



**CONTRACT BETWEEN CENTRAL MICHIGAN UNIVERSITY
AND
JAMES McELWAIN**

This Contract is hereby made between Central Michigan University, Mt. Pleasant, Michigan, hereinafter referred to as the "University," and James McElwain, hereinafter referred to as the "Coach." This Contract constitutes the University's only employment agreement with Coach.

The parties to this Contract, in consideration of the mutual covenants and stipulations set out herein, agree:

1. Employment. The University hereby employs Coach as a full-time P&A-99 employee for the purpose of conducting an intercollegiate football program for the University throughout the "Term" of this Contract. Coach hereby agrees to be the head-coach of the football "Team" throughout the Term of the Contract. Coach's "Term" of employment begins on December 2, 2018 and shall expire on the day following the Team's final game of the 2023-24 NCAA Division I Football Bowl Subdivision season (the "End Date"). During the Term, each period from January 1 through and including the following December 31 shall be referred to as a "Contract Year" (except that the Fifth and final contract Year shall conclude on the End Date).

2. Duties. In connection thereto, during the Term, Coach, who shall report directly to the Director of Athletics ("Director"), agrees to perform all duties and responsibilities reasonably attendant to the position of a Division I FBS Head Football Coach and as directed by the Director of Intercollegiate Athletics in accordance with the policies, practices and regulations of the University and the Athletics Department. Coach shall perform as a full-time employee during the hours and days of the week as reasonably determined by the Director. The duties of Coach shall include, but not be limited to, the following:

- A. Coach the University's football Team, operating within University, Mid-American Conference ("MAC") and NCAA rules, guidelines, and policies, and within the parameters of the allocated budget.
- B. Supervise and manage the football program budget, which includes decisions on travel and equipment procurement.
- C. Establish and maintain an active football recruitment program to provide players capable of maintaining University's level of play at the NCAA Division I level. Also, recruit and seek to retain student-athletes who achieve acceptable academic performance, as defined by the NCAA through its Annual Progress Report (APR) and Graduation Success Rate (GSR).
- D. Establish and maintain a football program that produces spectator interest as measured by attendance and revenue generated at home contests.
- E. Seek to generate revenues from external sources that support and enhance the operating budget of football and the overall athletic program by, among other methods, being directly involved in a reasonable number of fundraising activities.
- F. Represent the University's Department of Intercollegiate Athletics to various community groups with respect to the football program and make speaking appearances at special events sponsored by CMU Athletics as reasonably determined by the Director.

- G. Subject to applicable University and Departmental policies and procedures, University and Departmental budgetary guidelines, and the prior review and final approval of the Director, the responsibility for making recommendations related to the hiring, discipline and termination of assistant coaches, the director of football operations, and graduate assistants.

In addition to the normal responsibilities of a head coach, Coach recognizes the importance of and agrees to assume reasonable responsibilities to support fundraising, increase student spirit and alumni support for the program and the University. In addition, Coach shall perform media and fundraising obligations as reasonably assigned by the University in connection with the Team, as are standard for NCAA Division I Football Bowl Subdivision head coaches; provided none of the duties set forth in this paragraph conflict with Coach's primary responsibility in coaching the team (to include conducting practices, engaging in recruiting efforts, preparing the team for upcoming game activities, and other such similar position-specific duties).

3. Compensation. For the period December 2, 2018 to June 30, 2019 University will pay Coach semi-monthly based upon a twelve (12) month base salary of **four hundred thousand dollars (\$400,000)**. For the period July 1, 2019 – June 30, 2023, Coach will receive in July at least the annual percentage increase for cost of living adjustment, if any, for P&A employees on his prior twelve (12) month salary. In addition, Coach will also be eligible for any additional compensation allowed in the P&A Handbook.

In addition, Coach may receive additional compensation according to the following:

- A. If Coach is still an employee of the University charged with conducting the football program after February 15, 2020, Coach will receive a fifty thousand dollar (\$50,000) retention payment. If Coach continues to be employed and charged with conducting the football program after February 15th of each subsequent year of the Contract, he will receive a fifty thousand dollar (\$50,000) retention payment. Each retention bonus will be paid in one lump sum within thirty (30) days of it being achieved. Each bonus will not be a base salary increase but shall be a one-time payment.
- B. If Coach's Team has a victory over a team from the ACC, Big 10, Big 12, SEC, or PAC 12, Coach will receive an additional lump sum payment of ten thousand dollars (\$10,000).
- C. If Coach's Team wins more than a majority of its games (which includes a post-season victory) during any season, Coach will receive a lump sum payment according to the following schedule (not cumulative). Only one payment will be made, based on the total number of wins achieved in any one season of athletic competition (usually August through early January).
 - a. For a 7-win season, seven thousand five hundred dollars (\$7,500);
 - b. For a 8-win season, ten thousand dollars (\$10,000)
 - c. For a 9-win season, twelve thousand five hundred dollars (\$12,500);
 - d. For a 10-win season, fifteen thousand dollars (\$15,000);
 - e. For a 11-win season, seventeen thousand five hundred dollars (\$17,500);
 - f. For a 12-win season, twenty thousand dollars (\$20,000).
- D. If Coach's Team is regular season champion of the West Division of the Mid-American Conference, Coach will receive a lump sum payment of twenty thousand dollars (\$20,000) for that year, if Team participates in the Title Game.
- E. If Coach's Team wins the Mid-American Conference ("MAC") championship game, Coach will receive an additional lump sum payment of twenty-five thousand dollars (\$25,000) for that year.
- F. If Coach's Team participates in a bowl game, Coach will receive an additional lump sum payment of twenty thousand dollars (\$20,000) for that year.

- G. If Coach's Team wins a bowl game, Coach will receive an additional lump sum payment of twenty five thousand dollars (\$25,000) for that year.
- H. If Coach's Team appears in the Fiesta Bowl, Peach Bowl, Cotton Bowl, Orange Bowl, Rose Bowl, or Sugar Bowl, Coach will receive an additional lump sum payment of seventy-five thousand dollars (\$75,000) for that year.
- I. If Coach's Team appears in the College Football Playoff game, Coach will receive an additional lump sum payment of one hundred thousand dollars (\$100,000) for that year.
- J. If Coach's Team achieves a season ending ranking in the College Football Playoff top 25, Coach will receive an additional lump sum payment of twenty thousand dollars (\$20,000) for that year.
- K. If Coach is selected as Mid-American Conference Football Coach of the Year, Coach will receive an additional lump sum payment of twenty-five thousand dollars (\$25,000) for that year.
- L. If Coach is selected National Coach of the Year by a Major Publication, Coach will receive an additional lump sum payment of thirty-five thousand dollars (\$35,000).
- M. If football attendance for all home football games exceeds an average (mathematical mean) of 20,000 persons for the football season as reported by the University's game day internal audit, Coach will receive an additional ten thousand dollars (\$10,000). If football attendance for all home football games exceeds an average of 25,000 persons for the football season as reported by the University's game day internal audit, Coach will receive an additional fifteen thousand (\$15,000). If Coach reaches the higher incentive threshold for average attendance, he is only entitled to that one payment of \$15,000, and not a cumulative payment.
- N. If Coach's Team has a NCAA single-year Annual Progress Rate (APR) above 950, Coach will receive a lump sum payment of two thousand five hundred dollars (\$2,500). If Coach's Team has a NCAA single-year Annual Progress Rate (APR) above 965, Coach will receive a lump sum payment of seven thousand five hundred dollars (\$7,500). If Coach's Team has a NCAA single-year Annual Progress Rate (APR) above 985, Coach will receive a lump sum payment of ten thousand dollars (\$10,000). If Coach reaches the higher incentive threshold for APR, he is only entitled to that one payment of \$10,000, and not a cumulative payment.
- O. If Coach's Team has a cumulative grade point average that falls into one of the ranges identified below, Coach will receive a lump sum payment according to the following schedule. Only one payment will be made, based on cumulative Team grade point average. (Standard rounding rules apply.)
 - a. Between 2.7-2.79, three thousand dollars (\$3,000);
 - b. Between 2.8-2.89, five thousand dollars (\$5,000);
 - c. Between 2.9-2.99, seven thousand five hundred dollars (\$7,500); or
 - d. 3.0 and above, fifteen thousand dollars (\$15,000).

The term "Coach's Team" shall mean that the Coach continues to be employed by the University and is actively performing the employment related duties set forth in Paragraph 2 above.

These additional payments will be one time only and will not be added to Coach's twelve (12) month base salary. Each of the payments described in 3.A through 3.O above is cumulative: that is, Coach may receive each of them as may be applicable in any given year. Unless otherwise specified above, these additional payments, and any payment applicable under paragraph 4 (below), shall be paid to Coach, less applicable taxes, no later than thirty (30) days following the end of the Contract Year in which they were earned.

If Coach is terminated for Cause, he is not entitled to the additional payments described in 3.A through 3.O above that have been earned but are not yet due except as provided under Paragraph 8.

As a twelve-month P&A employee, Coach's appointment includes all periods when the University is open whether or not classes are in session. Coach will accrue a vacation allowance of twenty (20) days per year to be charged for those normal work periods when not performing professional duties.

Coach shall also be entitled to the same benefits provided to P&A employees based upon the above (12) month base salary. Benefits including retirement contributions will not be paid on the supplemental income described in paragraph 5 and paragraph 6 which will be taxed according to IRS regulations. Coach will receive benefits in accordance with the P&A Handbook and CMU policies, which are subject to change from time to time.

The University will contribute an amount equivalent to 10% of Coach's base salary, up to the annual compensation limit specified in Section 104(a)(17), into a basic 403(b) retirement plan. Once Coach's earnings reach the annual compensation limit, the university can no longer contribute to a 403(b) account. Coach may contribute to a supplemental 403(b) account and/or supplemental 457(b) account until the annual deferral limit is reached. Maximum limits for supplemental tax deferral plans can be found online at <https://www.cmich.edu/fas/hr/Documents/MaximumLimitsSRA.pdf>.

4. Outside Income. Coach must request in writing and receive prior written approval from the University President and Director for all athletically related income and benefits from sources outside the University, and such consent shall not be unreasonably withheld. For all income or benefits not to exceed \$1,000 per event/contract, Coach may request and University President and Director may grant either specific approval for each individual event/contract or a general approval. If a general approval is granted, at the end of the fiscal year, on or before the 1st day of June, pursuant to this contract, Coach will file a personal financial statement with the University President and the Athletics Director. For all income or benefits in excess of \$1,000 per event/contract, specific approval for each one must be granted by the University President prior to acceptance by Coach. Such income may include, but not be limited to, income and benefits from annuities; sports camps; housing benefits; club memberships; complimentary ticket sales; television and radio programs; and endorsement or consultation contracts with athletic shoe, apparel or equipment manufacturers.

5. Additional Benefits. As part of Coach's employment with the University, Coach is entitled to additional benefits as outlined below:

- A. The University will reimburse Coach in accordance with University policy and IRS regulations for his actual costs of relocating (including temporary housing, etc.), up to a maximum of Twenty Thousand Dollars (\$20,000); and any reimbursement for additional expenses shall be negotiable (in good faith).
- B. In accordance with University policy, a monthly cell phone allowance of seventy-five dollars (\$75.00) will be added in equal installments to each paycheck during the course of the Contract year. Coach is responsible for covering the cost of all hardware and service associated with his phone.
- C. In order to support Coach's effort in recruiting exemplary assistant coaches, the University agrees to support the top 10 full-time assistant coaches of the Team at a total combined salary up to \$1,020,000 per year (subject to annual increases pending conference and peer institution trends), it being understood that this support is separate and apart from compensation for the other support staff, and the like; Coach shall have the authority to employ, manage, discipline, and terminate all assistant coaches and other direct reports within the football department, subject to collective bargaining agreements or handbooks, university policies, departmental guidelines and budgetary limitations and in conjunction with Human Resources or Faculty Personnel Services.
- D. The University agrees in accordance with University policy to: (A) reimburse Coach for all reasonable business expenses that are typically reimbursed to Division I Head Football Coaches (i.e., travel/recruiting, etc.) and as allocated within Coaches sport operating budget; and (B) cover the ordinary and necessary expenses incurred by assistant coaches and their families in correction with their relocation to the University area as mutually agreed upon (in good faith).
- E. The University agrees to provide Coach with benefits which are typically provided to other NCAA Division I Head Football Coaches, in accordance with University and department policies, including but not limited to: the right to enter into arrangement for endorsements that do not conflict with current University endorsements, camps, and media and other opportunities for his own benefit; the use and possession of an

automobile throughout the Term; a satisfactory number of home and away football game tickets to all regular and post-season contests; use of a private stadium box for all home contests; membership privileges at a private golf club; the ability for Coach's spouse to travel to all away contests in accordance with CMU's Business Expense Manual.

6. Television/radio/promotional appearances. University arranges for certain television, radio, and promotional appearances by Coach. Coach will be paid additional compensation as described in A. through E. below for participation in television, radio, public and promotional appearances as directed by the Director. This additional compensation is due to Coach in equal semi-monthly payments for the periods described below.

- A. January 1, 2019 – December 31, 2019: One Hundred Ninety Thousand Dollars (\$190,000).
- B. January 1, 2020 – December 31, 2020: Two Hundred Fifteen Thousand Dollars (\$215,000).
- C. January 1, 2021 – December 31, 2021: Two Hundred Forty Thousand Dollars (\$240,000).
- D. January 1, 2022 – December 31, 2022: Two Hundred Sixty Five Thousand Dollars (\$265,000).
- E. January 1, 2023 – December 31, 2023: Two Hundred Ninety Thousand Dollars (\$290,000).

7. Adidas. The University recognizes Adidas as the sole provider of all athletic apparel and equipment (including inflatables, gloves, and shoes). Coach shall ensure the football program remains in full compliance with the Adidas contract, which requires all coaches and student-athletes to dress in Adidas apparel and equipment while representing the University in NCAA athletic competition (including pre-season, regular season, and post-season games), during all athletic practices held on University property or at an off-site location, and during all public appearances. Coach's willful failure to ensure such compliance which results in the failure of the football program to materially comply with the terms of the Adidas contract or any subsequent provider may lead to disciplinary action against Coach up to and including termination.

8. Suspension and/or Termination. Coach may be suspended or terminated for Cause (as defined by Attachment A, which is incorporated into this Contract). Without limitation, the University agrees that the Team's win-loss record shall not be permitted to be a factor in any termination of this Contract for Cause by the University. Termination for Cause shall include the immediate termination of all salary payments and benefits not yet earned by Coach and which would be due under the remaining term of this Contract. If the Coach is fired for Cause, the University will not be responsible for any buyout or payment to coach beyond what guaranteed compensation Coach had earned up to the point of notice of termination.

Coach is required to comply with the policies, practices or regulations of University and the rules and regulations of the NCAA and the Mid-American Conference as adopted and approved by University. Should Coach be found in violation of any of these, Coach shall also be subject to disciplinary or corrective action including those set forth in the provisions of the NCAA enforcement procedures. Such disciplinary or corrective action could include suspension without pay for a period of time or termination of this employment contract if Coach is found to be involved in serious violations of these policies, practices, rules or regulations. For the avoidance of doubt, any such termination shall only be for "Cause" if Coach's involvement meets the definition of Cause set forth in Attachment A.

Coach agrees that the University shall be permitted to terminate this Contract without Cause (a termination "Without Cause"), upon written notice to Coach, provided that the University pays Coach the sum detailed below ("University's Buy-Out"). University's Buy-Out shall be payable in full within sixty (60) days of said termination. In the event of a termination of this Contract by the University Without Cause, the University agrees that the payment of the University's Buy-Out shall be deemed liquidated damages (and not a penalty), as such damages are difficult to presently and accurately estimate. The University's Buy-Out shall be calculated as of the date of termination Without Cause, as follows:

- A. Dec. 2, 2018 – Dec. 31, 2019: Two Million Dollars (\$2,000,000)
- B. Jan. 1, 2020 – Dec. 31, 2020: One Million Six Hundred Thousand Dollars (\$1,600,000)
- C. Jan. 1, 2021 – Dec. 31, 2021: One Million Two Hundred Thousand Dollars (\$1,200,000)

- D. Jan. 1, 2022 – Dec. 31, 2022: Eight Hundred Thousand Dollars (\$800,000)
- E. Jan. 1, 2023 – Dec. 31, 2023: Four Hundred Thousand Dollars (\$400,000)

In the event the University exercises the right to terminate Coach's employment Without Cause and the Coach accepts or begins employment as a head football coach at a NCAA higher education institution within one year of termination, the University's obligation to pay a Buy-Out as listed above shall be reduced by an amount equal to the amount of Coach's minimum annual compensation agreed to by the Coach with the new NCAA higher education institution. For example, if Coach accepts such a position and is due a University Buy-Out payment of \$800,000, and the Coach's minimum annual compensation from the subsequent head coach position is \$400,000, Coach shall only receive \$400,000 from the University. In the event that the Coach has already received the University's Buy-Out payment, the Coach shall be obligated to repay to the University the difference between the amount the Coach received from the University and the minimum annual compensation.

However, the University shall never be obligated under this Contract or any other agreement to pay any Buy-Out to Coach if the Coach is terminated for Cause or has willfully or intentionally provided false information to the University, including false or untrue information in any of the Coach's employment application materials, including the Coach's resume.

In the event of termination of this Contract during its term or non-reappointment for a subsequent term, regardless of any liability by the University for base salary or benefits, University shall not be liable to Coach for the loss of any other compensation, benefits, gifts, or opportunities for supplemental income, including but not limited to those described in paragraphs 4, 5, and 6 above, TV show appearances, speaking engagements, workshops, use of an automobile, club memberships, summer camps, teaching assignments, outside endorsements or athletically related activity which he may have received or have the opportunity to receive, either from other parties or from the University, in whole or in part because of his position as football head coach.

University agrees that Coach shall be permitted to terminate this Contract immediately upon written notice to University, provided that in the event Coach voluntarily terminates this Contract in order to accept another position as coach, scout, athletics administration in college or professional sports, sport broadcasting, or other front-office positions of a football program at another college or university or any professional football team (a "Position"), Coach will pay University a buy-out, calculated based on the date of such termination ("Coach's Buy-Out"). Coach acknowledges that he shall be obligated to notify the Director in the event he engages in any substantive discussions for future employment during the Term. Coach's Buy-Out shall be payable within 60 days of Coach's acceptance of said Position. Coach's Buy-Out shall be calculated based on the date Coach accepts another Position as follows:

- A. Dec. 2, 2018 – Dec. 1, 2019: One Million Two Hundred Thousand Dollars (\$1,200,000)
- B. Dec. 2, 2019 – Dec. 1, 2020: One Million Dollars (\$1,000,000)
- C. Dec. 2, 2020 – Dec. 1, 2021: Eight Hundred Thousand Dollars (\$800,000)
- D. Dec. 2, 2021 – Dec 1, 2022: Six Hundred Thousand dollars (\$600,000)
- E. Dec. 2, 2022 – Dec 1, 2023: Four Hundred Thousand Dollars (\$400,000)

University shall not be responsible for payment of any additional compensation including bonuses earned until the Coach has fully satisfied his debt to the University for his termination of this Contract. For purposes of these payments, a football season includes all regular season and any post-season competition.

If either the University or Coach must pursue payment from the other party for early termination of the contract through legal means, including but not limited to litigation, the non-prevailing party will be responsible for the payment to the prevailing party for any and all reasonable outside attorney fees and associated costs incurred by the prevailing party.

If Coach accepts employment or announces his acceptance of employment with another entity, regardless of whether or not the Coach has signed a contract, while still employed with the University, Coach is deemed to have resigned his position with the University effective immediately.

9. Right to Resign. Unless notice of termination has been given to Coach, or unless Coach has resigned, Coach shall not discuss or negotiate directly his prospective employment with any other institution of postsecondary education or any professional athletic team without informing the Director of any such discussions or negotiations as soon as possible.

Coach has the right to resign from his employment pursuant to an irrevocable letter of resignation being provided to the Director.

10. Non-discrimination. The parties to this Contract agree to comply with all federal and state laws and University policies on nondiscrimination.

11. Merger. This Contract sets forth the entire agreement between the parties and fully supersedes any and all prior agreements, representations and/or understandings between the parties. All prior agreements, representations and/or understandings between the parties are hereby extinguished. Coach acknowledges and agrees that in executing this Contract he is not relying on any representations by University not set forth in this Contract.

12. Severability. The provisions of this Contract are severable and if any part of the Contract is found to be null, void or inoperative, the other paragraphs or portions thereof shall remain fully valid and enforceable.

13. Conflict of Laws. Coach and University agree that any disputes arising out of an interpretation of the duties and responsibilities entered into by the parties of this Contract shall be governed by the laws of the state of Michigan.

IN WITNESS WHEREOF, the parties hereby execute this Contract:

CENTRAL MICHIGAN UNIVERSITY

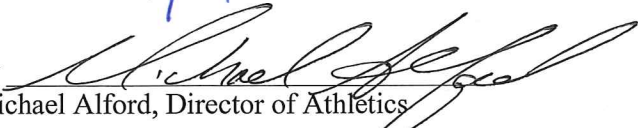
by 
Robert O. Davies, President

Date: 4/14/19

COACH

by 
James McElwain, Head Football Coach

Date: 4-3-19

by 
Michael Alford, Director of Athletics

Date: 3-22-19

cc: Cali Clark, Human Resources
Manuel Rupe, General Counsel

Attachment A

Contract between Central Michigan University and James McElwain
Head Football Coach
Central Michigan University

As provided for in your Contract as head football coach ("Coach"), you may be terminated at any time for Cause. Cause is defined as the following:

1. Cause includes without limitations: willful and/or egregious misconduct or behavior, whether by act or omission, that materially interferes with Coach's duties, materially or adversely affects the orderly or efficient operation of the athletic program or the University, or materially detracts from the reputation, image, or respect of the athletic program or the University, even if off-duty or off premises. "Cause" also specifically includes conduct or behavior, whether by act or omission, of a member of the Football program's coaching staff or any other person under Coach's supervision that Director determines may negatively and materially impact the reputation, image, or respect of the athletic program or the University, which is permitted, encouraged, or condoned by Coach, or about which Coach knew or reasonably should have known, and failed to act reasonably to prevent, limit, or mitigate.
- 2 Any major NCAA violation or repeated secondary NCAA violations, through knowing or deliberate conduct, or any such conduct demonstrating a reckless disregard for any major NCAA violation, by Coach which reflects adversely upon the University or its athletics program.
- 3 The making or rendition of a finding or determination by NCAA or MAC of a major violation of any of its rules or regulations by a member of the Football coaching staff or alumni, booster club members, or student-athletes, which is permitted, encouraged, or condoned by Coach, or about which violation Coach knew or reasonably should have known, and failed to act reasonably to prevent, limit, or mitigate;
- 4 Failure by Coach to report promptly to the President of the University, the General Counsel, faculty athletics representative, or director of compliance any violation of the NCAA, MAC or University rules known to Coach or about which Coach had reason to know, or to report promptly to these same persons any information that a significant violation may have occurred of the NCAA, MAC or University rules by any coach or staff under his supervision, by student-athletes, or by other persons who are associated with the University's athletic programs or who are deemed representatives of the University's athletic interests;
- 5 Counseling or instructing by Coach of any assistant coach, student or other person to fail or refuse to respond accurately and fully within a reasonable time to any inquiry or request concerning a matter relevant to the athletic programs of the University or of another institution of higher education which shall be propounded by the NCAA, MAC, or the President or General Counsel of the University, or the director of compliance.
- 6 Repeated unacceptable academic performance, or personal behavior, of student-athletes where Coach has demonstratively failed to promote an atmosphere of compliance within the program or failed to properly monitor the actions of staff-members who report, directly or indirectly, to Coach after Coach has been provided notice of such failure(s) by the Director. Unacceptable academic performance shall be as defined by the NCAA through its APR and GSR.
- 7 The University agrees that it does not intend for the Contract with the Coach to be terminable for minor, technical, or otherwise immaterial matters or breaches that are subject to being cured or resolved following notice of such to Coach.