

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.

W I T N E S S E T H:

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

Employment Agreement by and between the
Board of Regents of the University of Hawai'i and Gregory J. McMackin

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