



INTERCOLLEGIATE ATHLETICS Employment Contract – **HEAD COACH**

Name: Higashijima, Naya

Contract Type: Multi-Year

Sport: Women's Swimming &
Diving

Title: Athletic Coach 4 (Y7020)

Working Title: Head Coach

This Employment Contract, ("Contract") is entered into between **The University of New Mexico ("UNM" or "University")** and Naya Higashijima ("**Coach**").

- 1. Position:** Coach shall be responsible for all duties assigned by and under the direct supervision of the Director of Intercollegiate Athletics ("DIA"). Coach shall devote full-time to the duties and responsibilities of Head Coach / Women's Swimming & Diving and shall not engage in any other athletics-related employment, except as specifically approved by the DIA or as provided below. Further, under no circumstances, shall Coach interview for, negotiate for, or accept employment as a coach of any other institution of higher education or with any professional sports team, requiring performance of duties prior to the expiration of this Contract, without the prior approval of the DIA. Such approval shall not be unreasonably withheld. Failure to obtain such prior approval from the DIA shall constitute a material and actionable breach of this Contract.
- 2. Salary and Contract Period:** The Contract Term shall be for **four years (4)** for the period **June 19, 2023, through June 30, 2027** (the "Contract Term"), which constitutes **four (4)** separate and distinct contract employment years (each a "Contract Employment Year" or collectively the "Contract Employment Years"). Contract Employment Year 1 shall begin June 19, 2023 and end June 30, 2024. Each subsequent Contract Employment Year shall commence July 1 and end June 30 of the following year. Coach's base salary will be **Seventy-Five Thousand Dollars (\$75,000.00)** per Contract Employment Year. Coach will not be entitled to salary increases as provided in University Administrative Policy (UAP) 3500, Wage and Salary Administration, Section 4.1. Coach understands and agrees that this Contract does not guarantee or entitle Coach to any annual increases in base salary unless otherwise expressly provided in this Section. Employer-paid fringe benefits shall be paid in addition to the base salary consistent with University policies, provided, however, that Coach may accrue up to 168 hours of paid annual leave but will not be entitled to payment for unused annual leave upon separation from employment as provided in UAP 3400, Annual Leave, Section 7.

In the event the University suffers significant financial crisis, whether such occurs before or after the execution of this Agreement, the base salary amount set forth herein shall be reviewed by the DIA, and, in the DIA's sole discretion, may be modified in order to comply with University actions in responding to the financial crisis; provided, however, that in no event shall such base salary be modified by more than fifty percent (50%). Similarly, the University reserves the right to furlough Coach for a duration not to exceed fifty percent (50%) of the Contract Term.

- 3. Other Compensation:** Coach may be granted the following compensatory benefits during the period of performance of this Contract:
 - a. Car Donor Program:** Subject to availability and at the discretion of the DIA, in accordance with the Lobo Club car donor program and in cooperation with local Albuquerque car and truck dealers, the University or Lobo Club may provide a courtesy car for Coach's personal and business use. Coach shall be responsible for obtaining automobile liability insurance in accordance with insurance laws of the State of New Mexico, and shall comply in all respects with the rules and procedures of the car donor program now in place and as they may change over time. In addition, Coach shall comply with all federal and state laws, National Collegiate Athletic Association (NCAA) rules, University policies, and any other policies or directives of the Athletic Department applicable to the car donor program. Coach understands and agrees that the provision of a courtesy car is in the exclusive discretion of the

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DIA, and that Coach will surrender any courtesy car provided upon request of the DIA. Coach further understands and agrees that any courtesy car provided pursuant to this Section constitutes taxable compensation to Coach and that Coach is solely responsible for the tax consequences associated therewith.

- b. **Relocation Allowance:** Employee is eligible for a relocation allowance for costs associated with relocation in accordance with UAP 4020, New Employee Relocation Allowance. The amount for relocation expenses under this section will be a one-time amount of **Fifteen-Thousand Dollars (\$15,000.00)**, paid to Employee in Employee's regular paycheck upon the successful completion of a Relocation Allowance Request form to be submitted by the hiring officer. Relocation allowance amounts and the value of any hotel rooms or temporary housing provided at no cost to the Employee during the relocation period are reported as taxable income to the Employee, and applicable withholding taxes will be withheld from payment. Employee's year-end tax statement (Form W-2) will include the gross amount of this allowance and all applicable taxes withheld in the calendar year of the payment.

If Employee fails to complete the Contract Term, Employee is required to repay a prorated portion of the allowance, proportional to the number of months remaining in the Contract Term. Employee also agrees and understands that reimbursement may be accomplished in whole or in part via deduction from Employee's final paycheck as permitted by New Mexico law, Section 50-4-2 NMSA (1978). The amount of the deduction will not exceed the minimum wages to which the Employee would be entitled under state and federal law. Employee further agrees and understands that if the deduction from Employee's final check does not reimburse the University in full for moving expenses paid to the Employee, Employee will reimburse the University the remaining balance within sixty (60) days of the termination date. therewith.

All compensatory benefits are subject to compliance with University policies and procedures, the Mountain West Conference (MWC) rules and regulations, and the NCAA policies and procedures.

- c. **Program Promotion:** Coach shall actively promote the University's Intercollegiate Women's Swimming & Diving Program by giving speeches, and making herself available to alumni, supporters, civic and community groups, and as otherwise reasonably requested by the DIA. Coach shall exercise reasonable effort and devote such personal time to these activities as is customarily exerted by comparable head coaches in the promotion of Women's Swimming & Diving of the highest quality at other institutions of higher education engaged in National Collegiate Athletic Association ("NCAA") Division I Women's Swimming & Diving. In addition, Coach agrees to engage in reasonable efforts, as requested by the University, to promote non-athletic endeavors of the University, particularly as an ambassador and spokesperson for the University's fundraising efforts. As compensation for these activities on the part of Coach, the University shall pay to Coach the following additional sum:

- i. Contract Employment Year One (2023-2024): **Five Thousand Dollars (\$5,000.00)**

The University will pay the amount described in this Section in its entirety within 31 days of the effective date of this contract. Such compensation is in addition to, not a component of, Coach's base salary. Coach understands and agrees that payments to Coach pursuant to this Section constitute taxable compensation and that Coach is solely responsible for the tax consequences associated therewith.

- 4. **Incentive Salary:** In addition to the compensation set forth above, Coach is eligible for incentive payments according to the following categories of professional achievement.

- a. **Team Achievement Mountain West**
 - i. Mountain West Conference Champion \$2,500

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| b. <u>Team Achievement NCAA</u> | |
| i. NCAA Participation, Qualify Individual Student-Athlete | \$500 |
| ii. NCAA Participation, Qualify Relay Team | \$500 |
| iii. NCAA Champion, Individual Student-Athlete | \$1,000 |
| iv. NCAA Champion, Relay Team | \$1,000 |
| v. NCAA Team Champion | \$10,000 |
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| c. <u>Coaching Recognition</u> | |
| i. Mountain West Coach of the Year | \$2,500 |
| ii. National Coach of the Year | \$2,500 |
|
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| d. <u>Student Athlete Academic Performance</u> | |
| i. Academic Performance Rating (APR) 985 or higher | \$2,500 |

Coach will be eligible for incentive salary payments after completing the Contract Employment Year in which the incentive is earned. Incentive payments, if any will be paid no later than **ninety (90) days** after the end of such Contract Employment Year. Coach understands and agrees that incentive payments, if any, are taxable compensation and that Coach is solely responsible for the tax consequences associated therewith.

Coach may request that the University pay any portion or all of the incentive payments earned under this Section to one or more full-time assistant coaches who are under Coach's direct supervision and control. Coach shall inform the DIA of this request in writing no later than **thirty (30) days** after the end of the Contract Employment Year in which the incentive is earned, and shall specify what amounts are to be paid to her and to her staff members, respectively. The DIA may, in his sole discretion, approve, modify or reject Coach's request. If approved, the University shall pay the incentives earned under this Section as requested by Coach.

The incentives contemplated by this section are contingent upon sufficient appropriations being available to fund them. In the event that, in any Contract Employment Year the legislature of the state of New Mexico reduces its appropriation to the University or to the Athletic Department, below the current level as of the effective date of this Agreement, these incentives shall be paid in the reasonable discretion of the DIA.

- 5. Independent Income:** Subject to compliance with Athletics Department, University, MWC and NCAA policies, as currently in force and from time to time amended, and with advance written permission of the DIA, Coach may earn other athletics-related income during the period of this Contract. Coach understands and agrees that such activities are independent of Coach's University employment and the University shall have no liability or responsibility for any claims arising therefrom. Coach agrees to indemnify the University and hold it harmless from any claims arising out of any independent contractual or other business and/or employment arrangements with third parties. Coach's advance written requests pursuant to this Section shall include the sources and amounts of any independent income contemplated by this Section. Coach understands and agrees that Coach is solely responsible for any tax liability associated with such activities.

With the written permission of the DIA, Coach may organize and conduct a camp, clinic, lessons, or sports league pursuant to the Athletics Department's summer camp policy. Coach understands and agrees to comply with the terms UNM Athletics' Camp Manual Policy and Procedures provided by the UNM Athletics Compliance office including, but not limited to, income reporting and background checks. These activities are performed in addition to Coach's assigned duties and responsibilities, and shall not interfere with those assigned duties and responsibilities. Coach shall receive no compensation from the University in connection with these activities. Coach understands and agrees that Coach is solely responsible for any tax liability associated with such activities and that the University shall have no liability or responsibility for any claims arising therefrom. Coach shall be responsible for obtaining general liability insurance in accordance with insurance laws of the State of New Mexico, and will name the University as a third-party beneficiary of such insurance policies. Coach agrees to indemnify the University and hold it harmless from any claims arising out of any camp-related activities.

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6. Duties and Responsibilities: Under the supervision and direction of the DIA, Coach shall be responsible for the strategic planning, supervision, management, direction and leadership of the University's Intercollegiate Women's Swimming & Diving Program in an efficient and effective manner to achieve the goals and objectives of the Program and the Department of Intercollegiate Athletics as established by the DIA. Said goals and achievements shall be in concert with the mission of the Department of Intercollegiate Athletics and the University, including the planning development, implementation and maintenance of an NCAA Division I Women's Swimming & Diving program that is characterized by excellence, exemplified by academic achievement and development of character, maturity and a sense of fair play in Women's Swimming & Diving. To that end:

- a. Coach shall perform her duties and responsibilities under this Contract to the reasonable satisfaction of the DIA, including but not limited to the supervision and evaluation of assistant coaches and those support staff who report to Coach, provision of leadership for the effective recruiting, coaching and instruction of student athletes as well as all responsibilities normally associated with and performed by a Head Coach of an NCAA Division I Women's Swimming & Diving program at a member institution of the Mountain West Conference or other major NCAA Division I institution. Coach agrees to maintain a courteous and collegial working relationship with Athletics Department staff. Coach shall perform all duties set forth in this Contract and reasonably assigned by the DIA including, without limitation, assisting in the development and implementation of recruiting plans and strategies consistent with all applicable NCAA and MWC regulations; and, in general shall be responsible for evaluating, recruiting training conditioning, instructing, supervising, disciplining and coaching student athletes to prepare them to compete in the MWC and against college competition at the national level.
- b. Coach shall require and use her best efforts to ensure that institutional control of the Women's Swimming & Diving program is sustained through the development, implementation and maintenance of a vigorous and effective program for compliance with all NCAA, MWC regulations and bylaws, and all policies of the University.
- c. Coach shall act and speak positively about the University and the University's athletic programs in private and public forums.
- d. Coach shall perform her duties and responsibilities while comporting herself at all times in a professional and personal manner consistent with good sportsmanship and with the high moral, ethical and academic standards of the University and the Department, the MWC, and the NCAA.
- e. At no time shall Coach be involved in discreditable conduct that is inconsistent with professional standards of the University, or that is seriously prejudicial to the best interests of the University, or that violates the University's mission in a substantive manner.
- f. Coach shall exercise due care such that any personnel under her responsibility or supervision shall comport themselves in a similar manner.
- g. Coach shall make every reasonable effort to ensure that all student athletes' academic requirements are met in cooperation with and in support of the University faculty and administration.
- h. Coach recognizes and supports the importance to the University of its academic standards and requirements, and Coach hereby agrees to abide by and support these and any future academic standards adopted by the University, in all aspects of her duties and set forth herein.
- i. Coach shall not disclose or use any secret, proprietary, or confidential information about the University or its business affairs or activities, all of which shall be deemed "confidential information," except during the term hereof and then only for the benefit of the University.

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- j. Coach, as a recognized and notable spokesperson for intercollegiate athletics and education, shall support the University administration mission, policies, and decision, in all of her dealing and activities with the public

7. **Conduct of Athletics Personnel:** Coach, hired to administer, conduct, and/or coach intercollegiate athletics, shall act with honesty and sportsmanship at all times in promoting the honor and dignity of fair play in the context of the high standards associated with collegiate competitive sports. Coach understands and agrees that honesty and sportsmanship at all times, and the promotion of the honor and dignity of fair play in the context of the high standards associated with collegiate competitive sports, are material to this Contract, and that any conduct that undermines these values may be grounds for discipline, which can include termination for cause in accordance with Section 11.

Coach acknowledges that negative statements concerning the Athletics Department, the University, and the State of New Mexico made to the media or in public may be detrimental to recruiting, fundraising, and the morale of coaches, staff and players in the Sport program and other programs of intercollegiate athletics and the reputation of the University. Therefore, Coach agrees that Coach is highly encouraged that whenever appropriate and in a timely manner, will first direct any complaint or criticism that Coach may have of a particular University Sports Program, the Athletics Department or the University to the DIA before directing the complaint or criticism to anyone else. This shall not prohibit Coach from making communications protected by whistleblower laws. Further, Coach shall make reasonable efforts to project a positive image with respect to the University, Athletics Department, and Sport Program. Any conduct that disparages the Sport Program, Athletics Department or the University may be grounds for discipline, which can include termination for cause in accordance with Section 11.

Coach shall not engage in activities or conduct injurious to the reputation of the University, including without limitation, repeatedly conveying to one person, or conveying to an assembled public group, negative information concerning the University.

8. **Unethical Conduct:** Coach will refrain from unethical conduct. Unethical conduct may include, but is not limited to, the following examples of misconduct:
- a. Refusal to furnish information relevant to an investigation of a possible violation of an NCAA regulation when requested to do so by the NCAA or the University;
 - b. Involvement in arranging for fraudulent academic credit or false transcripts for a prospective or an enrolled student-athlete;
 - c. Involvement in offering or providing a prospective or an enrolled student-athlete an improper inducement or extra benefit or improper financial aid;
 - d. Furnishing the NCAA or the University false or misleading information concerning Coach's involvement in or knowledge of matters relevant to a possible violation of an NCAA regulation;
 - e. Receipt of benefits by Coach for facilitation or arranging a meeting between a student-athlete and an agent, financial advisor, or a representative of an agent or advisor (e.g., "runner");
 - f. Refusal to furnish information relevant to an investigation of a possible violation of federal or state law or University policy when requested to do so by lawfully authorized federal or state agents or University officials or when otherwise required to report under University policy; or
 - g. Refusal to comply with regulatory or policy requirements, including but not limited to the reporting requirements imposed by the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, Title IX of the Education Amendments of 1972 (the "Clery Act"), and any and all University policies relating thereto.

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Coach's agreement to refrain from unethical conduct is a material term of Coach's employment and this Contract. Coach expressly understands and acknowledges that unethical conduct is sufficient justification for **Termination of Contract for Cause** as described in Section 11.

- 9. Compliance With Laws, Policies, Rules and Regulations:** Coach shall be responsible for being fully knowledgeable of, and being in full compliance with, the policies, rules, and regulations of the University, the MWC, or any other conference with which the University may elect to affiliate, the NCAA (as they are currently in force and as they are amended from time to time), as well as applicable federal laws, including but not limited to the Clery Act; Title IX of the Education Amendments of 1972; applicable New Mexico laws; and University policies regarding crime reporting and sexual harassment, including, but not limited to sexual harassment, sexual misconduct, and sexual violence. Coach shall immediately report any apparent or confirmed violations of the above laws, policies, rules, and regulations occurring in the department to the university's compliance staff, the DIA, or UNM's Division of Human Resources, as well as other University official/departments as may be required by University policy. Upon receiving any information about a person who has experienced sexual misconduct, harassment, sexual assault or other sexual violence, Coach shall also report the information to UNM's Office of Compliance, Ethics and Equal Opportunity (CEEO) within 24 hours, or as soon as reasonably practicable, by calling CEEO at 505-277-5251 or by email at oeounm@unm.edu. Failure by Coach to report immediately to the University's athletics compliance staff and, as appropriate the DIA or other responsible University official/department, any alleged violations of University, MWC or NCAA policies, rules or regulations by Coach or, upon becoming aware of violations by any coaches, staff members, student-athletes, or other persons under Coach's supervision that become known to Coach, which failure, in the reasonable opinion of the DIA (i) creates material risk for the University or Program or (ii) negatively affects the University or the Program in a material manner, shall subject Coach to disciplinary or corrective action as set forth in the NCAA enforcement procedure. Such failure to report shall also subject Coach to immediate suspension, at the University's sole discretion, for a period of time without pay, or termination as described in Section 11

If the University determines that Coach is in violation of MWC or NCAA rules and regulations while employed by the University, or was in violation of NCAA or conference rules and regulations during prior employment at another NCAA member institution, Coach shall be subject to disciplinary or corrective action as set forth in the NCAA enforcement procedure and may be suspended by the University at the University's sole discretion for a period of time without pay, or terminated as described in Section 11. If Coach fails to meet Coach's obligations as stated in this Section or fails to complete any University-required training within six (6) months of the Effective Date of Coach's employment, or otherwise fails or refuses to meet her obligations under any law, regulation, policy or procedure, Coach may be subject to disciplinary action up to and including suspension and/or termination as described in Section 11.

Coach specifically acknowledges and agrees that Coach's compliance with applicable laws, policies, rules, and regulations are material obligations of this Contract.

- 10. Non-Applicability of University Employment Policies and Due Process Guarantees:** This Contract creates no expectancy of or property interest in continued employment with the University. Accordingly, no provisions of the University Administrative Policy manual (UAP) addressing or governing separation of employment, discipline and contract employees generally are applicable to Coach. No due process guarantees relating to progressive discipline, suspension, discharge, and appeal processes are accorded to Coach under this Contract. All rights, processes and notices afforded to Coach or required from Coach are specifically enumerated under sections 11, 12 and 13 of this Contract.
- 11. Termination of Contract for Cause:** The University reserves the right to immediately terminate this Contract for cause at any time. Cause includes violation of any material obligation of Coach under this Contract or any amendments hereto. In addition to a material breach of this Contract, the parties agree that the following items constitute cause for termination under this Section:

- a. insubordination;


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- b. Coach's neglect of, or failure or refusal to perform, her duties as Head Coach in any material respect after receiving written notice of such failure or refusal from the DIA.
- c. malfeasance;
- d. Coach's failure to comport herself in a manner consistent with good sportsmanship or the moral, ethical or academic standards specified in this Contract or in University policies and regulations;
- e. failure of Coach or any other person under her supervision and direction to comply with applicable standards or regulations of the MWC or the NCAA, federal or state law, or University rules, regulations or policies, as amended from time to time, regardless of whether such violation results in the imposition of sanctions or other consequences;
- f. Coach's failure to promote an atmosphere of compliance or properly and effectively monitor personnel under her supervision and direction which results in material non-compliance by Coach's personnel with applicable standards or regulations of the MWC or the NCAA, federal or state law, or University rules, regulations, or policies, as amended from time to time, regardless of whether such violation results in the imposition of sanctions or other consequences;
- g. Coach's instruction to any assistant coach, student or other person to respond inaccurately or incompletely to any request or inquiry concerning a matter relevant to University's athletic programs or other institution of higher learning which shall be propounded by University, the NCAA, the MWC or other governing body having supervision over the athletic programs of University or such other institution of higher learning, or required by law;
- h. Coach's failure to fully cooperate in the enforcement and implementation of any drug testing and/or education program established by the University, the MWC, the NCAA, or pursuant to federal or state law that is applicable to student athletes or other employees of the University;
- i. Coach's being charged with, indicted for, or pleading no contest to or being convicted of (i) any felony; or, (ii) any misdemeanor involving gambling, drugs or alcohol. For purposes of termination of this Contract for cause, the parties agree that a conviction or plea will serve as conclusive evidence of the commission of the alleged crime by Coach;
- j. engaging in conduct which either (i) displays a continual, serious disrespect or continual, serious disregard for the mission of the University, (ii) brings Coach into public disrepute (iii) constitutes moral turpitude or breaches the high moral and ethical standards applicable to Coach as a visible representative of the University;
- k. major or repeated minor violation of policies, rules, or regulations of the University; major or repeated secondary infractions of the MWC or NCAA rules (including any similar infraction which may have occurred at Coach's prior employment); major or repeated minor violation of New Mexico or federal laws, regulations, or policies;
- l. Coach's misconduct, whether or not relating to Coach's employment, which is not in the best interest of the University or which violates the University's mission, interests, policies, or regulations, and which causes material damage to the reputation or dignity of the University or its athletics program;
- m. participating in any (i) gambling, bookmaking, wagering, or betting involving any athletic contest whatsoever wither by soliciting, placing or accepting a bet or wager or through a bookmaker, a pool, or any other method of gambling; or (ii) counseling, instruction, encouraging, or knowingly and intentionally permitting any student-athlete, assistant coach, or other individual under or subject to Coach's control, authority, or supervision to participate in such activity;

- n. failure to report promptly to the DIA in writing any violations or potential violations known to Coach of University Rules including, but not limited to, those by Coach, her assistant coaches, student athletes or other persons under the direct control or supervision of Coach;
- o. failure to take reasonable steps to ensure the physical and mental wellbeing of student athletes on the Women's Swimming & Diving team;
- p. willful or grossly negligent conduct injurious to the University's Intercollegiate Women's Swimming & Diving Program or the University;
- q. any other reason constituting adequate cause for termination pursuant to official written employment policies of the University or its Athletics Department.

If this Contract is terminated for cause, the University shall have no further liability except for base salary and fringe benefits accrued to the date of termination.

Nothing in this Section shall prevent, limit or otherwise interfere with the University's right to terminate the services of the Coach without cause at any time subject to the provisions of Section 13 herein. Coach expressly agrees that nothing in this Agreement creates any expectancy of or property interest in continued employment and no University Administrative Policy addressing or governing progressive discipline, discharge or the appeal process for discharge shall be applicable to Coach.

12. Termination by Request of Coach: Coach may terminate this Contract at any time upon written notice to the DIA. In the event that Coach terminates this Contract pursuant to this Section, the University shall have no further liability except for base salary and benefits accrued to the date of termination.

Coach understands and agrees that termination of this Contract pursuant to this Section prior to the expiration of the Contract Term will cause irreparable harm to the reputation and athletic programs of the University in an amount not capable of precise calculation or quantification. Therefore, if Coach terminates this Agreement during the Contract Term then Coach agrees to pay to the University as liquidated damages, and not as a penalty, as follows:

If termination occurs in Contract Employment Year One:	\$150,000.00
If termination occurs in Contract Employment Year Two:	\$75,000.00
If termination occurs in Contract Employment Year Three:	\$37,500.00
If termination occurs in Contract Employment Year Four:	\$0 (zero)

Liquidated damages may be modified to a lesser amount at the discretion of the DIA, with approval of the University President.

Pursuant to this Section, any sum of liquidated damages shall be paid in full to the University within sixty (60) days of termination. Failure to pay the full sum of liquidated damages shall constitute a material and actionable breach of this Contract. The liquidated damages shall be the University's sole and exclusive quantification and limitation of Coach's damages owed to the University pursuant to this Section and the University shall seek no other remedies or damages whatsoever against Coach related to Coach's termination of this Contract.

13. Termination by Request of University: The University may voluntarily terminate this Contract at any time by giving Coach written or verbal notice. Notwithstanding any terms or provisions of this Contract or that may be found in University policy regarding employment that may be interpreted to the contrary, or unless otherwise specifically agreed to in writing, Coach's employment relationship with the University shall terminate upon delivery of the notice of termination or as otherwise set forth in the notice of termination.

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- a. **Severance:** In the event of termination of this Contract by the University other than for cause as defined in Section 11, the University agrees to pay, and Coach agrees to accept, as severance, the sums stated in the chart, below:

If the termination occurs in Contract Employment Year One:	\$150,000.00
If the termination occurs in Contract Employment Year Two:	\$75,000.00
If the termination occurs in Contract Employment Year Three:	\$37,500.00
If the termination occurs in Contract Employment Year Four:	The remainder of payment owed to Coach for the remaining period of Contract Year Four

The sums described in this Section shall be deemed a severance payment to Coach and shall be paid in approximately equal monthly payments to Coach over the greater of thirty-six (36) months or the number of months remaining in the Contract Term at the time of termination, on the last day of each month following termination, with New Mexico and federal tax withholdings associated with the payment of salary withheld, until paid. Coach understands and agrees that there will be no retirement withholding or contribution on the severance payments described in this Section, and that no benefits of any kind will accrue to Coach as a result of such payment. Coach agrees that as a condition of receiving any severance payments under this Section, except for any earned but unpaid compensation to the date of termination and any legally protected rights Coach has under any employee benefit plan, Coach must agree to not disparage the University and must execute a comprehensive release in a form to be determined by the University, in its sole discretion (the "Release"). Severance payments will not commence until Coach has fully executed the Release.

- b. **Mitigation/Offset:** Coach agrees that the University's obligation to make payments under this Section shall be subject to Coach's obligation to mitigate his damages by immediately making reasonable, good faith and diligent efforts to obtain other employment. Should Coach obtain soccer-related employment, including employment as a media consultant, on-air personality or analyst, the University's financial obligations under this Section shall cease so long as Coach's monthly compensation from such employment, including base salary, deferred compensation, public relations and bonuses and incentive salary actually earned or received, but excluding reasonable and usual non-monetary fringe benefits such as health and life insurance, club memberships and use of vehicles ("Monthly Compensation"), is equal to or greater than the University's obligation to pay severance under this Section, prorated on a monthly basis.

If Coach's Monthly Compensation from such employment is less than the University's monthly obligation to pay severance under this Section, the amount of the University's obligation to pay severance shall be reduced by the amount of Coach's Monthly Compensation from such employment.

Any amount received in mitigation of damages by Coach that acts as an offset against the amount paid by the University shall apply retroactively.

- c. **Notice:** Coach shall promptly, but no less than ten (10) days from acceptance of other employment, notify the DIA in writing of such employment and the total compensation to be paid to Coach for the employment. In addition, Coach agrees to provide the University with a copy of Coach's W-2 form for each calendar year as long as the University has the obligation to make severance payments under this Section.

Except as otherwise expressly provided in this Section, all rights and obligations due from each party to the other under this Contract shall cease upon the effective date of termination as set forth in the notice required by this Section. Additionally, no notice from the University shall be required for the Contract to expire by its terms on June 30, 2027, and there exists no expectancy of renewal of this Contract.

14. **Termination by Disability or Death:** It is expressly understood and agreed that this is a personal service agreement between the parties and that in the event of the incapacity of Coach to the degree that he is

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rendered incapable of performing the obligations and duties contained in this Contract for a period of more than ninety (90) consecutive days, as certified by two (2) physicians selected or approved by the University, or her untimely demise, this Contract shall terminate and the University shall have no further financial or other obligation whatsoever hereunder except to pay Coach her base salary and benefits accrued to the date of termination.

- 15. Complete Employment Contract:** This Employment Contract and any Exhibits attached hereto and incorporated herein by reference, constitute the final and complete agreement between the parties. Any amendments or further addenda, hereafter agreed to by both parties, shall be in writing and executed with the same formality. All prior and contemporaneous negotiations and agreements pertaining to Coach's employment by the University are deemed incorporated into this Contract and such documents and instruments are deemed to have been abandoned if not so incorporated. No verbal understandings, statements, promises, or inducements contrary to the terms of this Contract exist.
- 16. Severability:** If any provision of this Contract is held to be invalid or unenforceable for any reason, such provision shall be ineffective to the extent of such invalidity or unenforceability; provided, however, that the remaining provisions will continue in full force without being impaired or invalidated in any way unless such invalid or unenforceable provision or clause shall be so significant as to materially affect the Parties' expectations regarding this Contract. The Parties shall replace any invalid or unenforceable provision with a valid provision which most closely approximates the intent and economic effect of the invalid or unenforceable provision.
- 17. Governing Law and Forum:** This Contract, and any other amendments, shall be governed by and construed in accordance with the laws of the State of New Mexico.
- 18. Waiver:** No waiver by either party of any rights under this Contract will be valid unless set forth in a writing signed by that party. The failure of either party to insist upon strict performance of this Contract shall not be construed as a waiver of any of the party's other rights under the Contract.
- 19. Captions:** The captions used herein are for convenience only and do not in any way limit or amplify the terms and provisions hereof.
- 20. Mandatory Binding Arbitration:** The Parties agree to submit to binding arbitration any claims that they may have against each other, of any nature whatsoever, other than those prohibited by law, pursuant to the New Mexico Uniform Arbitration Act.

IN WITNESS HEREOF this Employment Contract has been duly executed by the parties hereto on the respective dates appearing below each party signature.

**THE REGENTS OF THE
UNIVERSITY OF NEW MEXICO**

Eddie Nunez

Eddie Nunez (Jun 20, 2023 12:50 MDT)

Eduardo J. Nuñez
Director of Intercollegiate Athletics

Date: Jun 20, 2023

Garnett S. Stokes

Garnett S. Stokes (Jun 20, 2023 16:11 MDT)

Garnett S. Stokes
President

Date: Jun 20, 2023

COACH

Naya Higashijima

Naya Higashijima (Jun 20, 2023 12:34 MDT)

Naya Higashijima
Head Coach / Women's Swimming & Diving

Date: Jun 20, 2023

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