

HEAD COACH EMPLOYMENT AGREEMENT

This Employment Agreement ("Agreement") is made and entered into this 16th day of January, 2008, by and between the Board of Regents of the University of Hawai'i (hereafter, the Board of Regents of the University of Hawai'i and the University of Hawai'i at Manoa will be interchangeably referred to as "University") and Gregory J. McMackin ("Coach"), and is agreed to by the Hawai'i Government Employees Association ("HGEA"). The effective date of this Agreement is January 16, 2008.

WITNESSETH:

WHEREAS, the University seeks to employ Coach as Head Coach for the University of Hawai'i at Manoa intercollegiate football program at the University, and wishes to enter this Agreement with Coach on the terms and conditions set forth in this Agreement;

WHEREAS, Coach is a member of Bargaining Unit 08 whose exclusive representative is HGEA;

WHEREAS, this Agreement modifies the terms and conditions of the collective bargaining agreement between the University and HGEA as they apply to Coach; and

WHEREAS, Coach wishes to accept such employment on the terms and conditions hereinafter contained;

NOW, THEREFORE, in consideration of the foregoing, the receipt and sufficiency of which consideration is hereby acknowledged, the University and Coach hereby agree as follows:

1. EMPLOYMENT. The University hereby agrees to employ Coach as Head Coach of the University of Hawai'i at Manoa intercollegiate football program (hereafter referred

to as the "Sports Program") at the University under the terms and conditions herein set forth.

A. Coach will report to the Athletics Director of the University or the University of Hawai'i at Manoa Chancellor's designee (individually and collectively referred to as "Athletics Director") and will be responsible for the coaching, leadership, recruiting, supervision and promotion of the Sports Program during the term of this Agreement and any extensions thereof. Coach will provide leadership in building and maintaining a competitive, quality program which will reflect the values and high standards of the University.

B. Coach accepts such employment and will devote his attention and best efforts, on a full-time basis, to the performance of Coach's duties and responsibilities as stated or provided for in Coach's official position description. Coach shall comply with all applicable governing constitutions, by-laws, rules, policies, interpretations and regulations of the NCAA, the University and any intercollegiate athletic conference or organization of which the University is or becomes a member of. Coach shall immediately advise the Athletics Director and the University's Athletics Compliance office if Coach has reason to believe that NCAA violations have occurred or will occur and shall cooperate fully in any investigation of possible NCAA violations conducted or authorized by the University or the NCAA at any time.

C. Coach agrees that he will not personally, or through any agent, actively seek, negotiate for, or accept other full-time or part-time employment of any

nature during the term of this Agreement without first obtaining written consent from the Athletics Director.

D. Coach acknowledges that negative statements concerning the Athletics Department, the University, and the State of Hawai'i made to the media or in public may be detrimental to recruiting, fundraising, and the morale of coaches, staff and players in the Sports Program and other programs of intercollegiate athletics at the University. Therefore, Coach agrees that he shall, in a timely manner, first direct any complaint and/or criticism that he may have of the Sports Program, the Athletics Department, or the University to the Athletics Director before directing the complaint and/or criticism to anyone else. Further, Coach shall make all reasonable efforts to project a positive image and take no action detrimental to the Sports Program.

E. Coach shall be evaluated in accordance with procedures developed by the Athletics Director, and shall not be subject to the evaluation procedure in University of Hawai'i Systemwide Administrative Procedure A9.170.

F. Coach represents to have special, exceptional, and unique knowledge, skill, and ability to coach the Sports Program which, in addition to the future development of coaching experience at the University, as well as the University's special need for continuity in its Sports Program, renders Coach's services unique. Coach recognizes that the loss of Coach's services to the University, without the University's approval and release, prior to the expiration of the term of this Agreement or any renewal thereof would cause an inherent loss to the

University which cannot be estimated with certainty, or fairly or adequately compensated by money damages. Coach therefore specifically agrees:

- i. That he will not negotiate or accept coaching employment that requires performance of duties prior to the expiration date of the term of this Agreement or any extension thereof, without first obtaining permission or a written release of this Agreement from the Athletics Director, or a negotiated resolution thereof in writing accepted and signed by Coach, HGEA, and the Athletics Director.
- ii. That the University shall have the right, in addition to any other rights which the University may possess, to obtain an injunction by appropriate judicial proceedings to prevent Coach from performing coaching activities or other related services in violation of this Agreement.
- iii. To indemnify and hold University harmless for its costs in the event that the University initiates an injunction proceeding as described above, including court costs and attorney's fees.

G. As coach of the Sports Program, Coach shall be subject to disciplinary or corrective action by the Athletics Director.

- i. For violation(s) of the terms and conditions of this employment agreement, or
- ii. Misconduct, or
- iii. If the Athletics Director has a reasonable basis to believe that a violation of NCAA regulations has occurred.
- iv. Discipline may be up to and including termination.

H. Coach shall also be subject to disciplinary or corrective action pursuant to NCAA By-Laws and enforcement procedures including, pursuant to NCAA By-laws 11.2.1, suspension without pay or termination for significant or repetitive violations of NCAA regulations.

2. TERM.

A. Coach's employment hereunder shall be for a term of five (5) years beginning on January 16, 2008 and ending on January 15, 2013 unless terminated earlier pursuant to this Agreement.

B. This Agreement is renewable solely upon a written offer from University, and accepted and signed by Coach, HGEA and University.

C. Should the term of this Agreement end without being renewed in writing, both Coach and University agree that all other terms and conditions of this Agreement shall continue on a month-to-month basis until either renewed in writing and signed by Coach, HGEA and University or terminated upon ninety (90) days written notice to Coach by the University.

D. This Agreement and Coach's employment in no way grants Coach a claim to employment security, or any years of employment attributable to employment security with University.

3. COMPENSATION.

A. University agrees to pay Coach as compensation for services rendered in the amount of \$1,100,004.00 (ONE-MILLION, ONE-HUNDRED THOUSAND FOUR and NO/100 dollars) as an annual base salary ("base salary") subject to the usual and customary deductions and withholdings required of other

employees and as may be required by applicable local, state and federal laws, e.g., federal and State taxes, FICA, Medicare, and other deductions mandated by law or the Unit 08 collective bargaining agreement.

B. University shall not be responsible for any other compensation or monetary benefit to Coach of any kind unless it is specifically set forth herein.

C. Coach shall be responsible for paying any local, state and federal or other personal income or other taxes due or owing as a result of his receipt of any compensation or benefits paid pursuant to this Agreement.

D. Coach shall, pursuant to NCAA By-Laws 11.2.2, Athletically Related Income, provide a written detailed account annually to the Athletics Director of all athletically related income and benefits received by Coach from sources outside the University. Approval of the receipt of such athletically related income and benefits in favor of Coach shall be consistent with the University's policy and State of Hawai'i policies and/or laws related to outside income and benefits applicable to all full-time or part-time employees. The sources of such reportable income shall include, but are not limited to, the following:

- i. Income from annuities;
- ii. Sports camps;
- iii. Housing benefits (including preferential housing arrangements);
- iv. Country club memberships;
- v. Complimentary ticket sales;
- vi. Television and radio programs; and

vii. Endorsement or consultation contracts with athletics shoe, apparel or equipment manufacturers.

4. PERFORMANCE INCENTIVES. Coach shall be eligible for the following performance incentives:

- A. A bonus of \$20,000 (Twenty Thousand dollars) if the football team participates in a Non-BCS Bowl Game.
- B. A bonus of \$10,000 (ten-thousand dollars) if the men's football team wins a Non-BCS Bowl Game.
- C. A bonus of \$50,000 (fifty-thousand dollars) if the men's football team participates in a BCS Bowl Game.
- D. A bonus of \$20,000 (twenty-thousand dollars) if the men's football team wins the Western Athletic Conference ("WAC") Championship.
- E. A bonus of \$10,000 (ten-thousand dollars) if named the WAC Coach of the Year.
- F. A bonus of \$20,000 (twenty-thousand dollars) if named the National Coach of the Year.
- G. A bonus of \$15,000 (fifteen-thousand dollars) if season tickets sold reaches a threshold of 32,500.
- H. A bonus of an additional \$15,000 (fifteen-thousand dollars) if season tickets sold reaches 40,000.

5. OTHER BENEFITS.

- A. University shall provide Coach with all medical and insurance benefits generally provided to University employees.

B. Coach shall be allowed to earn additional income from radio and television shows, and the operation of camps and/or clinics at the University, which shall be sponsored by the University but conducted by Coach. It shall be Coach's responsibility to insure that such radio and television shows and camps and/or clinics are operated professionally and safely. The tuition and/or fees charged for such camps and/or clinics shall be established by University in consultation with Coach. For such camps and/or clinics, Coach shall be compensated in an amount equal to the gross revenues generated:

- i. Less eight (8) percent of gross revenues for administrative fees,
- ii. Less salaries and fringe benefits paid to coaches, and
- iii. Less camp expenses.

For Coach's appearances on radio and television shows, and Coach's operation of camps and/or clinics sponsored by the University, Coach will not need to request leave or vacation.

C. Coach is prohibited from entering into any athletically related contracts, such as personal services contracts with manufacturers, without the prior review and approval of the University.

D. University may provide Coach the opportunity to participate in an Athletic Department courtesy car program, if available, in accordance with the following provisions:

- i. The Athletics Director shall administer the car program.
- ii. Under no circumstances shall Coach solicit auto dealers for cars.

- iii. Coach shall obtain necessary auto insurance in accordance with State laws and/or wishes of the auto dealer.
 - iv. Coach is personally responsible for care and maintenance of the car.
 - v. Two (2) courtesy cars, if available, shall be provided to the Coach.
 - vi. The auto dealer is free to terminate the courtesy car program agreement at any time.
- E. Upon the University's approval, Coach's spouse and up to FOUR (4) immediate family members shall be allowed to accompany Coach on a maximum of TWO (2) trips each year at the expense of the University of Hawai'i Foundation or the post-season sponsor. Travel shall be to a University, Western Athletic Conference ("WAC") or other athletic conference affiliated with the Intercollegiate Sports Program, or NCAA event. Coach's immediate family members traveling with Coach shall not be deemed to be employees or agents of the University. The method of payment for the travel will be determined by the Athletics Director.
- F. Each year, so long as this Agreement is in effect, Coach may be provided THIRTY (30) season tickets for the Sports Program and SIX (6) season tickets for the University's other sports events. Tickets provided hereunder shall be for personal use and shall not be sold by Coach or given or exchanged for any type of consideration or remuneration.
- G. Coach shall be provided TWO (2) annual parking permits for the University of Hawai'i at Manoa campus at no cost to Coach for each year of this

Agreement. Coach shall also be provided SIX (6) Aloha Stadium parking passes for UH football games. These parking passes shall be for Coach's personal use and shall not be sold.

H. Coach shall be entitled to twenty-one (21) annual vacation days, the timing of which shall be agreed upon by Coach and the Athletic Director. The vacation days shall vest at the rate of 1 and $\frac{3}{4}$ vacation days for each full month of service. Ten (10) days of vacation may be accumulated beyond the period of an annual term up to a total of thirty (30) accumulated vacation days.

I. The foregoing "Other Benefits" may be subject to deductions and withholdings required by applicable local, state and federal laws, e.g., federal and State taxes, FICA, Medicare, and other deductions mandated by law, and it is Coach's responsibility to determine such applicability.

J. The provisions of the current Unit 08 collective bargaining agreement shall apply except as provided below:

i. The following provisions shall not apply: Articles 8-Leave of Absence for Union Business, 9-Employment Security, 10-Employment Rights, 10A-Employment Rights, 11-Layoffs, 12-Return Rights to APT Positions, 18-Temporary Assignment, 18A-Temporary Assignment, 19-Overtime, 19A-Overtime, 20-Night Differential, 21-Meals, 22-Overload, 24-Compensation Adjustment, 24A-Compensation Adjustment, 27-Professional Improvement Leave, 27A-Professional Improvement Leave, 31-Vacation Leave, 35-Travel, 39-Salaries, 41-Entirety, Modification and

Conflict, and (New)-Standby Pay, and to similar related articles in future or amended agreements.

ii. Notwithstanding the above, with regard to alleged violations of Article 16 – Discipline, it is understood and agreed that for disciplinary actions taken against Coach, Article 17-Grievance Procedure shall apply, except that Step 4. Arbitration of Article 17 can only be utilized for disciplinary actions involving suspension or termination for cause for misconduct unrelated to a violation of NCAA regulations. For disciplinary actions related to violations of NCAA regulations, Coach shall have the option of exercising the appeal rights provided for in the NCAA By-laws 32.10.3. The provisions of Article 14 – Personal Rights and Representation, shall apply.

6. ADDITIONAL SERVICES BY COACH.

A. Coach agrees to endorse such products and perform such promotional services, including but not limited to radio, television and internet shows, product endorsements and personal appearances, as directed from time to time by the University. In the event that Coach's participation in such endorsements and promotional services generates a "talent fee" or other service fee, the fee shall be paid to, and remain the property of University.

B. Coach will not undertake personal commercial endorsements in which Coach is identified or identifies himself as the Sports Program Coach at the University, or wears apparel or is pictured with items which would so identify Coach unless he is directed or is authorized by the University.

C. Coach may not associate University's name with an endorsement unless Coach is directed to do so or is authorized by the University.

7. COMPLIANCE WITH LAWS.

A. Coach shall comply with all applicable provisions of Title 7, Public Officers and Employees, of the Hawaii Revised Statutes.

B. Coach shall also comply with and abide by all federal, State of Hawai'i, and local laws and ordinances.

8. TERMINATION OF AGREEMENT BY UNIVERSITY. The University may relieve Coach of the coaching position and duties specified herein, and may assign Coach to another position and duties within the University. Alternatively, the University may terminate Coach's employment at any time during its term for convenience without cause or for cause, in its sole discretion, by providing written notice to Coach.

A. Termination Without Cause.

i. This Agreement may be terminated by the University or its designee at any time without cause upon ninety (90) days written notice to Coach. In such event, University will pay Coach as liquidated damages, a lump sum amount equal to the total amount remaining under the terms of this Agreement. Payment of the liquidated damages amount shall be made in a lump sum or in equal monthly installments over the remaining term of this Agreement. The University and Coach may agree, upon mutual agreement in writing, to modify the timing of the payment of the liquidated damages amount. This payment is Coach's exclusive remedy. University shall not be liable or responsible for any liquidated damages or

loss of any collateral business opportunities or any other benefits, perquisites, or income from any source that might ensue as a result of University's termination of this Agreement without cause, and is in lieu of any and all other legal remedies or equitable relief and without regard to any compensation Coach may earn in mitigating his damages.

ii. In addition to the payment of liquidated damages as provided above in the event of a termination by the University without cause, University will be obligated to reimburse Coach for reasonable, substantiated work performance related expenses incurred by Coach, if any.

iii. Other than outlined in this Section, the University shall have no other obligation to the Coach. Specifically, the University shall not be obligated to pay anything more or other than the liquidated damages calculated above as of the date of termination.

iv. The parties have bargained for and agreed to the foregoing liquidated damages provision, giving consideration to the fact that Coach may lose certain benefits, supplemental compensation or outside compensation relating to his employment at University, which are extremely difficult to determine with certainty, or fairly or adequately. Coach and University further agree that payment of such liquidated damages by University and acceptance thereof by Coach shall constitute adequate and reasonable compensation to Coach for loss, damages and

injury suffered because of such termination by University. The foregoing shall not be, nor be construed to be, a penalty.

v. In the event of termination without cause by the University, all fringe benefits furnished by the University will terminate on the date of termination of this Agreement by the University, and the University will not be liable to Coach for any collateral business opportunities, personal service contracts, or other benefits associated with Coach's position as Head Coach of the Sports Program.

B. Termination for Cause.

i. This Agreement may be terminated by the University or its designee at any time prior to its expiration, upon TEN (10) days written notice, for cause which shall include, without limitation:

a. A deliberate or serious violation of NCAA Legislation by Coach or a failure to report a violation of NCAA Legislation; or

b. Violation of NCAA Legislation relating to the Sports Program by an assistant coach, coordinator or Sport Program student-athlete, and either (i) the violation occurs or continues to occur after Coach knew or should have known that it was about to occur or was occurring, or (ii) the Coach failed to establish and maintain reasonable policies and procedures for the Sports Program to prevent violations of NCAA Legislation; or

c. Violation of NCAA legislation by any coach or student-athlete under the Coach's direct supervision that, upon determination of the Athletics Director, reflects adversely upon the University; or

d. Engaging in conduct which is unlawful, or results in Coach's conviction of a crime, or displays a continual or serious disrespect or disregard for the character of the University, or causes notorious and public scandal; or

e. Refusing or failing to perform any duties reasonably related to Coach's position, or failing to perform the same to the best of Coach's ability, after notice to Coach of University's expectation; or

f. Committing material or repeated violations of any provision of this Agreement or policies of University; or

g. Prolonged absence from the University without the Athletic Director's consent; or

h. For any other reason constituting cause.

ii. In the event this Agreement is terminated for cause, Coach's salary and any benefits, as set forth above, shall terminate as of the date the Agreement is terminated by the University, and the University shall not thereafter be liable to Coach for any damages, legal or otherwise.

C. Termination Upon Death or Disability. If Coach dies, becomes permanently disabled, or totally disabled in excess of six (6) months and cannot perform the essential functions of his position with reasonable accommodation(s), this Agreement shall terminate automatically and Coach's

salary and any benefits, as set forth above, shall terminate as of the date of death, permanent disability, or after six (6) months of total disability.

9. TERMINATION OF AGREEMENT BY COACH. The Coach may terminate this Agreement at any time during its term by providing ninety (90) days written notice to University. In such event, Coach will pay University as liquidated damages, a lump sum amount equal to FIVE HUNDRED FIFTY THOUSAND AND NO/100 dollars (\$550,000.00) within NINETY (90) days of the date on which termination occurs. This payment is University's exclusive remedy. Coach shall not be liable or responsible for any other damages or loss to University, and the liquidated damages amount to be paid by Coach to University is in lieu of any and all other legal remedies or equitable relief and without regard to any mitigation of damages or loss that University obtains.

A. In addition to the payment of liquidated damages as provided above in the event of a termination by the Coach, Coach will be obligated to reimburse University for any non-work related expenses incurred by Coach and paid through University.

B. Other than outlined in this Section, the Coach shall have no other obligation to the University. Specifically, the Coach shall not be obligated to pay anything more or other than the liquidated damages calculated above as of the date of termination.

C. The parties have bargained for and agreed to the foregoing liquidated damages provision, giving consideration to the fact that Coach may lose certain benefits, supplemental compensation or outside compensation relating to his employment at University, which are extremely difficult to determine with

certainty, or fairly or adequately, and that University may incur financial expenses and losses as a result of Coach's termination of this Agreement, which are also extremely difficult to determine with certainty, or fairly or adequately.

D. Coach and University further agree that payment of such liquidated damages by Coach and acceptance thereof by University shall constitute adequate and reasonable compensation to University for loss, damages and injury suffered because of such termination by Coach. The foregoing shall not be, nor be construed to be, a penalty.

E. In the event of termination by the Coach, all compensation, performance incentives and other benefits furnished by the University in this Agreement will terminate on the date of termination of this Agreement by the Coach, and the University will not be liable to Coach for any collateral business opportunities, personal service contracts, or other benefits associated with Coach's position as Head Coach of the Sports Program.

10. UNIVERSITY PROPERTY. All materials or articles of information, including, without limitation, personnel records, Coach's records, statistics or any other material or data in any form or medium furnished to Coach by the University, or developed by Coach on behalf of the University, or at the University's or Coach's direction or supervision, are and shall remain the sole, proprietary and confidential property of the University. Within ten (10) days of the expiration or termination of this Agreement with or without cause by either party, Coach shall immediately cause any such materials in his possession, custody or control to be returned and delivered to the University.

11. ASSIGNMENT. This is an Agreement for the performance of personal services. It is personal to the Coach and the University and may not be assigned to any other person or entity at any time without the express written consent of the other parties, or as may otherwise be provided by law.
12. CONSTRUCTION. This Agreement constitutes and expresses the entire Agreement and understanding of the parties hereto regarding employment of Coach by the University. This Agreement cannot be changed, modified or amended in any respect except in writing and signed by Coach, HGEA and the University.
13. HEADINGS. The words of this Agreement appearing as headings are for identification purposes only and are not a part of this Agreement.
14. APPLICABLE LAW. This Agreement shall be governed by and construed in accordance with the laws of the State of Hawai'i.
15. SEVERABILITY. If any portion of this Agreement is declared null, void, invalid or unenforceable, such provisions shall be stricken from the Agreement. All of the provisions of this Agreement not so stricken shall remain in full force and effect and shall be binding upon the parties.
16. IMPOSSIBILITY.
- A. University may cancel this Agreement at any time upon 30 days' notice without any further obligation under this Agreement, due to a determination by University to eliminate the Sports Program for lack of funds, or a decision to discontinue the program made in accordance with University policies and procedures.

B. If the University terminates this Agreement due to impossibility, then the University agrees that for a period of two (2) years it will not hire any other Head Coach of the University of Hawai'i at Manoa intercollegiate football program without first providing Coach an exclusive opportunity to negotiate terms for such a position for a period of thirty (30) days.

17. BOARD OF REGENTS APPROVAL. This Agreement may be subject to the approval of the Board of Regents of the University of Hawai'i.

IN WITNESS WHEREOF, the University, Coach and HGEA have signed this Agreement on the day and year first written above.

BOARD OF REGENTS
UNIVERSITY OF HAWAI'I

COACH

By: David McClain
David McClain
President
University of Hawai'i System

By: Gregory J. McMackin
Gregory J. McMackin

By: Bert T. Kobayashi, Jr.
Bert T. Kobayashi, Jr.
Coach's Attorney

By: Brenna H. Hashimoto
Brenna H. Hashimoto
System Director of Human
Resources

HAWAI'I GOVERNMENT
EMPLOYEES ASSOCIATION
AFSCME, LOCAL 152, AFL-CIO

By: Randy Perreira
Randy Perreira
Executive Director

Athletic Department Staff Member's Athletically Related Income Policy & Form

In accordance to NCAA Bylaw 11.2.2 and 11.3.2, coaches and staff are required to provide a written detailed account annually of all athletically related income and benefits from sources outside the institution. It is University of Hawai'i's Athletic Department's (UHAD) policy to require that all athletic department coaches and staff members must annually receive prior written approval from the Athletics Director for all athletically related income and benefits from sources outside the UHAD when all such income exceeds \$1,000 per event. Please check off the appropriate box(es) and submit all necessary documents for the period of June 1, 2008-May 31, 2009.

<u>Type</u>	<u>Name of Source</u>	<u>Amount of Income/Benefit</u>	<u>Check all Appropriate Boxes</u>	
			Prior Approval	Final
a) Television program -- attach contract			10000	10000
b) Radio program -- attach contract			16000	16000
c) Sports camps (outside funding source)				
d) Club coaching, outside lessons				
e) Country club memberships				
f) Complimentary ticket sales				
g) Income from annuities				
h) Endorsement for consultation contracts with athletics shoe, apparel, or equipment manufacturers, etc. --attach contract			2500	2500
i) Housing benefits (including preferential housing arrangements)				
j) Speaking Fees (Honorarium), Commercials, Other -- attach contract				10000
k) No athletically related income and benefits from sources outside the institution (that is not part of my contract)			28500	38500

Greg Mamaekia
Name of Staff Member

[Signature] 8/18/08
Signature Date

[Signature]
Final Signature (2009) Date

[Signature]
Athletic Director's Signature

8/14/09
Date

A report will be forwarded to
the Chancellor for approval
by August 14, 2009.