

NOTICE TO REQUESTER

TO: Daniel Kalish (HKM Employment Attorneys)
request+mpkw5f9tvk@foi.uipa.org

FROM: University of Hawai'i Athletics, c/o Jason Nagai

DATE THAT THE RECORD REQUEST WAS RECEIVED BY AGENCY: April 13, 2021

DATE OF THIS NOTICE: April 27, 2021

GOVERNMENT RECORDS YOU REQUESTED (attach copy of request or provide brief description below):

- 1) In accordance with FOIA and the state public records act, I am writing to request the entire employment contract (including all exhibits and appendices) for the head football coach, Todd Graham.

THIS NOTICE IS TO INFORM YOU THAT YOUR RECORD REQUEST:

- Will be granted in its entirety.
- Cannot be granted. Agency is unable to disclose the requested records for the following reason:
 - Agency does not maintain the records. (HRS § 92F-3)
Other agency that is believed to maintain records:
 - Agency needs further clarification or description of the records requested. Please contact the agency and provide the following information: _____
 - Request requires agency to create a summary or compilation from records, but requested information is not readily retrievable. (HRS § 92F-11(c))
- Will be granted in part and denied in part, **OR** Is denied in its entirety
Although the agency maintains the requested records, it is not disclosing all or part of them based on the exemptions provided in HRS § 92F-13 and/or § 92F-22 or other laws cited below.
 (Describe the portions of records that the agency will not disclose.)

RECORDS OR INFORMATION WITHHELD	APPLICABLE STATUTES	AGENCY JUSTIFICATION
Exact salaries are not subject to disclosure. Coach Employment agreements have salaries redacted, with the salary range for each position provided. Todd Graham has authorized the disclosure of his exact salary. See the attached Authorization to the University of Hawai'i at Mānoa Athletics Department to Release Compensation Information Protected by Hawai'i Revised Statutes § 92F-12(a)(14)	HRS §§ 92F-12(a)(14)	Salaries are not subject to disclosure, the salary range for the position is provided

Exact salary of the requested employee.	HRS § 92F-14(b)(6)	Employees have a significant privacy interest in their finances, including income.
Exact salary of the requested employee.	HRS § 92F-13(1)	Disclosure of exact salaries would be an unwarranted invasion of the employees' significant privacy interests.

REQUESTER'S RESPONSIBILITIES:

You are required to (1) pay any lawful fees and costs assessed; (2) make any necessary arrangements with the agency to inspect, copy or receive copies as instructed below; and (3) provide the agency any additional information requested. If you do not comply with the requirements set forth in this notice within 20 business days after the postmark date of this notice or the date the agency makes the records available, you will be presumed to have abandoned your request and the agency shall have no further duty to process your request. Once the agency begins to process your request, you may be liable for any fees and costs incurred. If you wish to cancel or modify your request, you must advise the agency upon receipt of this notice.

METHOD & TIMING OF DISCLOSURE:

Records available for public access in their entireties must be disclosed within a reasonable time, not to exceed 10 business days from the date the request was received, or after receipt of any prepayment required. Records not available in their entireties must be disclosed within 5 business days after this notice or after receipt of any prepayment required. HAR § 2-71-13(c). If incremental disclosure is authorized by HAR § 2-71-15, the first increment must be disclosed within 5 business days of this notice or after receipt of any prepayment required.

Method of Disclosure:

- Inspection at the following location: _____
- As requested, a copy of the record(s) will be provided in the following manner:
 - Available for pick-up at the following location: _____
 - Will be mailed to you.
 - Will be transmitted to you by other means requested: Emailed to: request+mpkw5f9tvk@foi.uipa.org

Timing of Disclosure: All records, or the first increment if applicable, will be made available or provided to you:

- Immediately
- After prepayment** of 50% of fees and 100% of costs, as estimated below.

For incremental disclosures, each subsequent increment will be disclosed within 20 business days after:

- The prior increment (if one prepayment of fees is required and received), or
- Receipt of each incremental prepayment, if prepayment for each increment is required.

Records will be disclosed in increments because the records are voluminous and the following extenuating circumstances exist:

- Agency must consult with another person to determine whether the record is exempt from disclosure under HRS chapter 92F.
- Request requires extensive agency efforts to search, review, or segregate the records or otherwise prepare the records for inspection or copying.
- Agency requires additional time to respond to the request in order to avoid an unreasonable interference with its other statutory duties and functions.

A natural disaster or other situation beyond agency's control prevents agency from responding to the request within 10 business days.

ESTIMATED FEES & COSTS AND PAYMENT:

FEES: For personal record requests under Part III of chapter 92F, HRS, the agency may charge you for its costs only, and fee waivers do not apply.

For public record requests under Part II of chapter 92F, HRS, the agency is authorized to charge you fees to search for, review, and segregate your request (even if a record is subsequently found to not exist or will not be disclosed in its entirety). The agency must waive the first \$30 in fees assessed for general requesters, OR in the alternative, the first \$60 in fees when the agency finds that the request is made in the public interest. Only one waiver is provided for each request. See HAR §§ 2-71-19, -31 and -32.

COSTS: For either personal or public record requests, the agency may charge you for the costs of copying and delivering records in response to your request, and other lawful fees and costs.

PREPAYMENT: The agency may require prepayment of 50% of the total estimated fees and 100% of the total estimated costs prior to processing your request. If a prepayment is required, the agency may wait to start any search for or review of the records until the prepayment is received by the agency. Additionally, if you have outstanding fees or costs from previous requests, including abandoned requests, the agency may require prepayment of 100% of the unpaid balance from prior requests before it begins any search or review for the records you are now seeking.

The following is an itemization of what you must pay, based on the estimated fees and costs that the agency will charge you and the applicable waiver amount that will be deducted:

For public record requests only:

Fees: Search	Estimate of time to be spent: ___ hours (\$2.50 for each 15-minute period)	\$0.00
Review & segregation	Estimate of time to be spent: ___ hours (\$5.00 for each 15-minute period)	\$0.00
Fees waived	<input checked="" type="checkbox"/> general (\$30), OR <input type="checkbox"/> public interest (\$60) (Only one waiver per request)	<\$ 0.00>
Other	_____	\$
	(Pursuant to HAR §§ 2-71-19 & 2-71-31)	
Total Estimated Fees:		\$0.00

For public or personal record requests:

Costs: Copying	Estimate of # of pages to be copied: _____ (@ \$ _____ per page, pursuant to HRS § 92-21)	\$ <u>0.00</u>
Delivery	Postage	\$ <u>0.00</u>
Other	_____	\$ <u>0.00</u>
Total Estimated Costs:		\$ 0.00

TOTAL ESTIMATED FEES AND COSTS from above: \$0.00

The estimated fees and costs above are for the first incremental disclosure only. Additional fees and costs, and no further fee waivers, will apply to future incremental disclosures.

PREPAYMENT IS REQUIRED (50% of fees + 100% of costs, as estimated above) **\$ 0.00**

UNPAID BALANCE FROM PRIOR REQUESTS (100% must be paid before work begins) **\$**

TOTAL AMOUNT DUE AT THIS TIME \$0.00

Payment may be made by: cash
 personal check payable to University of Hawaii, attn: Athletic Business Office
 other _____

For questions about this notice or the records being sought, please contact the agency person named at the beginning of this form. Please note that the Office of Information Practices (OIP) does not maintain the records of other agencies, and a requester must seek records directly from the agency it believes maintains the records. If the agency denies or fails to respond to your written request for records or if you have other questions regarding compliance with the UIPA, then you may contact OIP at (808) 586-1400, oip@hawaii.gov, or 250 South Hotel Street, Suite 107, Honolulu, Hawaii 96813.

HEAD COACH EMPLOYMENT AGREEMENT

This Head Coach Employment Agreement ("Agreement") is made and entered into this 4th day of December, 2020 by and between the University of Hawai'i (hereafter referred to as "University") and Michael Todd Graham ("Coach"), and is agreed to by the Hawai'i Government Employees Association ("HGEA"). The effective date of this Agreement is January 22, 2020.

WITNESSETH:

WHEREAS, the University seeks to employ Coach as Head Coach for the intercollegiate football program at the University of Hawai'i at Mānoa, (hereafter also referred to as "University") and wishes to enter into 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 the HGEA and, as such, Coach shall be entitled to all rights and benefits afforded other Bargaining Unit 08 members, except as modified herein;

WHEREAS, this Agreement modifies the terms and conditions of the collective bargaining agreement between the University and the 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 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 and will be responsible for the coaching, leadership, recruitment, promotion of an atmosphere of compliance, fiscal integrity, exhibition of professional behavior and conduct, supervision and promotion of the Sports Program and the seeking of the academic success of student-athletes during the term of

this Agreement and any extensions thereof. Coach shall diligently seek to provide leadership in building and maintaining a competitive, quality program with student-athlete academic performance which will reflect the values and high standards of the University. Coach shall diligently seek to provide leadership and oversight for the academic progress and success of student-athletes including promoting and maintaining an environment that encourages academic achievement as measured by academic eligibility, retention, and graduation. Concerned with the physical, mental, social and academic well-being of the student-athlete, Coach will continually work toward improving the academic progress rates of student-athletes, with Coach and team staff taking an active interest with every student-athlete to expedite progress toward degree completion.

- 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 and the other duties and expectations set forth by the Athletics Director consistent with head coaching positions of NCAA Division I schools. Coach shall comply with all applicable governing constitutions, by-laws, rules, legislation, policies, interpretations and regulations of the NCAA (collectively, the "NCAA Rules"), the University (collectively, the "University Rules") and any affiliated athletic conference or organization of which the University is or becomes a member ("Athletic Conference") (collectively, "Athletic Conference Rules"). Coach shall promptly advise the Athletics Director and the University's Athletics Compliance Office if Coach believes or reasonably should believe that violations of NCAA Rules, University Rules, and/or Athletic Conference Rules have occurred or will occur and shall cooperate fully in any investigation of possible violations conducted or authorized by the University, the Athletic Conference or the NCAA at any time.

- C. 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 and/or to the reputation of 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 University, Athletics Department, and/or Sports Program.
- D. Coach shall be evaluated in accordance with criteria, expectations and 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, Performance Evaluation of Administrative, Professional, Technical ("APT") Personnel, as amended.
- E. Coach represents to have special, exceptional, and unique knowledge, skill, ability, and experience 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 personally, or through any agent, actively seek or negotiate for full-time or part-time employment of any nature, during the term of this Agreement without first providing written notice

thereof to the Athletics Director. Coach agrees that he will not personally, or through any agent, accept other additional full-time or part-time employment of any nature for performance during the term of this Agreement without first obtaining written consent from the Athletics Director in accordance with applicable University conflicts of interest and outside employment policies and procedures.

- 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 enforce the terms of the Agreement; and
- iii. To indemnify and hold University harmless for its costs in the event that the University initiates and prevails in an injunction proceeding as described above, including court costs and attorney's fees.

F. 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 Agreement, including but not limited to conditions relating to Section 8.B; or
- ii. For misconduct; or
- iii. For violation of NCAA Rules, University Rules, and/or Athletic Conference Rules.

Discipline may include Coach forfeiting any bonuses and performance incentives (subject to Attachment 1) to which Coach may otherwise be entitled.

G. Pursuant to NCAA Bylaw 11.2.1, Coach has an affirmative obligation to cooperate fully in any infractions process, including the investigation and adjudication of a case (see NCAA Bylaw 19.2.3); and if Coach is found to be in violation of NCAA regulations, he shall be subject to disciplinary or corrective action as set forth in the provisions of the NCAA infractions

process (see NCAA Bylaw 19), including suspension without pay or termination of employment.

- H. Coach shall also be subject to disciplinary or corrective action and enforcement procedures for violations of NCAA Rules, Athletic Conference Rules, and/or University Rules, including suspension without pay or termination for deliberate, significant or repetitive violations of NCAA Rules, Athletic Conference Rules, and/or University Rules.
- I. This Agreement may be cancelled or voided by the University, irrespective of Section 8 of this Agreement or any provision of the Bargaining Unit 08 collective bargaining agreement, if (i) the University, the conference(s) to which Coach's previous institution(s) belong or the NCAA concludes or has reasonable basis to believe, after notice to Coach (including being made aware of the allegations at issue) and an opportunity to be heard, that Coach was involved in deliberate, significant or repetitive violations of NCAA Rules during previous employment at another institution; or (ii) the allegations made against Coach have a material adverse impact on Coach's ability to perform and fulfill his duties and responsibilities under this Agreement. In the event the University cancels or voids this Agreement under this paragraph, Coach's salary and any benefits, as set forth in this Agreement, shall terminate as of the date the University cancels or voids this Agreement under this paragraph, and the University shall not thereafter be liable to Coach for any damages of any kind.

2. TERM.

- A. Coach's employment hereunder shall be for a term of four (4) years, 11 months, and 10 days beginning on January 22, 2020 and ending on December 31, 2024, 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, the 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, the HGEA, and University or until terminated in writing by providing thirty (30) days written notice.

- 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. Head Football Coach Salary Range is \$392,142 to \$935,544

3. COMPENSATION.

- A. Annual Base Salary: University agrees to pay Coach for services rendered an annual base salary of [REDACTED], payable semi-monthly in equal installments, 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 Bargaining 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, bonus, performance incentives or benefits paid pursuant to this Agreement.
- D. Coach shall 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 Rules 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 related to or derived from University or other athletic activities;
- ii. Sports camps;
- iii. Housing benefits (including preferential housing arrangements);
- iv. Country club membership;
- v. Complimentary ticket sales;
- vi. Television and radio programs; and
- vii. Endorsement or consultation contracts with athletic shoe, apparel or equipment manufacturers.

4. BONUSES AND PERFORMANCE INCENTIVES.

A. Signing and Retention Bonuses: University agrees to pay Coach signing and retention bonuses as outlined below (collectively, "Bonuses"):

- i. Signing Bonus: By July 20, 2020, Coach will be paid a one-time lump sum signing bonus of [REDACTED];
- ii. Year 1, from July 1, 2020 through December 31, 2020: Coach will be paid a monthly retention bonus of [REDACTED], or a total potential retention bonus amount of [REDACTED] for the year 2020;
- iii. Year 2 through Year 5: (January 1, 2021 through December 31, 2024): Coach will be paid a monthly retention bonus of [REDACTED], or a total potential retention bonus amount of [REDACTED] annually for Year 2, Year 3, Year 4 and Year 5;

all payable in arrears (in the immediately subsequent month, pursuant to usual payroll processes). All Bonus payments are 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 Bargaining Unit 08 collective bargaining agreement. Coach is not eligible or entitled to any other bonuses except as set forth in this Agreement.

- B. Performance Incentives: Coach shall only be eligible for performance incentives as set forth in Attachment 1 to this Agreement. Coach is not eligible or entitled to any other supplemental pay or performance incentives except as set forth in this Agreement.

5. OTHER BENEFITS.

- A. Upon written approval of the Athletics Director, 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 ensure that such radio and television shows and camps and/or clinics are operated professionally, safely and follow University policies. The tuition and/or fees charged for such camps and/or clinics shall be established by University in consultation with Coach. For each such camp and/or clinic, Coach shall be compensated in an amount equal to the gross revenues generated:

- i. Less an administrative fee that is set annually by the Athletics Director for all Athletics Department camps and/or clinics, with such fee not exceeding ten (10) percent of net camp and/or clinic revenues,
- ii. Less salaries and fringe benefits paid to coaches for the camp and/or clinic, and
- iii. Less camp and/or clinic 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.

- B. Coach is prohibited from entering into any athletically related contracts, such as, but not limited to, equipment, apparel, shoes and personal services contracts with manufacturers, without the prior review and written approval of the University which shall not be unreasonably withheld. The parties agree that the University may reasonably disapprove of Coach's request to enter into an athletically related contract if the University already has a similar or like agreement in place.
- C. University may provide Coach the opportunity to participate in an Athletics Department courtesy car program, if available, in accordance with the following provisions:
- i. The Athletics Director or designee shall administer the car program;
 - ii. Under no circumstances shall Coach solicit auto dealers for cars;
 - iii. Coach shall obtain necessary auto insurance at Coach's own expense in accordance with State laws and/or requirements of the auto dealer;
 - iv. Coach shall be personally responsible for care and maintenance of the car; and
 - v. The auto dealer and/or the Athletics Director may terminate the courtesy car program agreement at any time.
- D. Upon the Athletics Director's prior written approval, Coach may designate Coach's two (2) immediate family members to accompany Coach to every away or neutral site regular season game each year at the expense of the University of Hawai'i Foundation, subject to availability of funds. If the team participates in a bowl game, Coach's two (2) immediate family members shall be allowed to accompany Coach at the expense of the University of Hawai'i Foundation, or the post-season sponsor, subject to availability of funds. Travel shall be to a University Sports Program, Athletic Conference, or NCAA event. Coach's immediate family members traveling with Coach shall not be deemed to be employees or agents of

- the University. The amount of allowed expenses and method of payment for the travel will be determined by the Athletics Director.
- E. Each year, so long as this Agreement is in effect, Coach may be provided up to twenty-four (24) season tickets for the Sports Program, up to twelve (12) additional tickets for each away football game, and up to six (6) season tickets for the University's other sports events. Tickets provided hereunder shall be for personal use only and shall not be sold by Coach or given or exchanged for any type of consideration or remuneration;
 - F. Each year, so long as this Agreement is in effect and subject to availability from private sponsorship, Coach may be provided a gas card redeemable for up to \$2,000.00 (Two Thousand and no/100 Dollars) in gas; and
 - G. Coach is eligible to earn vacation leave at a rate of fourteen (14) hours for each full month of service. Vacation leave shall be requested and agreed upon by Coach and the Athletics Director before being taken. Eighty (80) hours or ten (10) days of vacation leave may be accumulated beyond the period of an annual term. Two hundred forty (240) vacation hours or thirty (30) vacation days is the accumulated maximum allowed.
 - H. Upon the Athletic Director's prior written approval, Coach may be provided access to equipment, apparel and shoes that are part of a University approved agreement with a third-party vendor to supply the football coaching staff, support staff, and camp participants with said equipment, apparel and shoes, and to fulfill other program related needs.
 - I. The foregoing "Other Benefits" as described in this Section 5, 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 and pay any required taxes.
 - J. The provisions of the current Bargaining 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, 11 – Layoffs, 12 – Return Rights to APT Positions, 18 – Temporary Assignment, 19 – Overtime, 20 – Night Differential, 21 – Meals, 22 – Overload, 24 – Compensation Adjustment, 27 – Professional Improvement Leave, 31 – Vacation Leave, 35 – Travel, 39 – Salaries, 41 – Standby Pay, 43 - Entirety, Modification and Conflict, and 44 - Duration, and similar related articles in future or amended agreements.
- ii. Notwithstanding the above, the grievance procedure set forth in the Bargaining Unit 08 collective bargaining agreement shall not be applicable or utilized for any sanctions or actions imposed by the NCAA or an Athletic Conference. For actions related to violations of NCAA Rules or Athletic Conference Rules, Coach's exclusive appeal rights shall be limited to the procedures prescribed by the NCAA Rules or the Athletic Conference Rules, respectively.

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 reasonable for a NCAA Division I coach, as directed from time to time by the Athletics Director. 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 the University or, at the sole discretion of the Athletics Director (whose consent shall not be unreasonably withheld), to Coach.
- B. Coach will not undertake personal commercial endorsements in which Coach is identified or identifies himself as the Sports Program Coach or a University employee, or wears apparel or is pictured with items which would so identify Coach unless he is directed or authorized to do so by the Athletics Director whose consent shall not be unreasonably withheld.

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

7. COMPLIANCE WITH LAWS.

- A. Coach shall comply with all applicable provisions of Title 7, Public Officers and Employees, of the Hawai'i Revised Statutes.
- B. Coach shall also comply with and abide by all applicable federal, State of Hawai'i, and local laws and ordinances.

8. TERMINATION OF AGREEMENT BY UNIVERSITY. The University may terminate Coach's employment at any time during its term for convenience without cause or for cause, in the University's sole discretion, by providing written notice to Coach.

A. Termination Without Cause.

- i. This Agreement may be terminated by the University at any time without cause upon sixty (60) days written notice to Coach. In the event of such termination, University's sole obligation to Coach shall be to pay Coach as post-termination liquidated damages \$35,417 per month (or \$425,004 per annum) for the remainder of the term of the Agreement, *i.e.*, until December 31, 2024, subject to any reductions provided for in Section 8.A.iii, and payable in arrears in monthly installments by the fifth day of every month (collectively, the "Payments"). Coach shall not be entitled to any bonuses or performance incentives pursuant to Section 4 as part of post-termination liquidated damages.

As an illustration, if Coach is terminated without cause on June 30, 2021, after 17 months and ten (10) days of employment, and has no New Income as defined in Section 8.A.iii., Coach will receive Payments of (1) \$35,417 each month for six (6) months for the remainder of Year 2 (July 1, 2021 through December 31, 2021),

and (2) \$35,417 each month for Year 3 through Year 5 (January 1, 2022 through December 31, 2024).

- ii. These Payments are Coach's exclusive remedy, and Coach shall not have, and hereby releases and waives, any rights to claim damages or losses of any kind or nature, including without limitation, loss of any business opportunities, benefits, perquisites, or income from any source, and the Payments shall be in lieu of any and all of Coach's other legal remedies or equitable relief.
- iii. It is expressly understood by the parties hereto that any Payments made to Coach as post-termination liquidated damages under the provisions of this Section 8.A shall be reduced by any gross amounts to which Coach shall become entitled from all other sources of income from coaching, administrative, media, or any other related job in professional or collegiate sports including the University ("New Income"), as and for compensation for the rendition of services by Coach during the period of time in which Coach, pursuant to this Agreement, would have been employed by the University if the University had not so terminated this Agreement.

As an illustration, if Coach is terminated without cause on December 31, 2020, after eleven (11) months and ten (10) days of employment, and earns New Income equal to or exceeding \$35,417 per month for each of the next forty-eight (48) months of the term of this Agreement, i.e., January 1, 2021 through December 31, 2024, Coach shall receive no additional Payments since Coach's New Income is equal to or exceeds \$425,004 a year or \$35,417 a month for the period of January 1, 2021 through December 31, 2024.

As another illustration, if Coach is terminated without cause on December 31, 2020, after eleven (11) months and ten (10) days of employment, and earns New Income of \$20,000 per month for each of the remaining forty-eight (48) months of the term of this Agreement, i.e., January 1, 2021 through December 31, 2024, Coach shall receive \$15,417 (\$35,417 a month - \$20,000 in New Income) per month in Payments for the period of January 1, 2021 through December 31, 2024.

- iv. Coach agrees promptly to provide the University with copies of his income tax returns for any year in which the University makes payment(s) under this Section 8.A, as well as provide all data that will enable the University to implement its rights herein on a current basis. Coach warrants that he shall not enter into any employment arrangements (including "volunteer" or "trial" arrangements) utilizing deferred or partially deferred compensation arrangements, regardless of how such arrangements are characterized. To the extent permitted by applicable law, the University reserves the right to adjust the compensation due and owing if Coach's post-termination income is designed for the purpose of negating or reducing the New Income that would otherwise offset amounts owed to Coach by the University.
- v. In the event of a termination by the University without cause, University will be obligated to reimburse Coach for reasonable, approved, and substantiated work performance related expenses incurred by Coach prior to the termination date, if any.
- vi. Other than outlined in this Section 8.A, the University shall have no obligation to Coach.

- vii. The parties have bargained for and agreed to the foregoing liquidated damages provision, as set forth in Section 8.A, giving consideration to the fact that Coach may lose certain benefits, bonuses and performance incentives, 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 the Payments by University and acceptance thereof by Coach shall constitute adequate and reasonable compensation to Coach for any loss, damages and injury suffered because of such termination without cause. The foregoing shall not be nor be construed to be a penalty.
- viii. Coach's right to payment under this Section 8.A is subject to the express understanding that Coach or HGEA shall bring no grievance, claim or lawsuit of any kind against University or its employees or agents which arises out of or is in any way related to termination of Coach's employment under Section 8.A, or Coach's employment (except any claim for worker's compensation or enforcement of Coach's right to payment under this Section 8.A), regardless of when such termination may take place. In the event that Coach or HGEA brings such a grievance, claim or lawsuit, all obligations of University under this Section 8.A shall cease and terminate, and Coach shall repay, forthwith and in full, any and all Payments received by Coach from University under Section 8.A.
- ix. In the event of termination without cause by the University, the University's obligation to pay any fringe benefits to Coach will terminate on the date of termination of this Agreement by the University.
- x. Performance incentives earned prior to the date of termination of this Agreement by the University shall be paid to Coach, unless they have been forfeited by Coach or withheld by the Athletics

Director in the limited instances set forth in Attachment 1. Coach may be represented by counsel as allowed by applicable processes and procedures.

B. Termination for Cause.

- i. This Agreement may be terminated by the University at any time prior to its expiration, upon ten (10) days written notice, for cause which shall include, without limitation:
 - a. A deliberate, significant, or repetitive violation of NCAA Rules, Athletic Conference Rules, and/or University Rules by Coach or a failure to report such violation(s);
 - b. A deliberate, significant, or repetitive violation of NCAA Rules, Athletic Conference Rules, and/or University Rules relating to the Sports Program by any institutional staff members who report, directly or indirectly, to Coach, including but not limited to, an assistant coach, staff member, coordinator, or Sports Program student-athlete, and either:
 - (i) The deliberate, significant, or repetitive violation occurs or continues to occur after Coach knew or should have known that it was about to occur or was occurring, or
 - (ii) Coach failed to promote an atmosphere of compliance and/or maintain reasonable policies and procedures for the Sports Program to prevent deliberate, significant, or repetitive violations of NCAA Rules, Athletic Conference Rules, and/or University Rules;
 - c. Deliberate, significant, or repetitive violation of NCAA Rules, Athletic Conference Rules, and/or University Rules by any coach, staff or Sports Program student-athlete who report,

directly or indirectly, to the Coach that, upon determination of the University, reflect adversely upon the University;

- 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;
 - 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, subject to a reasonable opportunity to cure;
 - f. Committing material or repeated violations of any provision of this Agreement or University Rules;
 - g. Prolonged absence from the University without the Athletics Director's consent; or
 - h. For any other reason constituting cause, which could include the disciplinary causes described in Sections 1.F, 1.G, and 1.H.
- 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 compensation or damages, legal or otherwise.

- C. Termination Upon Death or Disability. If Coach dies, becomes permanently disabled, with "disabled" defined as unable to perform the essential functions of his position with reasonable accommodation(s), or totally disabled in excess of six (6) months in a twelve-month period, 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 in a twelve-month period.

9. TERMINATION OF AGREEMENT BY COACH.

- A. Coach may terminate this Agreement without legal or equitable penalty (including any payment of liquidated damages as referenced below) by giving verbal and written notice to the Athletics Director at least sixty (60) days in advance of termination that 1) termination of the Agreement will occur within the thirty (30) day period following the last scheduled regular season contest or, if applicable, last post-season contest, or 2) if in the last year of this Agreement, giving verbal and written notice to the Athletics Director that termination of the Agreement will occur at any time following the last scheduled regular season contest or, if applicable, last post-season contest.
- B. If Coach voluntarily terminates this Agreement prior to the end of the term set forth in Section 2.A above and without providing sixty (60) days written notice to the Athletics Director as set forth in Section 9.A, then Coach shall pay the University as liquidated damages, a lump sum amount of:
- \$1,200,000.00 (One Million Two Hundred Thousand and no/100 Dollars) if termination occurs in Year 1 (January 22, 2020 through December 31, 2020);
 - \$1,000,000.00 (One Million and no/100 Dollars) if termination occurs in Year 2 (January 1, 2021 through December 31, 2021);
 - \$800,000.00 (Eight Hundred Thousand and no/100 Dollars) if termination occurs in Year 3 (January 1, 2022 through December 31, 2022);
 - \$600,000.00 (Six Hundred Thousand and no/100 Dollars) if termination occurs in Year 4 (January 1, 2023 through December 31, 2023); or
 - \$425,000.00 (Four Hundred Twenty-Five Thousand and no/100 Dollars) if termination occurs in Year 5 (January 1, 2024 through December 31, 2024), provided that for Year 5 only, the liquidated damages lump sum amount shall be pro-rated on a monthly basis,

such that Coach shall pay the University a pro-rated amount corresponding to the number of months remaining in Year 5 following termination of this Agreement.

- \$00.00 (Zero and no/100 Dollars) if University leaves the Mountain West Conference, provided that Coach voluntarily terminates this Agreement during the period between November 1 and December 31 immediately following UH's announcement of its departure from the Mountain West Conference.

As an illustrative example, if on August 1, 2020 UH announces that it will be departing from the MWC July 1, 2021, Coach will need to voluntarily terminate this Agreement between November 1 and December 31, 2020 and will owe the University \$00.00 (Zero and no/100 Dollars).

Payment is due within ninety (90) days of the date on which the termination occurs. This payment is the University's exclusive remedy subject to Coach also complying with Coach's obligations under Sections 1.E, 8.A.viii, and 10. Coach shall not be liable or responsible for any other damages or loss to University, and the liquidated damage 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.

- i. 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.
- ii. 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.

- iii. 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 the University may incur financial expenses and losses and suffer other injuries or damages as a result of Coach's termination of this Agreement, which are extremely difficult to determine with certainty, or fairly or adequately.
- iv. 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 construed to be a penalty.

- C. Coach may terminate this Agreement for cause if University fails to pay him in accordance with Sections 3 and 4 of this Agreement.
- D. In the event of such termination by the Coach, all compensation, bonuses (including Bonuses), 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 in any way for compensation, bonuses (including Bonuses), performance incentives, and/or other benefits, including any collateral business opportunities, personal services contracts, or other benefits associated with Coach's position as Head Coach of the Sports Program. If any Bonuses or performance incentives are earned prior to the date of termination of this Agreement, they will be paid as scheduled,

unless the performance incentives have been forfeited or withheld in the limited instances set forth in Attachment 1.

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, whether or not in his possession, custody or control to be returned and delivered to the Athletics Director or designee. The University shall be entitled to withhold and deduct from any final payment that is owed to Coach by the University the amount of any indebtedness owed to the University by Coach in accordance with University Rules.
11. ASSIGNMENT. This Agreement is for the performance of personal services. This Agreement 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. The parties intend that this Agreement (including the attachment) shall be the final expression of their entire agreement with respect to the subject matter hereof, and supersedes (and may not be contradicted by evidence of) any prior or contemporaneous written or oral agreements or understandings. This Agreement cannot be changed, modified or amended in any respect except in writing and signed by Coach, the HGEA and the University.
13. HEADINGS. The words of this Agreement appearing as headings are for identification purposes only and are not 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. If the University or the Sports Program is abolished, the University may terminate this Agreement upon giving Coach not less than sixty (60) days prior notice of the abolishment of the University or the Sports Program. In such event, University will pay Coach within thirty (30) days following such prior notice a lump sum amount equal to one (1) year of Coach's then-current annual base salary.
- B. If the University terminates this Agreement due to the abolishment of the University or the Sports Program, as indicated in this Section, the University agrees that during what would otherwise have been the remainder of the term of this Agreement including any extensions, the University will not hire any other Head Coach for the Sports Program without first providing Coach an exclusive opportunity, for a period of thirty (30) days, to negotiate terms for such a position.

If the University decides to hire someone else and to not offer Coach the exclusive opportunity to negotiate comparable terms of such a position, the University will pay Coach within thirty (30) days of the decision to not hire Coach, a lump sum amount equal to post-termination liquidated damages he would have been entitled to pursuant to Section 8.A had he been terminated without cause instead of terminated for impossibility, less the amount already paid to Coach pursuant to Section 16.A above.

If Coach refuses to accept the University's comparable offer to return because he is employed elsewhere, and he earns an annual base salary less than Coach's annual base salary at the time of termination, the

University shall pay Coach the difference between his then-current annual base salary and his annual base salary at the time of termination, for the period from the date of termination until the date of his refusal to return, less the amount already paid pursuant to Section 16.A above; payment will be made within thirty (30) days of the Coach's refusal to accept the University's offer.

- C. If, through collective bargaining negotiations or an arbitration award, Bargaining Unit 8 members become subject to a wage and/or benefit reduction, such reduction shall also apply to Coach. Such adjustment shall not exceed the percentage reduction or duration applicable to other members of the bargaining unit.
17. BOARD OF REGENTS APPROVAL. This Agreement may be subject to the approval of the Board of Regents of the University of Hawai'i.
18. COUNTERPARTS. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Delivery of an executed counterpart of a signature page for this Amendment by facsimile or electronic transmission shall constitute effective execution and delivery of this Agreement.

[The remainder of this page is intentionally left blank.]

[Signature page follows.]

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

UNIVERSITY OF HAWAII

COACH

By: David A. K. Matlin
David A.K. Matlin
Athletics Director
University of Hawai'i at Mānoa

By: Michael Todd Graham
Michael Todd Graham
Head Football Coach

By: David Lassner
David Lassner
President
University of Hawai'i

HAWAII GOVERNMENT
EMPLOYEES ASSOCIATION
AFSCME, LOCAL 152, AFL-CIO

By: Randy Perreira
Randy Perreira
Executive Director

ATTACHMENT 1 TO HEAD COACH EMPLOYMENT AGREEMENT

Performance Incentives for
UH Head Football Coach Michael Todd Graham
(Effective January 22, 2020)

The following are the agreed upon Performance Incentives for the Head Coach Employment Agreement entered into on the 4th day of December, 2020, between the University of Hawai'i ("University") and Michael Todd Graham ("Coach"):

In lieu of all other performance incentives and in recognition of exemplary athletic and academic performance by the intercollegiate men's football team (the "Team") and the additional work required therewith, and as an incentive for Coach to assist the Team in achieving the goals described below, the University agrees to pay Coach, if earned, annual performance incentives in an amount equal to the sum of the amounts described in the following subsections, subject to all applicable state and federal tax reporting and withholding requirements:

A. Conference Achievements. These performance incentives under this Subsection A are cumulative.

- i. Team Wins the West Division of the MWC and Participates in the MWC Championship Game \$50,000
- ii. *Team Wins the MWC Conference Championship \$100,000

*Upon approval from the President for an exception to Executive Policy EP 9.216, Classification and Compensation of Coaches, Section VI, Performance Incentives for Coaches and Administrators, Coach shall have sole discretion to recommend the sharing, splitting, assignment, or apportionment of this incentive payment for the Team winning the MWC Conference Championship, if earned, with his associate and assistant football coaches, coordinators, administrative assistant for football operations, or video specialist as he chooses. Coach shall submit to the Athletics Director his

recommendation to share, split, assign, or apportion this incentive payment. The Athletics Director will have final approval authority for the Coach's recommendation. Upon approval of the Athletics Director, the University shall issue any such payment as requested, taxed appropriately to the respective associate and assistant football coaches, coordinators, administrative assistant for football operations, or football video specialist.

B. Bowl Game Achievements. It is understood that Coach shall receive only one (1) incentive payment under this Subsection B per contract year, which shall be based on the highest goal achieved.

i. Team Bowl Eligible (as defined by the NCAA) but not invited to a Bowl Game	\$10,000
ii. Team Participates in a Bowl Game (Payable only if no Conference Achievements in Subsection A are earned)	\$20,000
iii. Team Wins a Bowl Game	\$40,000
iv. Team Participates in Non-Playoff New Year's Six Bowl Game	\$300,000
v. Team Wins Non-Playoff New Year's Six Bowl Game	\$500,000
vi. Team Participates in Four-Team Playoff Bowl Game	\$750,000
vii. Team Wins Four-Team Playoff Bowl Game	\$850,000
viii. Team Wins National Championship	\$1,000,000

C. Coach of the Year Achievements. These performance incentives under this Subsection C are cumulative and apply in full if any such award is solo or shared.

i. Conference Coach of the Year	\$20,000
ii. National Coach of the Year (Eddie Robinson, Sporting News, Walter Camp, Bobby Dodd, Woody Hayes, Paul "Bear" Bryant, George Munger, Home Depot, AP, American Football Coaches Association (AFCA) Coach of the Year Award)	\$80,000

- D. Academic Progress Rate (APR) Achievements. It is understood that Coach shall for receive only one (1) incentive payment under this Subsection D per year, beginning with the results from the 2019-20 academic year, which shall be based on the highest goal achieved.
- i. Single year APR of 960 or greater (Applicable for 2019-20 and 2020-21 Academic Years only) \$10,000
 - ii. Single year APR of 980 or greater \$40,000
- E. Other Performance Incentives: For regular season games only, these incentive payments under this Subsection E are cumulative.
- i. Each home game (any game played in the State of Hawai'i) win against a Power 5 Team \$7,500
 - ii. Each neutral site game win against a Power 5 Team \$10,000
 - iii. Each away game win against a Power 5 Team \$12,500
 - iv. Eighth regular season win \$10,000
 - v. Ninth regular season win \$10,000
 - vi. Tenth regular season win \$10,000

If an NCAA Level I or II violation is reported in a contract year, the Athletics Director has the discretion, based on the potential involvement and complicity of the Coach, to withhold any performance incentives earned in that contract year, until a final ruling of no NCAA violation(s) has been made by the NCAA.

If the Sports Program as defined in Section 1 of the Head Coach Employment Agreement is found by the NCAA to have committed a Level I or Level II violation during the term of Coach's employment hereunder, the Coach will forfeit any performance incentives from the contract year in which the NCAA violation was reported.

If the Sports Program as defined in Section 1 of the Head Coach Employment Agreement is placed on NCAA Academic Progress Rate ("APR") probation, or the Coach is found to be in violation of Athletic Conference Rules and/or University Rules, the Athletics Director has the discretion to withhold any performance incentives earned in that contract year.

All eligible performance incentives earned in a contract year will be paid out in a lump sum at the conclusion of the contract year subject to the provisions above.

UNIVERSITY OF HAWAI'I

COACH

By: David A.K. Matlin
David A.K. Matlin
Athletics Director
University of Hawai'i at Mānoa

By: Michael Todd Graham
Michael Todd Graham
Head Football Coach

By: David Lassner
David Lassner
President
University of Hawai'i

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

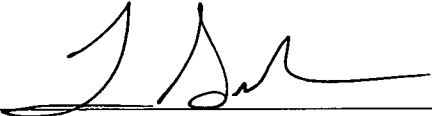
By: Randy Perreira
Randy Perreira
Executive Director

Authorization to the University of Hawai'i at Mānoa, Athletics Department to Release Compensation Information, Protected by Hawaii Revised Statutes § 92F-12(a)(14) ("Authorization")

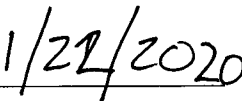
I, Michael Todd Graham, understand that the State of Hawai'i specifically provides me a right to personal privacy to the specific amount of my compensation. I understand that I am member of the Hawai'i Government Employees Association, AFSCME Local 152, AFL-CIO, Unit 8 - Administrative, Professional and Technical Employees of the University of Hawai'i and the community colleges.

Under Hawai'i Revised Statutes § 92F-12(a)(14), state agencies such as the University of Hawai'i must disclose government employee "compensation (but only the salary range for employees covered by or included in . . . bargaining unit (8))". I understand that with regard to my compensation, the University of Hawai'i respects personal privacy rights and as a member of Bargaining Unit 8 of The Hawai'i Government Employees Association and under the law, the University of Hawaii can only disclose my salary range without my permission.

I also understand that the Athletics Department is an important part of the University of Hawai'i's core mission of education. After due consideration and having been provided the opportunity to consult with legal counsel and/or my agent, I authorize the University of Hawai'i to disclose to the public the exact amount of my available compensation under my current Head Coach Employment Agreement with the University of Hawai'i at Mānoa, which is \$290,000 (annual base salary); \$200,000 signing bonus on July 20, 2020; \$45,000 monthly retention bonus from July 1, 2020 through December 31, 2020. From January 1, 2021 through December 31, 2024, a monthly retention bonus of \$42,500. In summary, the total annual compensation for 2020 is \$760,000 and total annual compensation for 2021 through 2024 is \$800,000. Finally, I understand that this Authorization contains all of the above available compensation information, and I specifically authorize the University to release this Authorization.



Michael Todd Graham



Date