

# EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT (“Agreement”) is entered by and between the Board of Governors of **MISSOURI STATE UNIVERSITY**, Springfield, Missouri, (“University”) and Holly Hesse (“Coach Hesse”) and is effective as of July 1, 2022 (“Effective Date”).

WITNESSETH:

**WHEREAS**, the University desires to employ Coach Hesse as the Head Coach of the University’s softball team, and Coach Hesse desires to serve in the position of the Head Coach of the University’s intercollegiate softball team under the terms and conditions set forth herein.

**NOW, THEREFORE**, in consideration of the promises, covenants, and agreements herein set forth, and for other good and valuable consideration, receipt of which is hereby acknowledged, the parties hereto covenant and agree as follows:

**1. Term of Employment**

The University does hereby employ Coach Hesse for a two-year term commencing on July 1, 2022, and continuing through June 30, 2024 (“Term”) as the Head Coach of the University’s intercollegiate softball team, subject to extension, renewal or termination, on the terms and conditions hereinafter provided.

**2. Duties**

During each year that the Agreement is in effect, Coach Hesse shall be responsible for fulfilling the following duties:

- (a) **Head Softball Coach.** Coach Hesse shall well and faithfully serve the University in her total assignment, yet in regard to the position of her assignment relating to athletics and as Head Coach in the sport of softball, she shall at all times devote her

whole time, attention, and energies to the conduct and coaching of softball on behalf of the University, and to the administration and management of her coaching staff and shall do and perform all services, acts, and things connected therewith as the Director of Athletics and the Associate Director of Athletics for the University shall from time-to-time direct, which are of a nature customarily and properly belonging to the duties of a head coach in the sport of softball.

- (b) **Other Activities Permitted.** Notwithstanding the foregoing provisions, Coach Hesse shall be permitted to conduct camps or clinics for her sole benefit as further described herein, camp activities other than any University related camp, accept promotional endorsements and contracts (provided that such endorsements and contracts do not compete with the products or services offered by University's sponsors or imply an endorsement on the part of the University), including but not limited to athletics sportswear, speaking engagements and commercials for her sole benefit not inconsistent with this Employment Agreement and NCAA regulations and subject to University approval. Similarly, Coach Hesse shall not permit her likeness or any phrase identified with her to be used in a manner that is detrimental to the rights of University's multi-media rights holder or in competition with any of University's existing sponsors.

### 3. **Compensation**

Effective July 1, 2022, the University shall pay Coach Hesse the following compensation:

- (a) **Base Salary.** On an annual basis, University shall pay Coach Hesse One Hundred Thousand Dollars (\$100,000.00) (i.e., approximately \$8,333.33 per month, base monthly rate, before withholdings) ("Base Salary"). For the duration of the

Agreement, Coach Hesse's Base Salary shall be subject to any and all across-the-board salary increases provided to University's other employees, including any across-the-board salary increases provided effective after January 1, 2023.

- (b) **Payment Via University's Standard Payroll Procedure.** Coach Hesse's salary shall be paid in equal sums at such intervals as University has established for its payroll procedure, less applicable taxes and withholdings.
- (c) **Base Salary as Total Guaranteed Compensation.** The compensation specified in Section 3(a) represents the total guaranteed compensation due and owing Coach Hesse in consideration of her duties as University's Head Softball Coach.
- (d) **Eligibility for Incentive Payments.** Coach Hesse shall be eligible for additional incentive payments as specified in Section 6.

**4. Additional Entitlements.**

In addition to the compensation described in Section 3, Coach Hesse shall receive the following entitlements:

- (a) **Workmen's Compensation Insurance.** The University will provide Workmen's Compensation insurance for payment of any medical expense, and compensation, as provided by the laws of the State of Missouri, if Coach Hesse suffers an injury or incurs an occupational disease arising out of and in the course of his employment. Compensability under such law is prescribed by state statute, and not by the University or by this contract.
- (b) **Retirement Fund.** The full contribution required for the Missouri State Employees Retirement System (MOSERS) will be paid by the University for Coach Hesse's retirement account.

- (c) **Other Benefits and Privileges.** The benefits and privileges accorded the University administrative, professional and staff employees, such as, but not limited to, paid vacation, sick leave, hospitalization/medical insurance, life insurance, long-term disability insurance, and other benefits established by the Board of Governors will likewise be accorded to Coach Hesse. It is agreed that the terms and conditions in the Faculty Handbook will not be regarded as a part of this agreement, and that Coach Hesse is not on tenure track and is not receiving tenure.

5. **Camp(s)**

University acknowledges that it is in the interest of the University to have a softball camp(s) during the year. In this regard, Coach Hesse may conduct a softball camp(s), and if so for her own benefit, and the University shall make available University facilities for that purpose, subject to the following provisions as long as the Agreement remains in effect and is not canceled or terminated.

- (a) **University Fee Per Camp Enrollee.** Coach Hesse agrees to pay the University the prevailing per person rate for each camp enrollee up to a maximum of 1,000 camp enrollees for the rental of Hammons Indoor Practice Facility. Upon her request, the University will give Coach Hesse the current prevailing rate. The University agrees to provide Coach Hesse, upon her request, with notice of any expected increase in the prevailing rate by the preceding December 31 prior to the fiscal year the increase will be effective.
- (b) **Insurance Obligations.** Coach Hesse agrees to secure commercial general liability insurance to cover the operation of the camp. Such policy limits insurance shall be in amounts no less than Five Hundred Thousand Dollars (\$500,000) per person,

and Two Million Dollars (\$2,000,000) in the aggregate, with the Board of Governors of Missouri State University named as an additional insured. No such insurance shall be construed to constitute a waiver of any sovereign, governmental or official immunity. Coach Hesse agrees to increase the liability limits if requested by the University as a result of a change in Missouri law.

- (c) **Mandated Reporter Training.** Coach Hesse will attend and require her staff to attend any University-required mandated reporter trainings prior to conducting any softball camps.
- (d) **Use of University's Athletic Facilities.** Coach Hesse shall be entitled to use the Hammons Indoor Practice Facility under this Section 5. Other University facilities may also be used in conducting softball camps, subject to scheduling and availability. Coach Hesse shall work with the University's Director of Athletics to schedule use of these other athletic facilities.
- (e) **Use of University's Housing System.** Coach Hesse shall be given access to the University's residency housing system for use in conjunction with the basketball camps, provided that she shall pay the-then current daily rate charged by the University's Department of Residence Life, Housing, and Dining Services for each camp enrollee. The University agrees to provide Coach Hesse, upon her request, with notice of any increase in residence hall rates for the subsequent year by the preceding December 31.
- (f) **No Guarantee as to Number of Camp Participants.** Coach Hesse does not guarantee any number of softball camp participants or enrollees.

- (g) **Registration Fee, Revenue for Basketball Camps.** The registration fee for each enrollee shall be established by Coach Hesse. Coach Hesse shall be allowed to retain all revenues and income generated by such camp, less fees referenced above in Sections 5(a) and (e):
- (h) **Use of University Name, Logos in Camp Brochures.** Coach Hesse may use the University names, logos, and depictions in brochures and similar camp documentation.
- (i) **Audit Right of University.** As it is the responsibility of the University to ensure that it is meeting NCAA rules-compliance responsibilities concerning sports camps, Coach Hesse shall provide all camp records to athletics administrators or other university administrators when requested, or as otherwise required by law. Examples of such records may include, without limitation, rosters, applications, free or discounted admissions, bank statements, expense records, and payroll records.

**6. Other Compensation and Incentives**

- (a) **Achievement Payments.** Coach Hesse shall be entitled to receive certain payments (before taxes) if the University's intercollegiate softball team (the "Team") performs to certain levels of achievement.
  - (i) **MVC Regular Season Champions or Co-Champions.** In the event the team finishes as Missouri Valley Conference Regular Season champions or co-champions, an additional \$2,500 will be paid for a MVC Regular Season championship or co-championship.

- (ii) **MVC Championship.** In the event the team finishes as Missouri Valley Conference champions, an additional **\$1,400** will be paid for a MVC Championship.
  - (iii) **NCAA Softball Tournament.** In the event the softball team is invited to appear in the NCAA post-season tournament, Coach Hesse will be paid an additional **\$700** for each game appearance in the NCAA Regional Tournament or **\$5,000** if the team wins the NCAA Regional Tournament; an additional **\$700** for each game appearance in the NCAA Super Regional Tournament or **\$10,000** if the teams wins the NCAA Super Regional; an additional **\$700** for each game played in the NCAA Women's College World Series or **\$50,000** if the team wins the NCAA College World Series.
  - (iv) **Academic Progress Rate ("APR").** Coach Hesse shall be paid the amount of Five Hundred Dollars (\$500.00) for each year that the Team's NCAA calculated APR meets or exceeds the NCAA APR score of 985.
  - (v) **MVC Coach of the Year.** In any year that Coach Hesse is named the Missouri Valley Conference Coach of the Year by the MVC coaches or the MVC media, he will receive an additional Two Thousand Five Hundred Dollars (\$2,500.00).
  - (vi) **Timing of Incentive Payments.** All such achievement payments will be paid to Coach Hesse within thirty (30) days of the dates earned and shall be paid even if the Agreement is terminated by either party for any reason.
- (b) **Expense Allowance.** All necessary and reasonable expenses incurred by Coach Hesse while recruiting or on official business for the University's softball or

athletics program will be paid/reimbursed to Coach Hesse, pursuant to University policy. Such expenses must be approved by the University's Director of Athletics upon presentation of expense vouchers and supporting documents; such approval not to be unreasonably withheld.

- (c) **Use of Automobile.** University shall furnish Coach Hesse with an automobile, pursuant to a lease agreement with the University, for her business and personal use for the duration of this Agreement, as long as the University and/or the Foundation receives such a vehicle via a trade-out with an automobile dealer in relation to a membership in The Bears Fund. The terms of the lease agreement shall control the use, maintenance, and insurance requirements applicable to such automobile. Coach Hesse shall be responsible for ensuring that the automobile is insured with policy limits acceptable to the University, and the University shall pay/reimburse Coach Hesse all insurance and maintenance costs associated with her use of the automobile.
- (d) **Tax Withholding on Fringe Benefit Programs.** The University will only withhold taxes, FICA and MOSERS retirement benefits if required by law on the fringe benefit programs on all payments made to Coach Hesse, unless authorized in writing by Coach Hesse.

**7. Professional and Moral Conduct Required**

It is understood Coach Hesse is being employed by University, which is a member institution of the National Collegiate Athletic Association ("NCAA"), for the purpose of administering, conducting, and coaching the Team. Accordingly, Coach Hesse agrees she will diligently conduct the softball program under her direction in such a manner that



NCAA regulations and codes of conduct now existing or hereinafter enacted, will be fully complied with, in all particulars, including, but not limited to, the following:

- (a) Coach Hesse will make best efforts to ensure that the Team's student-athletes comport themselves with honesty and sportsmanship at all times.
- (b) Coach Hesse shall not accept compensation or gratuities of any kind whatsoever, either directly or indirectly, for representing a professional sports organization in the scouting or contacting of athletics talent or the negotiating of a contract.
- (c) Coach Hesse shall not knowingly participate in the management, coaching, officiating, supervision, promotion, or player selection of any all-star contest involving student-athletes that is not certified by the NCAA's Extra Events Committee.
- (d) Except as is ordinarily done by a softball coach at a university, Coach Hesse shall not represent a student-athlete in the marketing of athletics ability or reputation to a professional sports team or professional sports organization and shall not receive compensation or gratuities of any kind, directly or indirectly, for such services.
- (e) Coach Hesse is required to provide a written detailed account annually to the University President for all athletically-related income and benefits from sources outside the University. Sources of such income shall include, but are not limited to, the following:
  - Income from annuities;
  - Sports camps;
  - Housing benefits (including preferential housing arrangements);
  - Country club memberships; and

- Complimentary ticket sales

Coach Hesse acknowledges that she has an affirmative obligation to cooperate fully in the NCAA/University infraction process, including the investigation and adjudication of a case of infraction. Furthermore, the Parties recognize that if Coach Hesse is found in violation of NCAA regulations she may be subject to disciplinary or corrective actions as set forth in the provisions of the NCAA infractions process, including suspension without pay and/or termination of employment under Section 8(b).

**8. Termination.**

(a) **Termination Due to Expiration of Term.** If no extension of the Agreement beyond the term specified above is made, this Agreement shall terminate as of the last day of the term (i.e., June 30, 2024).

(b) **Termination for Incapacity; Cause.** The Agreement may be terminated at any time during the term, by the University, upon the occurrence of any one of the following events:

(i) **Termination Due to Incapacity.** The Agreement shall terminate automatically if Coach Hesse becomes totally disabled within the meaning of the University's disability insurance for employees of Coach Hesse staff classification so that she qualifies under the University's long-term disability plan, or if Coach Hesse becomes permanently disabled. "Permanently disabled" shall mean physical or mental incapacity of a nature which prevents Coach Hesse from performing her duties under the Agreement for a period of one hundred eighty (180) consecutive days. In the event termination occurs under this Section due to permanent disability

at a time when Coach Hesse's University disability plan benefits are not sufficient to fund her compensation during the one hundred eighty (180) day waiting period to qualify under the University's long-term disability plan, the University will supplement those benefits to ensure Coach Hesse receives her full compensation.

- (ii) **For Just Cause.** The term "just cause" is defined as acts by Coach Hesse constituting or involving dishonesty in interactions with athletic or University administration, dishonesty when representing the University that brings ill repute to the University, moral turpitude that brings ill repute to the University, conviction of a felony, and major (i.e., Level I or Level II) or intentional infractions of NCAA rules and regulations, prolonged absence from duty without the consent of the Athletic Director, and willful disregard for the welfare and safety of University's student-athletes which has resulted in serious injury or death. No termination of employment for alleged "just cause" shall occur without first giving Coach Hesse notice in writing of the cause alleged, and an opportunity to be heard.
- (iii) **Effect of Termination for Just Cause.** In the event the University terminates Coach Hesse's employment, under Section 8(b)(ii) above, Coach Hesse shall not be entitled to any further compensation following the date of such termination, unless otherwise agreed to in writing by the University. She will, however, be entitled to all compensation and achievement payments earned through the date of termination.

**9. Termination Without Cause by the Parties**

(a) **Termination Without Cause by Coach Hesse.** Coach Hesse may terminate the Agreement if she gives notice of termination to the Director of Athletics and pays, or causes another party to pay, the Liquidated Damages Amount (as defined and calculated herein) to the University. The Liquidated Damages Amount will be calculated based on the applicable Monthly Rate, as defined herein, and the remaining months of this Employment Agreement, except that no Liquidated Damages will be assessed if Coach Hesse either terminates the Agreement without cause on or after June 30, 2023, or retires from coaching softball at the collegiate level. The Monthly Base Salary amount is defined as Eight Thousand Three Hundred Thirty-Three and 33/100 Dollars (\$8,333.33). The Liquidated Damages Amount is calculated by multiplying the number of months remaining in the Employment Agreement by the Monthly Rate, and dividing by two. The resulting sum is the Liquidated Damages Amount. For example, if Coach Hesse terminates the Agreement with 20 months remaining, the Liquidated Damages Amount would be Eighty-Three Thousand Three Hundred Thirty-Three and 33/100 Dollars (i.e.,  $20 \text{ months} \times \$8,333.33 = \$166,666.60$ ;  $\$166,666.60/2 = \$83,333.30$ ).

The parties acknowledge and agree that the Liquidated Damages Amount contemplated by this Section 9(a) are intended to repay compensation previously received by Coach Hesse under the premise that she would fulfill the Term of the Agreement and that the Liquidated Damages Amount represents a legitimate, market rate fee to permit another employer to obtain Coach Hesse's services. Said

Liquidated Damages Amount will be paid within thirty (30) days following the effective date of Coach Hesse termination of this Agreement.

- (b) **Termination Without Cause by University.** Notwithstanding any provision of the Agreement to the contrary, University may also elect to terminate the Agreement in any year by notification to Coach Hesse in writing, on or before June 30 (“Termination Date”). It is understood and agreed that termination does not require just cause or any cause. In the event of termination by University, Coach Hesse shall receive payment for the number of months remaining on the Agreement after the effective date times the base monthly rate. For example, if the University terminates the Agreement with twenty (20) months remaining, the liquidated damages for termination shall be Eighty-Three Thousand Three Hundred Thirty-Three and 33/100 Dollars (i.e., 20 months X \$8,333.33 = \$166,666.60;  $\$166,666.60/2 = \$83,333.30$ ). Said liquidated sum will be paid within thirty (30) days following the termination date and will be in full and complete satisfaction of all amounts which would be otherwise payable to Coach Hesse after the termination date. MOSERS retirement will not be paid on the liquidated sum. Social Security (FICA, Medicare tax) only will be paid on said liquidated sum, and standard payroll deductions for Social Security and income tax will be withheld. Coach Hesse will also be paid on or before the Termination any and all amounts actually earned by Coach Hesse on or before the Termination Date.

**10. Missouri Law**

The laws of the State of Missouri shall govern this Agreement, including the Missouri Sunshine Law. Coach Hesse acknowledges that the Agreement is a public document under the Sunshine Law that University may release without prior notice to her.

**11. Entire Agreement**


This Agreement constitutes the entire understanding between the parties, all previous oral and written statements, negotiations, and Memorandum of Understanding having been incorporated herein. This Agreement supersedes all prior agreements and amendments between the parties and may only be amended by a writing signed by the parties.

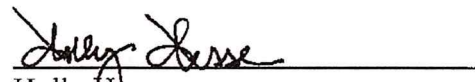
IN WITNESS WHEREOF, the parties have executed this Agreement with effective date as noted above.

ATTEST:

  
Secretary  
Board of Governors

**BOARD OF GOVERNORS OF  
MISSOURI STATE UNIVERSITY**

  
Clifton M. Smart, III  
President

  
Holly Hesse  
Head Coach of the University's  
intercollegiate softball team