

HEAD COACH EMPLOYMENT CONTRACT

CHANCELLOR/PRESIDENT'S
OFFICE

17 APR -4 PM 4: 25

BETWEEN
MAJOR APPLEWHITE
AND
UNIVERSITY OF HOUSTON
DEPARTMENT OF INTERCOLLEGIATE ATHLETICS

THIS AGREEMENT (hereinafter referred to as "this Agreement" or "the Agreement") is made by and among the University of Houston ("UH" or the "University") and Major Applewhite ("Coach") in order to employ Applewhite to serve as Head Coach of UH's Intercollegiate Football Team (the "Team"). UH and Coach will be hereinafter referred to collectively in the Agreement as the "Parties" to the Agreement. The Parties agree to be bound by what is stated in the Agreement.

AGREEMENT

UH and Coach agree as follows:

1. General Agreement of UH and Coach

1.1 Employment of Coach. UH employs Coach as Head Coach of the Team, and Coach accepts employment as outlined in the Agreement. Coach understands and agrees that the Agreement contains all the terms, conditions, and understandings of the Parties regarding Coach's employment by UH;

1.2 Reporting to Director of Athletics. Coach shall work under the immediate supervision of and report to the UH Director of Athletics ("AD" or "Director") and/or his or her designee and shall be employed at the discretion of the AD and the President of the University of Houston;

1.3 Performance of Duties. Coach shall perform the duties set forth in this Agreement, as well as in the job description located on the UH website, to the best of his abilities and to the satisfaction of the AD.

2. Term of Agreement

2.1 Length of Term. The term of the Agreement shall begin on December 11, 2016 and shall end on February 28, 2022 ("Term") subject to the termination provisions stated in the Agreement. After the initial twenty four (24) months of this Agreement, the AD will review Coach's performance, and if the AD determines based solely on the AD's discretion that Coach should receive a two year extension to this Agreement, a two year extension of this Agreement may be offered in writing by the AD to Coach;

2.2 Renewal of Agreement. This Agreement is renewable only if (a) the AD, on behalf of UH, extends a renewal contract to Coach, and (b) Coach accepts the offer by executing the renewal contract after Coach is provided with a reasonable opportunity to review (at least

fifteen (15) business days after the AD has offered Coach the renewal contract) and negotiate the terms and conditions of such offer. UH, however, does not grant Coach any claim to tenure in employment, continued employment, or any other rights not specifically provided in the Agreement.

3. Compensation

3.1 Compensation for Coach's Services. Subject to the provisions of the Agreement, UH shall provide the following to Coach:

3.1.1 Base Salary. The total amount of Fifty Four Thousand One Hundred Sixty Six Dollars and Sixty Six Cents (\$54,166.66) (\$650,000.00 when annualized), will be paid each month through the UH payroll system, as salary for services rendered during the Term of the Agreement ("Base Salary");

3.1.2 Non-Salary Compensation. The total amount of Eight Hundred Fifty Thousand Dollars and Zero Cents (\$850,000.00) payable in twelve (12) equal installments of Seventy Thousand Eight Hundred and Thirty Three Dollars and Thirty Three Cents (\$70,833.33) on the first of each month beginning on February 1, 2016.

3.1.3 Deferred Compensation. Coach will accrue deferred compensation in the amount of Two Hundred Fifty Thousand Dollars and Zero Cents (\$250,000.00) on December 31 of each year during the Term of the Agreement beginning with December 31, 2017. If Coach successfully completes the Term of the Agreement, Coach will receive a payout of One Million Two Hundred Fifty Thousand Dollars and Zero Cents (\$1,250,000.00). If Coach is terminated without cause, Coach will receive in deferred compensation, the amount that has accrued at the time of Coach's termination within thirty (30) days from the date of termination. If Coach is terminated for cause at any time during the Term of the Agreement, either by default, or by conduct, Coach is not entitled to any deferred compensation as provided in Sections 5.2, 5.3, and 5.4.2. If Coach terminates without cause any time during the Term of the Agreement, Coach is not entitled to any deferred compensation as provided in Section 5.4.1. Coach will be responsible for all taxes on any deferred compensation received under this Section 3.1.3;

3.1.4 Standard Benefits. Standard benefits will be provided, as extended to UH staff, including vacation and sick leave time and contributions to and/or eligibility for health and group life insurance, and a retirement account. However, Coach shall not be entitled to a payout of any accrued vacation leave time upon separation from employment with UH for any reason;

3.1.5 Additional Benefits. In addition to standard employee benefits, Coach will be provided with the following special fringe benefits associated with his position as Head Coach of the Team:

3.1.5.1 Courtesy Car. Coach shall be entitled to one (1) courtesy car for business use. Assignment of a courtesy car shall not afford Coach any ownership rights whatsoever in the courtesy car. UH shall pay for the cost of gas, oil, and insurance associated with Coach's, and any registered driver's use of car; provided, however, that UH shall not pay for any use of the car which is related solely to personal use

by Coach or any registered drivers. No unauthorized individuals will be permitted to drive the assigned courtesy car. Authorized individuals are Coach, Coach's spouse, and other UH Athletics Staff members who maintain a valid Texas Driver's License and motorist insurance, as required by law. A UH issued national gasoline company credit card is available to Coach for university related business. Upon termination or expiration of the Agreement, Coach shall immediately surrender the courtesy car and gas credit card to UH. With the exception of normal wear and tear, Coach shall be liable for any amounts needed to be expended to repair the courtesy car arising from Coach's use or operation of the courtesy car. Additionally, Coach may be liable for any damage to the courtesy car and/or to any other vehicle caused by the use or operation of the courtesy car, if such damage is caused by an unauthorized driver's use or operation of the courtesy car;

3.1.5.2 Mileage Reimbursement. If Coach is provided a courtesy car or a car allowance, mileage will only be reimbursed for approved recruiting expenditures at a set rate determined by the UH Department of Intercollegiate Athletics;

3.1.5.3 Responsibility for Excess Mileage. Unless agreed upon beforehand, Coach will be monetarily responsible for any excess mileage on the courtesy car; the cost per mile will be \$.15 per mile after exceeding the annual mileage limitation. The Coach's courtesy car mileage limitation is 20,000 miles per year. It is the Coach's responsibility to keep track of these miles by submitting the monthly courtesy car mileage update form;

3.1.6 Travel Expenses. Reimbursement will be made, in accordance with UH policy and procedure, for reasonable travel expenses incurred by coach that are directly related to performance of responsibilities set forth in the Agreement;

3.1.7 Incentive Income. The following merit incentives will be awarded to Coach if the most recent (previous four-year academic data) multi-year Team Academic Progress Rate (APR) score is 930 or higher (in accordance with NCAA standard, which may be adjusted by the NCAA) and if the applicable event listed in Sections 3.1.7.1 through 3.1.7.19 occurs during Coach's employment as Coach of the Team. Coach shall not be entitled to any incentive income in the event Coach terminates this Agreement without cause and does not coach the Team during the bowl game for that particular season. The Associate Athletics Director for Student-Athlete Development Services will verify the Team multi-year APR score.

3.1.7.1	At academic years end (after Spring Semester), Team overall GPA of 2.5 or above for scholarship student-athletes	\$10,000
3.1.7.2	At academic years end (after Spring Semester), Multi-Year Team APR Rate of 940 or above	\$10,000
3.1.7.3	At academic years end (after Spring Semester), Team Graduation Success Rate of 60% or above	\$10,000
3.1.7.4	Win nine (9) regular season games	\$100,000
3.1.7.5	Win ten (10) regular season games	\$100,000 ¹

¹ This incentive payment is in addition to the compensation paid to Coach pursuant to Sections 3.1.7.4.

3.1.7.6	Win eleven (11) regular season games	\$100,000 ²
3.1.7.7	Win twelve (12) regular season games	\$100,000 ³
3.1.7.8	Coach the Team in Conference Championship Game	\$10,000
3.1.7.9	Coach the Team and Win Conference Championship game or be designated as the overall Conference Champions or Co-Champions	\$100,000 ⁴
3.1.7.10	Coach the Team during a non-CFP "New Year's Six" Bowl Game	\$10,000
3.1.7.11	Coach the Team and Win a non-CFP "New Year's Six" Bowl Game	\$25,000 ⁵
3.1.7.12	Coach the Team during a CFP "New Year's Six" Bowl Game	\$100,000 ⁶
3.1.7.13	Coach the Team and Win a CFP "New Year's Six" Bowl Game	\$75,000 ⁷
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3.1.7.14	CFP Championship	\$100,000
3.1.7.15	Top 25 National Ranking at any time during the Season – CFP/USA Today/Coaches, and/or AP	\$7,500 ⁸
3.1.7.16	Top 25 Final National Ranking (at the end of the Season – Regular and Post- Season) – CFP/USA Today/Coaches, and/or AP	\$20,000
3.1.7.17	Conference Coach of the Year	\$10,000
3.1.7.18	National Coach of the Year designation by Nationally Recognized Poll or Association	\$20,000
3.1.7.19	Regular Season Tickets Sold above 17,500	\$10,000

For purposes of this Section 3.1.7, the term "regular season" shall not include conference championship games, bowl games, or any playoff game of any type. Any Incentive Income earned by Coach pursuant to this Section 3.1.7 shall be paid by University within thirty (30) days of the final game of the football season including any bowl game.

3.1.8 Camp Proceeds. Coach shall be entitled to 100% of camp proceeds, less customary expenses, generated as a result of the camp of the University of Houston. Monies can be used at Coach's discretion and as additional supplemental income to Coach or for assistant coaches' compensation.

3.1.9 Spousal Travel. Coach's spouse shall be permitted to accompany the Team (on charter flights to away football games at the discretion of the AD on a game by game basis) for the purpose of supporting Coach's official duties at the discretion of the AD;

² This incentive payment is in addition to the compensation paid to Coach pursuant to Sections 3.1.7.4 and 3.1.7.5.

³ This incentive payment is in addition to the compensation paid to Coach pursuant to Sections 3.1.7.4-3.1.7.6.

⁴ This \$100,000 will be added to Coach's Non-Salary Compensation in Section 3.1.2. This Non-Salary Compensation increase is in addition to the compensation paid to Coach pursuant to Section 3.1.7.8.

⁵ This incentive payment is in addition to the compensation paid to Coach pursuant to Section 3.1.7.10.

⁶ This \$100,000 will be added to Coach's Non-Salary Compensation in Section 3.1.2.

⁷ This incentive payment is in addition to the compensation paid to Coach pursuant to Section 3.1.7.12.

⁸ This incentive payment is limited to one earned incentive per season.

3.1.10 Complimentary Tickets. The following complimentary premium tickets (e.g., premium chair back with club access or better) shall be provided to Coach for UH sporting events: football regular season – twelve (12) lower bowl tickets and Head Coach Suite (Press Level) (20 tickets); men’s basketball season – six (6) lower bowl tickets. Tickets for post-season events to be provided as mutually agreed upon by both parties;

4. Responsibilities of Coach

4.1 **Obligations of Coach.** Coach promises to fulfill the following obligations:

4.1.1 **Devote Efforts.** Devotion of Coach’s best, ongoing, and exclusive efforts to performance of all duties and responsibilities contemplated by the Agreement;

4.1.2 **Support and Supervise and Properly Treat Student-Athletes.** Encouragement and support of student athletes on the Team in regard to personal, physical, and intellectual development, activities, and achievements, including an emphasis on each student athlete’s completion of an undergraduate degree program. Engaging in (and assuring every coach under Coach’s supervision is engaging in) fair, safe, and responsible treatment of student-athletes on the Team and avoiding behavior that could, in any way, jeopardize a student-athlete’s health, safety, welfare, or that could otherwise cause harm or risk causing harm to a student-athlete. Being knowledgeable of, and orienting student-athletes on the Team regarding applicable NCAA legislation, Conference rules, University policy, and Texas and federal law including criminal law. Engaging in reasonable and appropriate supervision of student-athletes on the Team to promote behavior that is consistent with such NCAA legislation, Conference rules, University policy, and Texas and federal law;

4.1.3 **Adhere to Budget.** Execution of these duties within the Coach’s allocated budget;

4.1.4 **Dedicate Effort.** Dedication of focused, ongoing attention, enthusiasm and efforts to coaching duties, Team members, and the success and furtherance of UH’s athletic program;

4.1.5 **Comply with Policies.** Compliance with all applicable policies and procedures set forth by the AD and with all applicable policies and procedures of UH;

4.1.6 **Comply with NCAA, Conference Rules.** Compliance with rules, regulations, and advisory opinions of the National Collegiate Athletic Association (NCAA) and of Conference, as presently in effect or as amended during any Term of the Agreement;

4.1.7 **Promote Academic Excellence.** Dedication to the academic excellence of the student-athletes by ensuring student-athletes on the Team are in maximum pursuit of degree programs and in compliance with NCAA academic standards, including, but not limited to, the NCAA Division I Academic Reform Initiatives;

4.1.8 Supervise Personnel. Supervision of job performance and all other incidents of employment, including assessing job performance and reporting suspected rules violations of assistant coaches and other personnel, if Coach is administratively responsible for the supervision of such individuals at any time during the Term of this Agreement;

4.1.9 Develop Programs. Development of programs and procedures with respect to the evaluation, recruitment, training and coaching of student-athletes that both foster successful competition and promote the welfare and academic achievement, including degree completion, of student-athletes;

4.1.10 Fulfill Responsibilities. Fulfillment of all job responsibilities in a timely, thorough, constructive, cooperative, positive, and professional manner, including responsibility for appraisals, administrative processes, and attendance at all meetings specified by the AD or the AD's designee;

4.1.11 File Annual Report. For activities approved in accordance with Section 4.2.4 of the Agreement, Coach shall file an annual report, in a form acceptable to the AD and within NCAA required guidelines, to identify and quantify all athletically-related income derived from sources other than the compensation provided under the terms of the Agreement; and

4.1.12 Receive Approval from AD for the Team's Schedule. The AD shall have the sole authority to arrange and/or approve the Team's schedule for each season as well as the rescheduling of any contests; however, the details of the total schedule will be arranged through close coordination and collaboration with Coach and the AD to ensure that the Team meets and maintains the University's overall objectives in intercollegiate athletics.

4.2 Prohibitions. Coach shall not:

4.2.1 Engage in Business. Engage in any business, personal, or professional activities that could or does compromise Coach's fulfillment, on a full-time basis and in a constructive and professional manner, of the responsibilities specified in and contemplated by the Agreement;

4.2.2 Commit a Violation. Engage in any conduct, whether related to performance of duties under the Agreement or not, that constitutes (as defined by the NCAA) a Level I or II violation or repetitive Level III violations of NCAA rules, bylaws, or regulations; or a significant and/or repetitive violation(s) of UH policies or procedures; Conference rules, legislation, regulations, or advisory opinions; of federal or state laws, regulations, or agency advisory opinions; of municipal ordinances; or of ethical principles applicable to higher education coaching positions;

4.2.3 Condone a Violation of NCAA Legislation, Conference Rules, University Policy, Texas or Federal Law Including Criminal Law. Condone a violation of NCAA legislation, conference rules, university policy, Texas or federal law including criminal law (any of which shall be referred to in this Section 4.2.3 as a "Violation") by a member of the Team's coaching staff or any person under Coach's supervision and direction,

including a student-athlete. For purposes of this Section 4.2.3, "condone" shall mean: (a) Coach's actual knowledge of and complicity in a Violation by a member of the Team's coaching staff or any person under Coach's supervision and direction, including a student-athlete; or (b) Coach's failure to report a known Violation by a member of the Team's coaching staff or any person under Coach's supervision and direction, including a student-athlete, to the AD within a reasonable amount of time. For purposes of this Section 4.2.3, a "known Violation" shall mean a Violation the Coach becomes aware of, or has reasonable cause to believe, is taking place or may have taken place;

4.2.4 Receive Other Benefits. Receive, either directly or indirectly, compensation, remuneration, or any other benefit from any source other than UH, for activities related to Coach's professional standing or employment with UH, including but not limited to (i) income from annuities related to the Coach's position with UH, (ii) sports camps or private lessons, (iii) television or radio programs, (iv) endorsement or consultation contracts, or (v) income from speeches, appearances, or written materials, without obtaining, on an annual basis, prior, written consent of the AD, which consent will not be unreasonably withheld. Coach also agrees to and shall provide the AD with an annual written report, as specified in Section 4.1.11, of any such arrangements, in a form acceptable to the AD;

4.2.5 Discredit UH or Bring Public Embarrassment to UH. Engage in any business transactions or commerce, appear on any radio or television program or in any public forum, or make statements to the media or in any public forum that may bring undue criticism or discredit to UH. Commission of or participation in by Coach of any act, situation, or occurrence or any conduct which, in UH's judgment, brings Coach and/or UH into public disrepute, embarrassment, contempt, scandal or ridicule or which constitutes a substantial failure to perform in good faith the duties required of Coach in Section 4.1 herein or failure by Coach to conform Coach's personal conduct to conventional standards of good citizenship, with such conduct offending prevailing social mores and values and/or reflecting unfavorably upon UH's reputation and overall primary mission and objectives, including but not limited to, acts of dishonesty, misrepresentation, fraud or violence that may or may not rise to a level warranting criminal prosecution by the relevant authorities;

4.2.6 Enter Into Agreements. Enter into any oral or written agreement, letter of understanding, contract or any other arrangement that seeks to bind, obligate, or involve UH, the Athletics Department, or any other component of the University of Houston in any transaction whatsoever. All such agreements will be disclaimed by UH, unless Coach submits any contemplated arrangement to the AD for development, processing, and approvals, if warranted;

4.2.7 Fail to Provide Notification of Other Coaching Opportunity. Should another college coaching opportunity or an NFL coaching opportunity be presented to Coach or a third party representative of Coach during the term of this Agreement, Coach must notify the AD of such opportunity or interest, and oral or written permission must be given by the AD to Coach before any discussions can be held by Coach with the anticipating coaching position principals, which oral or written permission shall not be unreasonably withheld;

4.2.8 Fail to Report to Title IX Coordinator. Fail to promptly report to the University's Title IX Coordinator any known violations of the UH System Sexual Misconduct Policy (including, but not limited to, sexual harassment, sexual assault, sexual exploitation, intimate partner violence, and stalking) that involve any student, faculty, or staff, or that is in connection with a university sponsored event. Any emergency situation should immediately be reported to 911 and/or law enforcement. For purposes of this Section 4.2.8, a "known violation" shall mean a violation or an allegation of a violation of Title IX that Coach is aware of or has reasonable cause to believe is taking place or may have taken place; or

4.2.9 Fail to Fulfill Duties. Negligently or intentionally fail to fulfill duties or conditions described in Section 4.1 to the reasonable satisfaction of the AD.

If Coach is determined to be involved in any of the activities or arrangements contemplated by this Section 4.2, without Coach having obtained prior, written consent of the AD, UH may at its sole discretion, (a) suspend the Coach, with or without pay, pending a final decision about the matter and/or (b) terminate the Coach's employment relationship pursuant to Section 6 of the Agreement. This section is intended to give UH the widest discretion permitted by applicable law (including constitutional and statutory provisions) to prohibit the conduct described in Sections 4.2.1 through 4.2.9 of this Agreement.

5. Termination

The Parties understand and agree that the obligations set forth in the Agreement shall, at all times and for purposes of any term or renewal of the Agreement, be subject to the termination provision in this Section 5.

5.1 Mutual Agreement of Parties. If UH and Coach mutually agree in writing, the Agreement may be terminated on the terms and date stipulated in the writing;

5.2 Termination for Cause – By Default. If UH gives written notice to Coach that Coach has substantially defaulted in the performance of any obligation under the Agreement, and Coach does not correct the default to the reasonable satisfaction of UH within 14 calendar days following the Coach's receipt of such written notice, then UH may immediately terminate the Agreement after the 14-day-correction-period has elapsed. If UH terminates the Agreement in accordance with this Section 5.2, it shall not be liable for the payment of any salary or other additional compensation or benefit following the end of the month in which the termination is effective;

5.3 Termination for Cause – By Conduct. UH may, upon notice from the AD to Coach and an opportunity for Coach to meet with the AD and respond, terminate the Agreement immediately if Coach violates any of the proscriptions against conduct specified in Section 4.2 of the Agreement. If UH terminates the Agreement in accordance with this Section 5.3, it shall not be liable for the payment of any salary or other additional compensation or benefit following the end of the month in which the termination is effective;

5.4 Termination without Cause. If either Party shall at any time desire to terminate this agreement without cause, such party shall give to the other party advance written notice of the

intent to terminate this Agreement without cause, and the Agreement shall terminate on the future date specified in such notice.

5.4.1 If Coach Terminates without Cause. In the event Coach terminates this Agreement without cause and accepts another coaching position, and unless otherwise agreed to by the Parties, Coach shall pay UH liquidated damages in the amount equal to the total Base Salary (Section 3.1.1) and Non-Salary Compensation (Section 3.1.2) remaining on the Agreement through the end of the Term plus the dollar amount equal to the total compensation the University will be obligated to pay any assistant coach on Coach's staff at the time Coach terminates the Agreement who are not retained on the new head football coach's staff. Coach's buyout amount in this Section 5.4.1 shall be increased by 50% to the extent Coach leaves UH for a head coaching position in Texas. The total buyout amount in this Section 5.4.1 (after calculating all amounts including any 50% increase in buyout for leaving UH for a coaching position in Texas) shall be increased by 10% if Coach fails to comply with Section 4.2.7.

Coach shall pay such liquidated damages in a lump sum within sixty (60) days after the effective date of termination. Coach shall be entitled to continue health insurance, at Coach's sole expense, as provided by law, but shall not be entitled to any benefits, salary, or further compensation of any kind provided under the terms of this Agreement. UH shall not be liable to Coach for any liquidated damages. UH shall not be liable for the loss of any collateral business opportunities or any other benefits, perquisites, or income from any sources that might ensue as a result of Coach's termination of this Agreement without cause. For the purposes of this Section 5.4.1, "cause" shall mean UH's knowing and deliberate failure to perform its obligations under this Agreement, and such a failure is not corrected by UH within fourteen (14) calendar days following receipt of written notice of such failure;

5.4.2 If UH Terminates without Cause. If UH terminates the Agreement without cause, then Coach agrees to accept liquidated damages, as specified in this Section 5.4.2, in complete satisfaction of and as payment in full for all obligations, if any, due and owing by UH to Coach pursuant to the Agreement. As liquidated damages, UH shall pay Coach a sum equal to the Base Salary remaining due under the Agreement (Section 3.1.1), but for termination of the Agreement, payable in equal monthly installments, per usual payroll procedure, until the date on which the Agreement would have expired. UH shall pay Coach in a lump sum within sixty (60) days from the date of termination without cause, the amount of deferred compensation accrued as of the date of termination of the Agreement (Section 3.1.3). Coach will also receive a pro-rated sum of deferred compensation for the partial year of his termination. This sum does not include, and Coach would not be entitled to, any other benefits or compensation that would have been afforded to Coach under the terms of the Agreement. The payment of liquidated damages as specified in this Section 5.4.2 is subject to the duty to mitigate in Section 5.4.4 below. Coach shall be entitled to maintain health insurance coverage at Coach's sole expense, as provided by law;

5.4.3 Liquidated Damages. The Parties have bargained for and agreed to, and consequently are bound by, the liquidated damages provisions in Section 5.4.1 and 5.4.2 above. The Parties agree and acknowledge the unique, specialized and exclusive nature of collegiate coaching and the difficulty in calculating damages in the event of a breach.

The Parties acknowledge the competitive environment of collegiate football coaching. The Parties recognize and acknowledge the valuable coaching and recruiting knowledge and relationships that Coach will develop with players, recruits, high schools, junior colleges, staff, coaches, alumni and donors while employed by the University of Houston and the difficulty the University of Houston will have in replacing that knowledge and those relationships. Coach understands and acknowledges that upon his departure, he will have unique and specialized knowledge of the University of Houston's schemes and tendencies. The Parties understand and acknowledge the special need for continuity in the University of Houston's football program. The Parties agree that Coach is highly compensated and that the University of Houston is making a substantial monetary investment in Coach. The Parties further understand and recognize the cost, difficulty and uncertainty with replacing Coach. The Parties agree and understand that ticket sales and television contracts are in part tied to the success of the Coach and the program. The Parties agree that payment of such liquidated damages shall constitute adequate and reasonable compensation for damages suffered because of termination without cause by UH, or because of termination without cause by Coach. The liquidated damages shall not be construed as a penalty. The liquidated damages provisions shall apply only to termination pursuant to Section 5.4.2 of this Agreement for termination without cause by UH, and termination pursuant to Section 5.4.1 of this Agreement for termination without cause by Coach;

5.4.4 Duty to Mitigate. Coach shall use reasonable efforts to obtain other employment as a head coach or coordinator/assistant coach in either the NFL or at an NCAA Division I institution if Coach is terminated by UH without cause. If Coach obtains other employment before the date on which the Agreement would have expired, but for the termination, the Coach shall provide the AD with written notice, within 10 calendar days, of such employment, including the (i) name and address of the new employer, (ii) position title, (iii) monthly salary, and (iv) start date. Upon receipt of this notice, UH will continue to pay Coach the difference, if any, between amounts that would have been earned by Coach under the Agreement and amounts earned by Coach in the new position. If, however, Coach does not notify UH about the new position within the 10-day period, UH shall not be liable for any further payments under Section 5.4.2 of the Agreement. For the purposes of this Section 5.4.4, "employment" shall mean working as an employee for another employer, as a consultant, as a self-employed person, or as an independent contractor. For the purposes of this Section 5.4.4, "amounts earned by Coach in the new position" shall mean any and all compensation received through Coach's employment, including, but not limited to, base salary, non-salary compensation, consulting fees, bonuses, and any other compensation.

5.5 Termination upon Inability of Coach to Perform Essential Job Functions. In the event the AD determines Coach is unable, because of mental or physical infirmity, to perform essential functions of the job as contemplated by the Agreement, even with reasonable accommodation, for a period of at least ninety (90) consecutive days, then UH may, at its option, terminate the Agreement upon 14-calendar days' notice to Coach;

5.6 Termination upon Death of Coach. If Coach dies during any Term of the Agreement, then the Agreement shall immediately terminate by operation of law;

5.7 Notices regarding Termination. All notices required under the termination provisions of this Section 5.0 shall be given in accordance with the notice provisions of the Agreement;

5.8 Effects of Termination. Unless otherwise provided in this Agreement, upon termination of the Agreement, as provided above, neither Party shall have any further obligation to the other, except for mutually agreed upon (in writing) obligations incurred prior to the date of termination or mutually agreed upon (in writing) obligations made specifically to extend beyond termination of the Agreement;

5.9 Liability after Termination. In no case shall UH be liable to Coach for any loss of collateral business opportunities or any other benefits, perquisites, or income from any other sources.

6. Miscellaneous

6.1 Hold Harmless. Coach agrees to and shall hold harmless and indemnify UH, its regents, officers, employees, and agents, from any and all suits, claims, demands, damages, liability, costs, and expenses, including reasonable attorneys' fees, incurred by UH because of Coach's intentional or negligent acts or omissions arising out of matters related to the Agreement, except for such suits, claims, or demands in which Coach seeks to compel UH to comply with its obligations under the Agreement or in which Coach seeks to enforce any remedies under the Agreement. These indemnification obligations shall continue after termination of the Agreement;

6.2 State Agency. UH is an agency of the State of Texas and, as such, no provision of the Agreement is intended to operate as a waiver or relinquishment of any right, privilege, or defense, including the defense of sovereign immunity, afforded UH under constitutional provision or law or any other state or federal law;

6.3 Child Support Obligations. As required by state law, a child support obligor who is more than thirty (30) days delinquent in paying child support, and a business entity in which the obligor is a sole proprietor, partner, shareholder, or owner with an ownership interest of at least twenty-five percent (25%) is not eligible to receive payments from state funds under a contract to provide property, materials, or services until all arrearages have been paid, or the obligor is in compliance with a written repayment agreement;

6.4 Approvals. This Agreement is subject to any approvals that must be obtained in accordance with law or UH policy;

6.5 Amendment. Except as otherwise expressly provided in the Agreement, no amendment or variation of the terms of the Agreement shall be valid unless in writing and signed by the authorized representative(s) of UH and by the Coach;

6.6 Choice of Law/Venue. The Parties agree that any matter related to or arising out of the Agreement shall be resolved in accordance with laws of the State of Texas, without giving effect to its conflict of laws provisions, and venue for any proceedings shall be in Harris County, Texas;

6.7 Non-delegable Duties. Coach acknowledges that Coach's skills, expertise, and experience related to coaching duties contemplated by the Agreement are unique, specialized, and non-delegable;

6.8 Assignment. Neither Party may assign any obligations, rights, or duties set forth in the Agreement without the mutual, written consent of both Parties;

6.9 Notices. In order to be effective, any notice sent for purposes of the Agreement must be sent to the address stated in the Agreement, by certified mail, return receipt requested, or must be delivered in person to Coach or to the President of UH, as applicable, as follows:

UH:

President
University of Houston
4800 Calhoun
Houston, TX 77204

with a copy to

Director of Athletics
University of Houston
4800 Calhoun
Houston, TX 77204

COACH:

Major Applewhite
4800 Calhoun
Houston, TX 77204

with a copy to

Trace Armstrong
422 S.W. 88 Terrace
Gainesville, FL 32607

6.10 Severability. If any provision of the Agreement is found to be illegal or unenforceable, then that provision shall be amended or deleted, without affecting the enforceability of the remainder of the Agreement;

6.11 Force Majeure. If either Party is unable to perform any obligation under the Agreement because of acts of nature not within the control of that Party, then the performance of both Parties is excused until such matters are resolved to the extent that performance may resume;

6.12 Entire Agreement. This Agreement contains the entire understanding of the Parties and supersedes any prior oral or written understandings, agreements, contracts, obligations or representations of the Parties;

6.13 Employment Matters. This Agreement sets forth all the terms of the Coach's employment and rights to such employment. This Agreement is intended as the sole source of Coach's employment rights, irrespective of any statement contained in any UH employment manual, UH staff manual, or any other similar document pertaining to UH staff or faculty;

IN WITNESS WHEREOF, the authorized representatives of UH have and the Coach has executed the Agreement as indicated below.

BY: Renu Khator
Renu Khator
Chancellor/President
4/5/17
Date

BY: Major Applewhite
Major Applewhite
Head Football Coach
3.30.17
Date

BY: Hunter Yurathek
Hunter Yurathek
VP of Intercollegiate Athletics
4-12-2017
Date

Approved as to form:
BY: Dona Cornell
Dona Cornell
General Counsel