

EASTERN MICHIGAN UNIVERSITY

ATHLETIC COACH FIRST AMENDED EMPLOYMENT AGREEMENT

This Employment Agreement made this 27th day of June 2017, by and between the Board of Regents of Eastern Michigan University (hereinafter the "University") of Ypsilanti, Michigan and Chris Creighton (hereinafter the "Employee"). It supersedes all prior written or verbal agreements between the parties and is subject to the approval of the University's Board of Regents.

RECITALS

A. University needs the services of an athletic coach to coach University's varsity football team; and

B. Employee represents that he meets University's qualifications for the position previously made available to Employee and is available for employment in this capacity by the University.

TERMS

In consideration of the mutual covenants, promises and conditions in this Contract, University and Employee agree as follows:

1.0 Employment

1.1 Subject to the approval of the University's Board of Regents and the conditions stated in this Agreement, University employs Employee as Head Football Coach at University, and Employee agrees to and accepts the terms and conditions for employment outlined in this Agreement.

1.2 Employee shall work under the supervision of the Athletic Director of University ("Athletic Director") or the Athletic Director's designee.

1.3 Employee shall manage and supervise the University's Football Team ("Team"), and perform such other duties in the intercollegiate athletic program of University as may be reasonably assigned so long as such duties are generally consistent with those duties typically assigned to Football Subdivision head football coaches.

2.0 Term.

2.1 The Term of this Agreement shall be for six contract years (defined below) subject, however, to earlier termination in accordance with the provisions set forth in Section 6 of this Agreement.

2.2 As used in this Agreement, the term "Contract Year" is defined to mean: the twelve (12) month period commencing January 1 and ending the following December 31, except the first contract year will begin on July 1, 2017 and end on December 31, 2017 and the last contract year shall begin on January 1,

2022 and end on the date of the last game played by the University football team in the 2022 season (including any bowl game played in 2023) or December 31, 2022, whichever is later. Each such contract year shall be numbered to correspond to the period specified as follows:

<u>Contract Year</u>	<u>Period</u>
Contract Year One	January 1, 2017 to December 31, 2017
Contract Year Two	January 1, 2018 to December 31, 2018
Contract Year Three	January 1, 2019 to December 31, 2019
Contract Year Four	January 1, 2020 to December 31, 2020
Contract Year Five	January 1, 2021 to December 31, 2021
Contract Year Six	January 1, 2022 to December 31, 2022

2.2 This employment in no way grants Employee a claim to tenure in employment, or any years of employment attributable to tenure within University.

3.0 Compensation.

3.1 In consideration for Employee's faithful and diligent performance of the services set forth in this Agreement, the University agrees to provide the following salary and fringe benefits to Employee during the term of this Agreement. All amounts stated will be less any applicable deductions and withholding.

3.1.1 Salary. University shall pay Employee an annual base salary paid according to the University's regular payroll procedures, in full payment for the satisfactory performance of all duties required under this Agreement. Employee's Base Salary will be:

- \$425,000, effective July 1, 2017
- \$435,000, effective July 1, 2018
- \$445,000, effective July 1, 2019
- \$455,000, effective July 1, 2020
- \$465,000, effective July 1, 2021
- \$475,000, effective July 1, 2022

3.1.2 Fringe Benefits. University shall provide Employee with the same fringe benefits and on the same terms as provided to non-bargained for administrative employees as of the date of this Agreement.

3.1.3 Leave of Absence. A leave of absence may be provided pursuant to University policies, rules, and regulations. A request for a leave of absence must be approved pursuant to the University's procedures. A leave of absence shall not extend beyond the term of the Employment Agreement.

3.1.4 University shall provide the Employee with an automobile (leased at University's option) or in lieu of an automobile with a \$750 per month stipend for an automobile. If a leased automobile is provided to Employee, University will be responsible for insuring, maintaining and repairing the automobile. If Employee is provided with a stipend, Employee shall be responsible for insuring, maintaining and repairing Employee's automobile. Employee shall use the automobile for the purpose of conducting University business. Upon termination of this Agreement, Employee shall immediately return the automobile to the University.

3.1.5 The University agrees to make all necessary arrangements, including financial, for a radio show during the term of this Agreement. For his appearance on this radio show, Employee shall be annually paid \$25,000. The radio show airs weekly during the football season and special appearances by Employee may be required during the Spring football practice period.

3.1.6 Incentives. During the term of this Agreement Employee shall be entitled to receive each of the following bonuses and incentives (each of which shall be treated separately). All payments will be less applicable withholding.

3.1.6.1 For each year during the term of this Agreement the University's football Team coached by Employee participates in a post-season bowl game, Employee shall be entitled to a lump sum bonus payment of \$25,000. There will be an additional \$10,000 compensation pool to be divided among assistant coaches for participating in a post-season bowl game. The Employee and Athletic Director will develop a process in accordance with appropriate IRS and Payroll procedures to determine the amount each applicable assistant coach will be compensated. If Team wins the Bowl game, Employee shall be entitled to an additional \$25,000 payment.

3.1.6.2 For each year during the term of this Agreement the University's football Team coached by Employee participates in a College Football Playoff Host Bowl (or its successor equivalent) game, Employee shall be entitled to a lump sum bonus payment of \$50,000. There will be an additional \$25,000 compensation pool to be divided among assistant coaches for participating in a CFP Host bowl game. The Employee and Athletic Director will develop a process in accordance with appropriate IRS and Payroll procedures to determine the amount each applicable assistant coach will be compensated. If Team wins the Playoff game, Employee shall be entitled to an additional \$50,000 payment.

3.1.6.3 For each year during the term of this Agreement the University's football Team coached by Employee completes the season in sole possession of First Place in the Mid American Conference (MAC) Western Division, after any and all applicable tie-breaking procedures utilized by the MAC, Employee shall be entitled to a lump sum bonus payment equal to \$20,000. There will be an additional \$10,000 compensation pool to be divided among assistant coaches. The Employee and

Athletic Director will develop a process in accordance with appropriate IRS and Payroll procedures to determine the amount each applicable assistant coach will be compensated.

3.1.6.4 For each year during the term of this Agreement the University's football Team coached by Employee wins the Mid-American Conference Championship, Employee shall be entitled to a lump sum bonus payment equal to \$30,000. There will be an additional \$20,000 compensation pool to be divided among assistant coaches. The Employee and Athletic Director will develop a process in accordance with appropriate IRS and Payroll procedures to determine the amount each applicable assistant coach will be compensated.

3.1.6.5 For each year during the term of this Agreement the University's football Team coached by Employee: 1) wins seven games, Employee shall be entitled to a lump sum bonus of \$10,000 to retain as a lump sum bonus or to be divided, in whole or part, among applicable assistant coaches; 2) wins eight games, Employee shall be entitled to a lump sum bonus of \$12,500 to retain as a lump sum bonus or to be divided, in whole or part, among applicable assistant coaches; 3) wins nine games, Employee shall be entitled to a lump sum bonus of \$15,000 to retain as a lump sum bonus or to be divided, in whole or part, among applicable assistant coaches; 4) wins ten games, Employee shall be entitled to a lump sum bonus of \$20,000 to retain as a lump sum bonus or to be divided, in whole or part, among applicable assistant coaches; 5) win eleven games, Employee shall be entitled to a lump sum bonus of \$25,000 to retain as a lump sum bonus or to be divided, in whole or part, among applicable assistant coaches; 5) wins twelve games, Employee shall be entitled to a lump sum bonus of \$30,000 to retain as a lump sum bonus or to be divided, in whole or part, among applicable assistant coaches. The Employee and Athletic Director will develop a process in accordance with appropriate IRS and Payroll procedures to determine the amount each applicable assistant coach will be compensated. Employee shall be entitled to only one annual bonus payment pursuant to this provision, which shall be based on the total number of wins during the football season.

3.1.6.6 For each year during the term of this Agreement the Employee is named Mid-American Conference "Coach of the Year", or the American Football Coaches Association (AFCA) Regional "Coach of the Year" the Employee shall be entitled to a lump sum bonus of \$25,000. In the event Employee is named both the MAC Coach of the Year and the AFCA Regional Coach of the Year the Employee shall be entitled to a lump sum bonus of \$30,000. For each year during the term of this Agreement the Employee is named Coach of the Year by the American Football Coaches Association (AFCA) Coach of the Year, Employee shall be entitled to a lump sum bonus of \$50,000.

3.1.6.7 For each academic year the Football team has a single year APR (academic progress rate) of 950 or higher, then the Employee shall be entitled to a lump sum bonus of \$5,000. For each academic year the Football team has a multi-year APR of 965 or above, the Employee shall be entitled to a lump sum bonus of \$10,000.

3.1.6.8 For each academic year the team has a cumulative GPA of 3.0 or higher for the academic year, then the Employee shall be entitled to a lump sum bonus of \$10,000. For each academic

year the team has a cumulative GPA of 2.75-2.99 for the academic year, then the Employee shall be entitled to a lump sum bonus of \$5,000.

Bonuses for the achievements set forth in this Section 3.1.6 shall be paid on or before March 1 of each year of this Agreement.

3.1.7 University shall provide Employee with a monthly cellular phone stipend which covers the cost of the cell phone and applicable monthly charges.

3.1.8 University shall provide Employee with up to twenty (20) complimentary season tickets for University football home and away games.

3.1.9 University shall provide Employee with up to ten (10) complimentary season tickets for University men's and women's basketball home games.

4.0 Employee's Duties.

4.1 In consideration of the annual salary and other benefits, Employee promises and agrees as follows:

4.1.1 Faithfully and conscientiously perform all duties related to the establishment, direction and development of an educationally sound and competitive Football program, and to perform all duties assigned and prescribed herein.

The Athletic Director, in conjunction with the Associate Athletic Director for Finance and Operations and the University's Chief Financial Officer determines the budget for the football program. Employee will be involved in determining how the designated funds for the football program, as determined by the Athletic Director, are allocated. University and Employee understand that there may be a need for budget adjustments due to cost increases that are beyond the control of Employee.

4.1.2 Plan, direct, and implement all phases of a varsity intercollegiate athletic program, including recruitment of academically and athletically qualified students of sound character and integrity, developing competitive schedules, budget preparation and supervision for programs, conduct practice sessions, conditioning programs, clinics, public relations activities, and fund raising. Attendance is expected at staff meetings, community events, and other appropriate athletic activities as reasonably requested by the Athletic Director or the Athletic Director's designee.

4.1.3 Devote full-time, attention, and energy to the duties of head coach as required herein, to the promotion of the University's Football program; and to avoid any business or professional activities or pursuits that would prevent Employee from devoting full time to performance of the duties under this Agreement.

4.1.4 To be responsible for the actions of all assistant coaches and administrators who report, directly or indirectly, to the Employee consistent with NCAA Bylaw 11.1.1.1 and associated NCAA opinions and interpretations. Employee shall promote an atmosphere of compliance within his program, shall communicate the expectations and commitment for compliance to all staff and student-athletes in the Football program, and shall monitor the activities of all assistant coaches and administrators involved with the program who report, directly or indirectly, to the Employee, as well as the actions of prospective and current student-athletes in Coach's program including but not limited to activities during official and unofficial visits, extra benefits, and actions in violation of academic integrity standards.

4.1.5 Know, recognize and comply with the laws, policies, rules, and regulations governing University ("University Rules") and its employees and the rules of the National Collegiate Athletic Association (NCAA) and the Mid American Conference (MAC) ("Governing Athletic Rules"), as now constituted or as they may be amended during the term hereof, to supervise and ensure that the assistant coaches and any other employees for which Employee is administratively responsible comply with the aforesaid policies, rules and take active steps to remain educated on University Rules and Governing Athletic Rules. If Employee is found in violation of these rules or regulations, by the University, the MAC, the NCAA or any other governing body, he shall be subject to disciplinary action, including suspension without pay, or termination of employment as set forth in Section 6 of this Agreement.

4.1.6 Immediately report to the Athletic Director and to the Athletic Department Compliance Office in writing if any person or entity, including without limitation, representatives of EMU's athletic interests, has violated or is likely to violate or may potentially have violated any such laws, University Rules and Governing Athletic Rules. Employee shall cooperate fully with the Department's Compliance Office at all times.

4.1.7 Develop programs and procedures with respect to the evaluation, recruitment, training, and coaching of student athletes to compete successfully (independent of the team's overall record or on-field performance) while assuring the welfare of student athletes;

4.1.8 Observe and uphold all applicable academic standards, requirements, and policies of University;

4.1.9 Encourage student athletes to perform to their highest academic potential, obtain the highest grades possible and graduate.

4.1.10 Pursuant to the Jeanne Clery Disclosure of Campus of Security Policy and Campus Crime Statistics Act, Title IX of the Education Amendments of 1972 and other laws and policies, Employee will report any instances of child abuse, sexual assault or harassment and certain other criminal activity of which he has knowledge or reasonable cause to believe has occurred.

4.2 It is further agreed that Employee will not receive outside compensation (including but not limited to income, annuities, sports camps, housing benefits, complimentary ticket sales, television and radio programs, and endorsement or consultation contracts with athletic footwear, apparel or equipment

manufacturers) without prior written consent of the President or Athletic Director, which consent shall not be unreasonably withheld or delayed and shall annually disclose to University all outside compensation Employee receives and the source of such compensation. Employee may conduct camps at University athletic football facilities. Reports regarding outside compensation must be made on an annual basis in conjunction with the annual performance evaluation. The document must include information concerning athletically related outside income for the previous contract period.

4.3 Employee shall maximize radio and television coverage favorable to University, but shall receive remuneration for such appearances, for any endorsements, or public presentations only upon securing prior written consent as noted in Section 4.2.

5.0 Travel.

Employee shall conduct such travel within the allotted budget as is necessary to carry out duties as Head Football coach, and Employee shall be entitled to reimbursement for transportation and per diem expenses at the rate provided to non-represented administrative employees.

6.0 Termination for Just Cause.

6.1 University has the right to terminate this Agreement for Just Cause, in which case prior to termination, Employee shall be given notice and an opportunity to be heard. In addition to its meaning in University contract with its faculty, and its normally understood meaning in employment contracts, the term "Just Cause" shall be understood to include, but not be limited to, all of the following:

6.1.1 A deliberate or serious violation of the duties set forth in this Agreement or refusal or unwillingness to perform such duties in good faith and to the best of Employee's abilities, which includes in addition to the usual and customary coaching activities, recruiting, assisting duly authorized alumni, booster club and University Development Foundation activities and cooperating with the news media;

6.1.2 A material violation by Employee of any of the other terms and conditions of this Agreement not remedied after fifteen (15) days written notice thereof to Employee;

6.1.3 Any conduct of Employee that constitutes moral turpitude, or which would tend to bring public disrespect, contempt, or ridicule upon University, or failure to follow the high moral and ethical standards commonly expected of Employee as a leading representative of the Department of Intercollegiate Athletics at University;

6.1.4 A deliberate, serious, or repetitive violation of any law, regulation, rule, constitutional provision or bylaw of University, the MAC, or the NCAA, as determined in good faith by the University, the MAC, the NCAA or another governing body, which violation may, in the reasonable judgment of University, reflect adversely upon University or its athletic program, including any serious violation that could result in University being punished by the MAC or the NCAA;

6.1.5 Prolonged absence from duty without University's consent which consent shall not be unreasonably withheld;

6.1.6 Engaging in criminal activity, or misuse of University funds or resources; and

6.1.7 Any conduct which violates the rights of student athletes, including verbal or physical abuse of student-athletes as reasonably determined by the University.

6.1.8 Failure to report violation of University Rules, Governing Athletic Rules as set forth in section 4.1.5 and 4.1.6 or failure to report the activity described in section 4.1.10.

6.2 In the event University terminates this Agreement for Just Cause prior to the end of this Agreement, all obligations of University to make further payments and/or to provide other consideration (other than for amounts earned but not yet paid) hereunder shall cease on the termination date specified in the notice of termination.

7.0 Termination Without Cause.

7.1 Notwithstanding any other provision of this Agreement, this Agreement shall terminate automatically if Employee dies or becomes totally or permanently disabled (as defined by University). Any such termination shall not be reason for payment of any liquidated damages set forth below.

7.2 At any time after commencement of this Agreement, University may terminate this Agreement without cause by giving written notice to Employee.

7.2.1 In the event University terminates this Agreement without cause, University shall pay to Employee, as liquidated damages, the applicable amount determined as follows:

If Employee's Last Date of Employment Occurs During	The University Shall Pay the Head Coach
Contract Year One	\$950,000
Contract Year Two	\$950,000
Contract Year Three	\$950,000
Contract Year Four	\$800,000
Contract Year Five	\$700,000 (but in no case will the amount be greater than the amount of base compensation remaining under this Agreement.)
Contract Year Six and thereafter	\$500,000 (but in no case will the amount be greater than the amount of base compensation remaining under this Agreement.)

The amount is to be paid at University's option in one lump sum or on a monthly basis over either the thirty (30) months following termination or the number of months remaining on the term of the Agreement, whichever is shorter.

To be eligible for this payment, Employee shall execute a release and waiver agreement within such timeliness and subject to such terms and conditions as are mutually agreed to by University and Employee, including, but not limited to, a waiver of any and all legal claims or potential legal claims Employee has or may have against University and any of its related entities, their regents, directors, officers, employees and agents. University shall not be liable for any liquidated damages or loss of any collateral business opportunities or any other benefits, or income from any sources that might ensue as a result of University's termination of this Agreement without cause.

7.2.2 The parties have bargained for and agreed to the foregoing liquidated damages provision, giving consideration to the fact that Employee may lose certain benefits, supplemental compensation or outside compensation relating to his employment at University, which damages are extremely difficult to determine with certainty, or fairly or adequately. The parties further agree that payment of such liquidated damages by University and acceptance thereof by Employee shall constitute adequate and reasonable compensation to Employee for damages and injury suffered because of such termination by University. The foregoing shall not be, nor be construed to be, a penalty.

7.2.3 The Employee is required to mitigate the University's obligations under section 7.2.1 by making reasonable efforts to obtain other football related employment as soon as possible following such termination. If the Employee is employed in a football related position, or receives compensation related to football (e.g. as a consultant), elsewhere after the University's termination of this agreement, then the University's obligation to pay the Employee as set forth in 7.2.1 shall be reduced by the head coach's total compensation from all such sources. If head coach does obtain other football related employment or compensation, he shall provide written notice to the University describing his position and total compensation within ten (10) days of agreeing to terms.

7.3 Employee recognizes that the promise to work for University for the entire term of this Agreement is of the essence of this Agreement. Employee also recognizes that University is making a highly valuable investment in Employee's employment by entering into this Agreement and that University's investment would be lost if Employee were to resign or otherwise terminate employment with University before the end of the contract term. Nonetheless, it is agreed that at any time after commencement of this Agreement, Employee may terminate this Agreement by giving written notice to University.

7.3.1 In the event Employee terminates this Agreement without cause, Employee shall pay to the University, as liquidated damages, the applicable amount determined as follows:

If Employee's Last Date of Employment Occurs During	The Employee Shall Pay the University
Contract Year One	\$600,000
Contract Year Two	\$500,000

Contract Year Three	\$400,000
Contract Year Four	\$300,000
Contract Year Five	\$250,000 (but in no case will the amount be greater than the amount of base compensation remaining under this Agreement.)
Contract Year Six and thereafter	\$0

to be paid within thirty (30) days after the effective date of termination, with the exception of Contract Year One and Contract Year Two. In the event Employee terminates this Agreement without cause in Contract Year One or Contract Year Two, Employee shall pay to the University, as liquidated damages \$400,000 within thirty (30) days after the effective date of termination with the remainder of the amount set forth above due within twelve (12) months of termination without cause. University shall not be liable for the loss of any collateral business opportunities or any other benefits, or income from any sources that might ensue as a result of Employee's termination of this Agreement without cause.

7.3.2 The parties have bargained for and agreed to the foregoing liquidated damages provision, giving consideration to the fact that University will incur administrative, recruiting and resettlement costs in obtaining a replacement for Employee, in addition to potentially increased compensation costs if Employee terminates this Agreement prior to its expiration, which damages are extremely difficult to determine with certainty. The parties further agree that the payment of such liquidated damages by Employee and acceptance thereof by University shall constitute adequate and reasonable compensation to University for the damages and injury suffered by it because of such termination by Employee. The foregoing shall not be, nor be construed to be, a penalty.

8.0 Outside Employment.

Employee agrees not to personally, or through any agent actively seek, negotiate for, or accept other full-time or part-time employment of any nature during the term of this Agreement without first having notified the Athletic Director.

9.0 Relationship Between the Parties.

The relationship between Employee and University shall be determined solely by the terms and conditions of this Agreement.

10.0 Governing Law.

This Agreement shall be governed by and construed under the laws of the State of Michigan, the courts of which shall be the forum for any lawsuits arising from or incident to this Agreement.

11.0 Severability.

If any provision of this Agreement shall be determined to be void, invalid, unenforceable or illegal

for any reason, it shall be ineffective only to the extent of such prohibition and the validity and enforceability of all the remaining provisions shall not be affected thereby.

12.0 Entire Agreement: Modification.

This Agreement contains all the terms between the parties and may be amended only in writing signed by both parties.

IN WITNESS WHEREOF, Employee and the authorized representative(s) of University have executed this Agreement on this 27th day of June, 2017.

EASTERN MICHIGAN UNIVERSITY

EMPLOYEE:

By: Erin Kido
Erin Kido, Interim Director of
Athletics

By: Chris Creighton
Chris Creighton
Head Football Coach

By: Dr. James Smith
Dr. James Smith
President