

TO: Darian DeVries  
 FROM: Wren Baker  
 Vice President and Director of Athletics  
 RE: Memorandum of Understanding  
 DATE: March 24, 2024

Dear Coach:

It is with great pleasure I offer you the position of Head Coach of the Intercollegiate Men’s Basketball team (“Coaching Position”) at West Virginia University (“University”), beginning on April 1, 2024, and ending on April 30, 2029 at 11:59 p.m. (“Termination Date”). The Term may be extended if and only if the Parties mutually agree in writing and you understand that there is no expectation of future or continued employment beyond the Termination Date.

The one-year period beginning May 1 each year shall be deemed to be an “Agreement Year” as that term is used in this Agreement; provided, however, that the first Agreement Year shall be from April 1, 2024 through April 30, 2025.

You will be employed by and subject to the rules and policies adopted by the West Virginia University Board of Governors and any other policies and procedures adopted by the University and the Department of Intercollegiate Athletics, all as they may be modified from time to time. You will report to me, in my role as Vice President and Director for Intercollegiate Athletics.

Until such time, as these terms are expanded and incorporated into a mutually agreed upon employment contract with the University containing our standard employment terms for execution, the following represents the material terms of our offer and supersedes all prior agreements:

**1. Compensation and Benefits.** In consideration of your services and satisfactory performance of the terms and conditions of this Agreement, University agrees to pay you an annualized “Base Salary” for performance of duties related to traditional coaching activities, and “Supplemental Compensation” for performance of duties related to promotional activities which may include, but are not limited to appearances at events sponsored by the University, the Mountaineer Athletic Club, or any other University affiliated organizations; appearances and participation in radio, television and Internet programs produced by or on behalf of the University, its affiliated organizations, or other such programs licensed by the University.

The University agrees to compensate you according to the following schedule:

<b>Agreement Year</b>	<b>Base Salary</b>	<b>Supplemental Compensation</b>	<b>Total Compensation</b>
Agreement Year 1 (April 1, 2024 – April 30, 2025)	\$250,000	\$2,550,000	\$2,800,000
Agreement Year 2 (May 1, 2025 – April 30, 2026)	\$250,000	\$2,650,000	\$2,900,000

<b>Agreement Year</b>	<b>Base Salary</b>	<b>Supplemental Compensation</b>	<b>Total Compensation</b>
Agreement Year 3 (May 1, 2026 -April 30, 2027)	\$250,000	\$2,750,000	\$3,000,000
Agreement Year 4 (May 1, 2027 – April 30, 2028)	\$250,000	\$2,850,000	\$3,100,000
Agreement Year 5 (May 1, 2028 – April 30, 2029)	\$250,000	\$2,950,000	\$3,200,000

For avoidance of doubt, the combined value of your Base Salary and Supplemental Compensation shall be referred to as “Total Compensation.” Payment of Total Compensation shall be in accordance with the payroll policies of the University and subject to such deductions as may be required by applicable state and federal laws and regulations, and such employee benefit plans in which you elect to participate.

In addition to your Total Compensation, you will be eligible to participate in all employee benefit programs available to other University employees of like status. Such benefits shall be governed by the University’s policies and the laws of the State of West Virginia and will include, among others, health insurance, retirement, annual leave, sick leave, and all other standard benefits.

**2. Publicity Rights.** You specifically recognize and agree, as a material part and of the essence of this Agreement and in consideration of all compensation provided by the University, that the University, and any party under contract with the University for such purposes, has the exclusive royalty-free worldwide right and license to utilize your name, nickname, image, likeness, initials, autograph, signature, audio recordings, photographic portraits, pictures, statements, testimonials, voice, video or film portrayals, and all other of your publicity rights, as well as statistical, biographical, or other information or data relating to you, (collectively referred to as “Personal Indicia”) in the conduct and promotion of the University and/or the Programs, and as otherwise contemplated by this Agreement. The foregoing rights shall survive expiration or termination of this Agreement for purposes of historical references to your employment at the University. You, subject to this Agreement, are, and will remain, the sole and exclusive owner of your Personal Indicia and all proprietary and potentially proprietary rights therein.

**3. Allowances and Incentives.** You will also be entitled to annual performance incentives, if at any time during this contract, you or the team you are coaching achieves the specific benchmarks set forth on Attachment A, provided you remain employed and performing your duties as of the occurrence of the event triggering payment of the incentive. Further, so long as you remain employed in the Coaching Position, you will also be entitled to the following:

- a. Vehicle: You shall receive one (1) courtesy automobile; provided, however, prior to receipt of the automobile, you shall separately agree to the terms

and conditions of the Department of Intercollegiate Athletics' Wheels Club Driver Agreement.

- b. Tickets: You may elect to receive twenty (20) tickets for each home men's basketball game, four (4) tickets for each home football game, four (4) tickets for each home women's basketball game, and if applicable, ten (10) tickets for each Conference and National Collegiate Athletic Association (NCAA) tournament game in which the University's men's basketball team participates. You may also receive parking passes, pending availability, for such events described. Such tickets shall be distributed as allowed by law and by the rules and regulations of WVU, the Big 12 Conference and the NCAA, and are subject to applicable taxes.
- c. Sports Camps: You may be entitled to additional compensation for services performed related to youth camp(s) and/or clinic(s) held on campus as part of the Department of Intercollegiate Athletics' operations consistent with the provisions of West Virginia University Board of Governors' Policies, currently Finance and Administration Rule 5.5, and other applicable state laws.
- d. Athletic Apparel: To the extent funds are available pursuant to the Athletic Department apparel supplier contract, you will receive an allocation goods from the University's team apparel supplier no greater than Five Thousand Dollars (\$5,000) which is subject to applicable taxes.
- e. Club Membership: University shall provide a family membership to a golf club which will be subject to applicable taxes, if any. Coach shall be responsible for any food and beverage charges related to the membership and expenses.

4. **Relocation Support**. You will also be entitled to the following relocation support; however, if your employment with the University ends for any reason during the initial Agreement Year, you will be required to pay back in full the value of the Relocation Support outlined below:

- a. University shall provide a relocation stipend of One Hundred Thousand Dollars (\$100,000) that will be payable to you on or before June 1, 2024. This payment may be subject to applicable taxes which are your personal responsibility unless otherwise provided by federal or state law.
- b. To support your relocation to Morgantown, West Virginia, the University shall reimburse you for the actual, reasonable, and documented moving and relocation expenses. Requests for reimbursement must be submitted in writing with appropriate support documentation to the Vice President and

Director for Intercollegiate Athletics review and approval. This payment may be subject to applicable taxes which are your personal responsibility unless otherwise provided by federal or state law.

- c. If necessary, WVU will provide temporary housing for you in Morgantown for a period of 90 days of no more than \$15,000 (\$5,000 per month). Please note that temporary housing and relocation are taxable income to you.
- d. The University shall pay your buyout obligation to Drake University and University agrees to cover any tax liability amount(s) so that it is tax neutral to you. Any tax gross up payment shall be made no later than the end of calendar year 2024 or, if later, within thirty (30) days after you provide such documentation and information as are reasonably requested by the University to make a reasonable determination of the total amount of the tax gross up payment.

Relocation stipends and housing, which are taxable income, will be added to your income with the appropriate taxes withheld and report on your Form W-2.

**5. Automatic Extension Clause.** In the event that during one of the first two basketball seasons of your employment (2024-25 and 2025-26) you successfully coach the men's basketball team to a finish in the top 6 of the Big 12 Conference standings, including all conference tie breakers, your employment agreement will be extended for one (1) additional year through April 30, 2030.<sup>1</sup> If the extension is earned, your Supplemental Compensation in Agreement Year 6 (May 1, 2029 – April 30, 2030) will increase by One Hundred Thousand Dollars (\$100,000); therefore, your Total Compensation for Agreement Year 2030 will be Three Million and Three Hundred Thousand Dollars (\$3,300,000). Except as set forth in Section 7(k) below, all other terms and conditions of your employment will remain the same in Agreement Year 6.

**6. Representations.** You represent and warrant as follows:

- a. To the best of your knowledge, you have not violated any of the bylaws, rules or regulations of the NCAA or any athletic league or conference, nor are you aware of any such violations by individuals under your direct or indirect supervision;
- b. You are not aware of any threatened or pending NCAA, league or conference investigation involving your or their conduct at any NCAA member institution;

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<sup>1</sup> For the avoidance of doubt, if the men's basketball team finishes in the top 6 of the Big 12 Conference standings in both of the referenced seasons, only one (1) extension will have been earned.

- c. You have not been, and are not currently, the subject of any Title IX or similar investigation involving your conduct nor have you been disciplined, sanctioned, or found responsible for any Title IX or similar violations;
- d. You have not been, and are not currently, the subject of any investigation alleging you engaged in discriminatory conduct, nor have you been disciplined, sanctioned, or found responsible for engaging in discriminatory conduct;
- e. You have not been, and are not currently, the subject of any investigation involving the U.S. Department of Education's Office of Civil Rights nor are you aware of any threatened Office of Civil Rights investigations;
- f. You are not aware of any fact, occurrence, circumstance or state of affairs that could reasonably be expected to give rise to any violation, investigation, proceeding, discipline, sanction or finding described in the foregoing subsections 6.a-6.e;
- g. Your resume and credentials provided to the University or its employees, agents or representatives are true and accurate; and
- h. Other than as previously disclosed to the University in writing, you are under no obligations to any current or former employer or other third party, or pursuant to any applicable statute or regulation, which are in any way inconsistent with, which impose any restriction upon, or which require any payment by or on behalf of you in view of, your employment by the University or your undertakings under this Agreement, or that prevent you from complying with any other agreement that the University has with a third party.

7. **Standard Employment Terms and Conditions.** Your employment is subject to the following, which will be provided in further detail in your employment contract which will contain these and other standard University coaching clauses, and terms otherwise customary for agreements of such nature:

- a. You will be expected to fulfill all job responsibilities in a timely, thorough, constructive, cooperative, and positive manner, including responsibility for appraisals, administrative processes, and attendance at all meetings (including, but not limited to, a meeting with the Vice President and Director of Intercollegiate Athletics at the conclusion of each season).

- b. You will be required to obtain approval from the Vice President and Director of Intercollegiate Athletics or his designee, and such approval will not be unreasonably withheld, for the team's schedule each season as well as the rescheduling of any contests.
- c. You will be prohibited from receiving any benefits or compensation other than as described above from any other source without the University's prior written agreement.
- d. You will be required to take leave in accordance with the University's policies and you authorize the University to process leave accordingly.
- e. You will be required to perform the duties of a campus security authority under the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (the "Clery Act") and the duties of a responsible employee under the University's policies and procedures adopted for purposes of compliance with Title IX of the Education Amendments of 1972, the Violence Against Women Act's amendments to the Clery Act, and/or any similar state or local law, including without limitation BOG Rule 1.6 (collectively, "Title IX Policies").
- f. You will have an affirmative obligation to cooperate with the NCAA infractions process, as defined by the NCAA bylaws.
- g. You will provide appropriate support, supervision, and proper treatment of all student-athletes. If you are found by the University to have mistreated a student-athlete, violated NCAA rules and/or regulations, violated the Title IX Policies, or to have failed to report a violation that you know about or to have failed to prevent or stop a violation that you know about, you will be subject to disciplinary or corrective action pursuant to University and (if applicable) NCAA guidelines, including suspension without pay, or termination of employment for cause with no further monetary obligations by the University.
- h. If you terminate the contract without cause, or if the contract is terminated for cause by the University, the University will not be liable for any payments or benefits after the date of termination.
- i. The University specifically reserves the right to terminate this Agreement without further obligation at any time for cause. A termination for cause provision will be consistent with past University practices, which will include, but will not be limited to, strict adherence to all applicable NCAA rules and regulations, conference rules, University policies, as well as state and federal law; insubordination of the reasonable instruction of the Vice President and Director of Intercollegiate Athletics; conduct that is clearly contrary to the character and responsibilities of a person occupying the

Coaching Position; offends the traditions of the University, brings discredit to the University; or harms the University's reputation.

- j. A requirement that you not personally or, directly or indirectly, through any agent or representative, interview for, negotiate for, or accept other full-time or part-time employment of any nature without providing prior written notice to the University.
- k. A provision that you will be required to pay to the University, as liquidated damages, Thirty-Seven and One Half percent (37.5%) of your unpaid cumulative Total Compensation for the remainder of your term if you terminate your employment on or before April 30, 2028 (or April 30, 2029, if the automatic extension has been earned). All payments made pursuant to this provision shall be considered by the parties to be liquidated damages resulting from the University's inherent loss which cannot be estimated with certainty, or fairly or adequately compensated by money damages.
- l. A termination by the University without cause provision consistent with past University practices, which will require a severance payment limited to Seventy Five Percent (75%) of the Total Compensation for the remainder of the term of the contract, and subject to your duty to mitigate where the University will only be required to pay the difference, if any, between the severance payment and the total compensation from your new position. Upon the execution of a separation agreement in a form consistent with past University practices, such amount due to you shall be paid by the University in regular bi-weekly installments over the period from the effective date of termination through the end of the contract date. Notwithstanding the preceding sentence, with respect to any portion of the severance benefit that is payable in a calendar year after the calendar year in which the effective date of termination occurs ("Future Severance Pay"), a portion of the Future Severance Pay shall be accelerated in an amount equal to the federal and state income tax withholdings that would have been remitted by the University if there had been a payment of wages equal to the income includible by Coach under Section 457(f) of the Internal Revenue Code (the "Code") as of the effective date of termination (Future Severance Pay otherwise payable to Coach will be offset by any such Future Severance Pay accelerated) and such portion shall be paid by the end of the calendar year in which the effective date of termination occurs. The acceleration described in the preceding sentence is intended to comply with the requirements of Section 1.409A-3(j)(4)(iv) of the Code regulations (as it may be amended from time to time) and shall be administered and construed in whatever manner is necessary to ensure such compliance.

**8. Miscellaneous Notices and Requirements.**

- a. This Memorandum of Understanding, as well as the resulting formal, long-form employment contract are contingent on you successfully passing a criminal background check and confirmation of your resume and credentials. If the Human Resources Department determines that you have a criminal history and designates you as not being recommended for employment, this Memorandum of Understanding and the employment contract will become null and void.
- b. Please be advised that the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act require WVU to distribute an annual security report to current employees and to give notice of its availability to prospective employees. The annual security report includes statistics for the previous three years concerning reported crimes that occurred on campus, in certain off-campus buildings or property owned or controlled by WVU, and on public property within or immediately adjacent to and accessible from the campus. The report also includes institutional policies concerning campus security, such as policies concerning alcohol and drug use, crime prevention, the reporting of crimes, sexual assault, and other matters. You can obtain a copy of this report by contacting the WVU Police at 304-293-3136 or by accessing the following website: <https://police.wvu.edu/clery-act/annual-clery-report>.
- c. Additionally, WVU is required to maintain Federal I-9 Forms that verify each employee's identity and eligibility to work in the United States. To comply with federal requirements, new employees must bring employment eligibility and identity documentation to Employee Processing Services (EPS) on or before their first day of employment. Please see <http://payroll.wvu.edu> for a list of acceptable documents as well as employee processing locations and hours. You are also required to bring a voided check or savings information to establish mandatory direct deposit.

**9. Entire Agreement; Severability.** It is mutually understood that this Memorandum of Understanding contains all of the terms and conditions upon which we have agreed; further, West Virginia law will govern the validity, interpretation, performance, and enforcement of this Memorandum of Understanding.



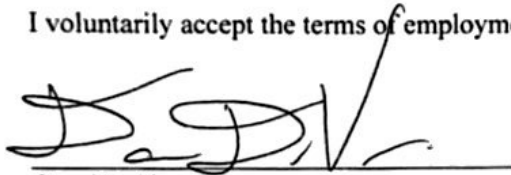
While these terms are binding, I trust that every reasonable effort will be made to mutually conclude a formal, long-form employment contract within sixty (60) calendar days of your start date with the University. The formal contract shall be consistent with other similar University employment agreements and the absence of a specific clause or provision in this Memorandum of Understanding shall not preclude the inclusion of such clause or provision in the final contract. However, this Memorandum of Understanding will serve as your employment contract until such time that a formal contract is signed.

Best Regards,

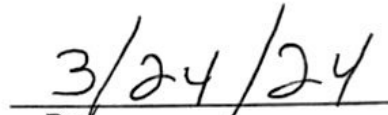
Handwritten signature of Wren Baker in black ink, including the phrase "Let's Do!" written in a cursive style to the right of the signature.

Wren Baker  
Vice President and Director of Athletics

I voluntarily accept the terms of employment as stated above.

Handwritten signature of the Coach in black ink, written over a horizontal line.

Coach's Signature

Handwritten date "3/24/24" in black ink, written over a horizontal line.

Date

## ATTACHMENT A – Annual Performance Incentives

As set forth in the MOU, this Coaching Position is entitled to the following annual performance incentives:

### A. NCAA Tournament Appearances (cumulative)

1.	First Round	\$20,000
2.	Second Round	\$30,000
3.	Third Round	\$40,000
4.	Fourth Round	\$40,000
5.	Final Four	\$100,000
6.	National Championship	\$200,000

### B. Big 12 Conference (or any other athletic conference that University may join)

1.	Regular Season First Place or Tie	\$40,000
2.	Regular Season Second Place or Tie	\$30,000
3.	Regular Season Third Place or Tie	\$20,000
4.	Regular Season Fourth Place or Tie	\$10,000
5.	Tournament Championship	\$40,000
6.	Tournament Runner-up	\$30,000

### C. Season Ticket Sales\* (not cumulative)

1.	Season ticket sales exceeds 5,000	\$10,000 or
2.	Season ticket sales exceeds 6,000	\$20,000

\*Season ticket sales includes full packages, WVU employee seasons, and mini-packages.

### D. Coach of the Year Awards (cumulative)

1.	Big 12 Coach of the Year	\$30,000
2.	National Coach of the Year**	\$50,000

\*\*As selected by NABC and/or Associated Press. Selection by both will not increase incentive.

### E. Annual Academic Performance Rating (cumulative 1-3)

1.	At least 930	\$10,000
2.	At least 950	\$20,000
3.	Team Grade Point Average of 2.65 (combined fall and spring semester)	\$10,000