retention Bonus Agreement with an effective date of May 20, 2019 (the “Initial Retention Bonus Agreement”), as amended by the First Addendum to Retention Bonus Agreement with an effective date of February 26, 2022 (the “Retention Bonus First Addendum”; together with the Initial Retention Bonus Agreement, the “Previous Retention Bonus Agreements”); however, the Parties acknowledge and agree that: (i) the Employment Contract fully replaces, restates, and supersedes all terms of the Previous Employment Contracts, except with respect to the Stay Bonuses expressly contemplated by this Agreement; and (ii) This Agreement fully replaces, restates, and supersedes all terms of the Previous Retention Bonus Agreements, and is hereby incorporated by reference into the Employment Contract.

NOW, THEREFORE, the University and Coach agree as follows:

Terms

1. **Retention Payments.** The University shall pay or cause to be paid Coach a retention bonus (each a “Stay Bonus”, collectively the “Stay Bonuses”), subject to the conditions described in Sections 2 (“Funding Contingencies”) and 3 (“Conditions to Stay Bonuses”) of this Agreement, including the condition that Coach continues to be employed as Head Men’s Basketball Coach on the Stay Dates identified below. Each Stay Bonus amount will be paid within forty-five (45) days after the Stay Date (each a “Payment Date,” collectively the “Payment Dates”), which are specifically identified below.
 - (a) If Coach continues to be employed until March 31, 2024 (“Stay Date”), a payment in the amount of Five Hundred Thousand and no/100 Dollars (\$500,000.00) shall be made to Coach (less required withholding) by May 15, 2024 (“Payment Date”).”
 - (b) If Coach continues to be employed until March 31, 2027 (“Stay Date”), a payment in the amount of Five Hundred Thousand and no/100 Dollars (\$500,000.00) shall be made to Coach (less required withholding) by May 15, 2027 (“Payment Date”).”
2. **Funding Contingencies.** The obligation of the University to pay or cause to be paid Coach a Stay Bonus shall be subject to the following contingencies:

- (a) **Involuntary Termination of Employment.** In the event Coach’s employment as Head Men’s Basketball Coach is terminated by the University (“Involuntary Termination”) pursuant to Coach’s Employment Contract prior to a Stay Date, the University will not owe Coach any additional Stay Bonuses under this Agreement. In the event of Coach’s Involuntary Termination, Coach will be paid Liquidated Damages as defined by Coach’s Employment Contract. The parties agree that the Liquidated Damages provision in Coach’s Employment Contract incorporates any outstanding Stay Bonus amounts in calculating the total amount of Liquidated Damages owed by the University.

For purposes of this Agreement, “Termination of Employment” or “Terminates Employment” means the termination of Coach’s employment with the University for reasons other than death or Disability. Whether a Termination of Employment takes place is determined based on the facts and circumstances surrounding the termination of Coach’s employment.

Coach’s employment relationship will be treated as continuing intact while Coach is on military leave, sick leave or other bona fide leave of absence if the period of such leave of absence does not exceed six (6) consecutive months, or if longer, so long as Coach’s right to reemployment with the University is provided either by statute or by contract. If the period of leave exceeds six (6) consecutive months and there is no right to reemployment, a Termination of Employment will be deemed to have occurred as of the first date immediately following such six (6) consecutive month period.

- (b) **Disability.** If Coach shall become disabled during the term of this Agreement to an extent that he is no longer able to perform his duties as Coach, no further sums shall be paid to

Coach following the date of termination as a result of disability. “Permanently disabled” means Coach is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or can be expected to last for a continuous period of not less than twelve (12) consecutive months. Medical determination of permanent disability may be made by either the Social Security Administration or a physician reasonably acceptable to both Coach and the University. Coach shall submit proof reasonably satisfactory to the Chancellor of the University of Nebraska Lincoln (“Chancellor”) of disability, including but not limited to the Social Security Administration’s or physician’s determination.

(c) Death. If Coach shall die during the term of this Agreement, no further sums shall be paid under this Agreement to Coach following Coach’s date of death.

(d) Coach’s Resignation. In the event Coach (i) voluntarily resigns Coach’s position as Head Men’s Basketball Coach or (ii) is otherwise no longer employed as the Head Men’s Basketball Coach prior to a Stay Date due to reasons other than involuntary termination, disability or death as described above, no additional payments will be made following Coach’s resignation and Coach shall fully and completely forfeit any rights in and to any payments pursuant to this Agreement.

3. **Conditions to Stay Bonuses**. Any payment to Coach under this Agreement is subject to, and contingent upon, the nonoccurrence of any of the following by Coach during the term of Coach’s Employment Contract:

- (a) a substantial violation of the bylaws, policies, rules and regulations of the Board of Regents which adversely and materially harms the University and Athletics;
- (b) a substantial violation of any material rules or regulations of the National Collegiate Athletic Association applicable to the University of Nebraska-Lincoln and its Athletic Department which adversely and materially harms the University and Athletics;
- (c) Any materially dishonest or fraudulent act, or any misappropriation of funds or property of the University; and/or
- (d) Any act involving moral turpitude of sufficient magnitude that adversely and materially harms or discredits Coach or the University.

In the unlikely event that the Chancellor determines in good faith that any one or more of these events has occurred, Coach will not be entitled to receive any unearned benefits pursuant to this Agreement; provided, however, that the University shall still be required to pay any portion of the Stay Bonus that has been earned and not yet paid. An occurrence of any event in (a) or (b) above by any of Coach’s subordinates (e.g., any assistant coach or staff of the Program), or by any student participating in the Program, or by any other person, shall not be deemed to be a violation by Coach, unless the Chancellor determines in good faith that Coach knowingly participated in such violation or, upon acquiring knowledge of such violation, unreasonably failed to report the same to the Chancellor; *provided, however*, that the foregoing shall not be deemed to be a violation by Coach if Coach has fully disclosed his knowledge of such violation, and received concurrence of,

the University's athletic director and director of compliance on a course of action to deal with the violation.

4. **No Present Rights.** Neither Coach, his personal representative, heirs, legatees, distributees, or any other person claiming under him shall have any right to commute, encumber, or otherwise dispose of any right to receive payments hereunder, all of which payments and the rights thereto are expressly declared to be non-assignable. In addition, such rights as herein created shall not be subject to execution, attachment, or similar process. Any attempt to assign, transfer, pledge, or otherwise dispose of any such right, interest, or benefit contrary to the provisions of this Agreement, or the levy of any attachment or similar process thereon, shall be null and void and without effect.
5. **No Discretionary Powers.** Coach shall take no part whatsoever in the exercise of discretionary powers that are retained by the University pursuant to this Agreement.
6. **Intent of Parties.** Anything to the contrary notwithstanding, it is the intention of the parties to this Agreement that the Agreement shall create a contractual obligation to make payments as provided herein. The parties do not intend, and this document should not be construed, to establish any trust for the benefit of Coach or to grant him any beneficial interest in the amounts which may be credited to a separate account for the purposes of providing eventual payment until he is entitled to receive payment thereof, nor shall it be construed as an election on the part of Coach to defer any current compensation to which he might be otherwise entitled by reason of his current employment by the University.
7. **Miscellaneous Provisions.**
 - (a) **Entire Agreement, Amendment.** This document constitutes the entire agreement between the parties with respect to the subject matter addressed herein and may not be modified, amended or terminated except by a written agreement specifically referring to this Agreement signed by the parties hereto. For the avoidance of doubt, nothing in this Agreement shall be construed to require the University to employ Coach for any length of time.
 - (b) **Captions.** The section headings contained herein are for the purposes of convenience only and are not intended to define or limit the contents of said section.
 - (c) **Binding Effect.** Except as otherwise expressly provided herein, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns and heirs.
 - (d) **Nebraska Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Nebraska.
 - (e) **No Acceleration or Delay of Distributions.** The time or manner of distribution of amounts deferred under this Agreement may not be changed by amendment or otherwise except in conformity with the requirements of Code Section 409A.

