

HEAD COACH EMPLOYMENT CONTRACT

Between
Kevin Sumlin
AND
UNIVERSITY OF HOUSTON
DEPARTMENT OF ATHLETICS

THIS AGREEMENT (hereinafter referred to as "this Agreement" or "the Agreement") is made between the University of Houston ("UH") and Kevin Sumlin ("Coach") in order to employ the named individual 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:

1.0 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 the AD's 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 duties set forth in the job description (Appendix A) and in this Agreement without limitation and to the satisfaction of the AD.

2.0 Term of Agreement

2.1 Length of Term. The Term of the Agreement shall be for a period of sixty (60) months, beginning on the 3rd day of January, 2009 and ending on the 2nd day of January, 2014, subject to the termination provisions stated in the Agreement;

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 within five (5) business days after the AD has offered Coach the renewal contract. UH, however, does not grant Coach any claim to tenure in employment, continued employment, or any other rights not specifically provided in the Agreement.

3.0 Compensation

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

3.1.1 Guaranteed Base Salary. The total amount of \$20,833.33 paid each month (\$250,000 annualized) through the UH payroll system, as salary for services rendered during the Term of the Agreement;

3.1.2 Non-Salary Compensation. The total amount of four hundred thousand dollars and no cents (\$400,000) payable quarterly in increments of one hundred thousand dollars and no cents (\$100,000) on March 30, June 30, September 30, and December 30 to Coach from external sources of revenue for radio show, TV, personal appearances representing the UH Athletic Department, apparel and footwear.

3.1.3 Deferred Compensation. As of January 2, 2009, Coach has accrued deferred compensation in the amount of one hundred thousand dollars and no cents (\$100,000). Coach will continue to accrue deferred compensation in the amount of one hundred thousand dollars and no cents (\$100,000) at the end of each year under the original five year contract term for a total of five hundred thousand dollars and no cents (\$500,000) to be paid to Coach if Coach is continuously employed until January 2, 2013 (the end of the original five year contract term). Coach will also receive an additional one hundred thousand dollars and no cents (\$100,000) upon the completion of the current five year contract term on January 2, 2014. If Coach is terminated without cause prior to the completion of the original five year contract term (i.e., before January 2, 2013) or prior to the completion of the current five year contract term (i.e., before January 2, 2014), Coach will receive in deferred compensation, the amount that has accrued at the time of Coach's termination. If Coach is terminated for cause, either by default, or by conduct, Coach is not entitled to any deferred compensation as provided in Sections 6.2 and 6.3. If Coach terminates without cause, Coach is not entitled to any deferred compensation as provided in Section 6.4.1. 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;

3.1.5 Additional Benefits. In addition to the standard employee benefits, Coach will be provided with the following special fringe benefits associated with his position as Head Coach of the University's Intercollegiate football program:

3.1.5.1 Automobile. Coach shall be entitled to two (2) courtesy cars for business use. Assignment of the courtesy cars shall not afford Coach any ownership rights whatsoever in the courtesy cars. UH shall pay for the cost of gas, oil, and insurance associated with Coach, Coach's spouse, and any registered driver's use of the cars; provided, however, that UH shall not pay for any use of the cars which is related solely to personal use by Coach, Coach's spouse 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. UH issued national gasoline company credit cards are available to Coach and Coach's spouse, for university-related business. Upon termination or expiration of the Agreement, Coach shall immediately surrender the courtesy car and gas credit cards to UH. Coach shall be liable for any amounts needed to repair the courtesy cars, normal wear and tear excepted;

3.1.5.2 Country club or social club. UH shall pay, on a monthly basis, membership dues during the term of his service as Head Coach to one approved country club or social club of Coach's choice in the Houston metropolitan area for his personal membership. UH will also provide the cost of joining or initial fee. Coach will provide the cost of any ancillary fees associated with club membership, e.g., food, locker dues, etc. Restrictive clubs will not be approved;

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. During his employment as Head Coach of UH's Intercollegiate football team, Coach shall have the opportunity to receive the following additional compensation in recognition for meritorious performance;

3.1.7.1	At academic years end (after spring semester), Team overall GPA 2.4 or higher for scholarship student-athletes	\$10,000.00
3.1.7.2	At academic years end, Academic Progress Rate of 940	\$30,000.00
3.1.7.3	Win seven (7) regular season games	\$20,000.00
3.1.7.4	Win eight (8) regular season games	\$35,000.00
3.1.7.5	Win nine (9) regular season games	\$45,000.00
3.1.7.6	Win ten (10) regular season games	\$55,000.00
3.1.7.7	Win eleven (11) regular season games	\$65,000.00
3.1.7.8	Win twelve (12) regular season games	\$75,000.00
3.1.7.9	West Division Conference or tie for West Division Conference Championship	\$25,000.00

3.1.7.10	Conference Championship or tie for Championship (Overall)	\$25,000.00
3.1.7.11	Coach the Team during a non-BCS Bowl game	\$25,000.00
3.1.7.12	Coach the Team during a BCS Bowl game	\$80,000.00
3.1.7.13	Top 25 National Ranking at Anytime During The Season –USA Today/AP/Coaches Poll (whichever is higher)	\$25,000.00
3.1.7.14	Season Ticket Sales of 8,000	\$10,000.00
3.1.7.15	Season Ticket Sales of 9,000	\$20,000.00
3.1.7.16	Season Ticket Sales of 10,000	\$30,000.00
3.1.7.17	Selected by CUSA Coaches or media as CUSA Coach of the year	\$25,000.00

3.1.7.18 Sections 3.1.7.3, 4, 5, 6, 7, 8, are not cumulative, but bonus specific to the teams exact finish during the season. Likewise, Sections 3.1.7.14, 15, 16 are not cumulative, but bonus specific to the exact number of season ticket sales. For the purposes of Sections 3.1.7.14, 15, 16, the term “season ticket” shall mean a ticket package that includes admission to all scheduled regular season UH home football games. Incentive income earned shall be payable within thirty (30) days from the date the achievement has been confirmed and certified;

3.1.8 Summer Camps. Coach shall be entitled to 100% of the football camp proceeds, less customary expenses, generated as a result of the UH Football Camp at 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 game by game basis;

3.1.10 Complimentary Tickets. Twelve (12) complimentary tickets shall be provided Coach for all UH sporting events.

4.0 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 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. 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, C-USA Rules. Compliance with rules, regulations, and advisory opinions of the National Collegiate Athletic Association (NCAA) and of the Conference USA (CUSA), 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;

4.1.8 Supervise Personnel. Supervision of job performance and all other incidents of employment, including assessing job performance of and reporting suspected rules violations by assistant coaches and any other personnel for whom Coach is administratively responsible;

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, and positive manner, including responsibility for appraisals, administrative processes, and attendance at all meetings specified by the AD or the AD's designee; and

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.

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 Engage In Conduct. Engage in any conduct, whether related to performance of duties under the Agreement or not, that constitutes a violation of UH policies or procedures; of NCAA or C-USA rules, regulations, or advisory opinions; of federal or state laws, regulations, or agency advisory opinion; 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 Coach's coaching staff or any other 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 his coaching staff or any other 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 his coaching staff or any other 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 Receipt of 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. 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, unless prior, written approval is obtained from the AD to appear or engage in such an activity;

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 Associate Athletics Director for Business Operations, or the Associate Director's designee, for development, processing, and approvals, if warranted; or

4.2.7 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, the 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 6.0 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 4.2.7 of this Agreement.

5.0 Reassignment

The performance of Coach as Head Football Coach will be subject to periodic review by the Director of Athletics and, at the discretion of the Director, Coach may be removed from the duties and responsibilities as Head Football Coach and reassigned to other duties and responsibilities within the Athletic Department for the remaining term of this Agreement. In the event of such reassignment, the compensation for the performance of such reassigned duties and responsibilities shall be the sum equal to the guaranteed base salary (3.1.1), plus deferred compensation (3.1.3), for a total of \$350,000 per year, payable monthly until expiration of the contract or resignation by the Coach.

6.0 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 6.0.

6.1 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;

6.2 Termination for Cause – By Default. If UH gives 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 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 6.2, 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;

6.3 Termination for Cause – By Conduct. UH may, without further notice, 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 6.3, 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;

6.4 Termination without Cause. If either Party shall, without cause, at any time give to the other at least 30 calendar days' advance written notice, the Agreement shall terminate on the future date specified in such notice;

6.4.1 If Coach Terminates without Cause. In the event Coach terminates this Agreement without cause, and unless otherwise agreed to by the Parties, Coach shall pay UH six hundred thousand dollars (\$600,000) in liquidated damages. Coach shall pay such liquidated damages in a lump sum within thirty (30) 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 additional 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 6.4.1, "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;

6.4.2 If UH Terminates without Cause. If UH terminates the Agreement without cause, then Coach agrees to accept liquidated damages, as specified in this Section 6.4.2, 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 sum of the guaranteed base salary remaining due under the Agreement (Section 3.1.1), as well as deferred compensation remaining due under the agreement (Section 3.1.3) for a total of \$350,000.00 per year, 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. In addition, Coach shall receive in a lump

sum the amount of deferred compensation accrued to the date of termination. This payment is subject to the duty to mitigate in Section 6.4.4. This sum does not include non-salary compensation in Section 3.1.2 or any other benefits or compensation that would have been afforded to Coach under the terms of the Agreement. Coach shall be entitled to maintain health insurance coverage, at Coach's sole expense, as provided by law;

6.4.3 Liquidated Damages. The Parties have bargained for and agreed to the liquidated damages provisions in Section 6.4.1 and 6.4.2. 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 6.4.2 of this Agreement for termination without cause by UH, and termination pursuant to Section 6.4.1 of this Agreement for termination without cause by Coach;

6.4.4 Duty to Mitigate. Coach shall use reasonable efforts to obtain other employment if he is terminated 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 UH with 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 10-day period, the UH shall not be liable for any further payments under Section 6.4.2 of the Agreement. For the purposes of this Section 6.4.4, "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 6.4.4, "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.

6.5 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, then UH may, at its option, terminate the Agreement upon 14-calendar days notice to Coach;

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

6.7 Notices regarding Termination. All notices required under the termination provisions of this Section 6.0 shall be given in accordance with the notice provisions of the Agreement;

6.8 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 obligations made specifically to extend beyond termination of the agreement;

6.9 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.

7.0 Miscellaneous

7.1 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;

7.2 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;

7.3 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;

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

7.5 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;

7.6 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;

7.7 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;

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

7.9 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:

Kevin Sumlin
4800 Calhoun
Houston, TX 77204

7.10 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;

7.11 Force Majeure. If either Party is unable to perform obligations 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;

7.12 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;

7.13 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;

7.14 Agreement Execution. Each multiple original of this document shall be deemed an original, but all multiple copies together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the authorized representatives of the UH have and the Coach has executed the Agreement in multiples originals.

UNIVERSITY OF HOUSTON:

KEVIN SUMLIN:

BY: _____
Renu Khator
Chancellor/President
University of Houston

Date

BY: Kevin Sumlin
Kevin Sumlin
Coach

1-23-09
Date

BY: Dave Maggard
Dave Maggard
Director of Athletics

1/25/09
Date

APPROVED AS TO FORM BY:

BY: _____
Dona H. Cornell
General Counsel