

First Amendment to Contract Between Central Michigan University and James McElwain

This First Amendment (hereafter "Amendment") to the Contract Between Central Michigan University (hereafter "University") and James McElwain (hereafter "Coach"), to be effective January 1, 2020 (the "Amendment Effective Date"), is made between the University and Coach and amends the Contract between the parties that became effective on December 2, 2018 (the "Contract").

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

- A. Paragraph 1 (Employment) of the Contract shall be amended to read as follows:

Employment. The University hereby employs Coach as a full-time P&A 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 2024-25 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 final Contract Year shall conclude on the End Date).

- B. The first paragraph of Paragraph 3 (Compensation) of the Contract shall be amended to read as follows:

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, 2024, 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.

- C. Sub-Paragraph 3(A) of the Contract shall be amended to read as follows:

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 retention payment in the amount of one hundred fifty thousand dollars (\$150,000). 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. In the event of a leadership change by either the University President or the Director of Athletics during the Term, the University acknowledges and agrees the annual amount of all retention payments scheduled to be earned by Coach following any such leadership change shall be reduced by \$100,000, and further agrees the annual amounts for additional compensation due Coach pursuant to the terms of Paragraph 6 shall be increased commensurately by \$100,000 following any such leadership change.

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D. Sub-Paragraph 3(B) of the Contract shall be amended to read as follows:

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 twenty thousand dollars (\$20,000).

E. Paragraph 6 (Television/radio/promotional appearances) of the Contract shall be amended to read as follows:

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 F. below for participation in television, radio, public and promotional appearances as directed by the Director. This additional Contract Year compensation is due to Coach in pro-rated 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 Sixty-five Thousand Dollars (\$265,000)
- C. January 1, 2021 – December 31, 2021: Two Hundred Ninety Thousand Dollars (\$290,000)
- D. January 1, 2022 – December 31, 2022: Three Hundred Fifteen Thousand Dollars (\$315,000)
- E. January 1, 2023 – December 31, 2023: Three Hundred Forty Thousand Dollars (\$340,000)
- F. January 1, 2024 – December 31, 2024: Three Hundred Sixty-five Thousand Dollars (\$365,000)

F. The third paragraph of Paragraph 8 (Suspension and/or Termination) of the Contract shall be amended to read as follows (including the insertion of a new sub-paragraph as indicated herein):

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"), which supersedes the provisions of the P&A Handbook regarding Termination Payment and vacation payouts. University's Buy-Out shall be payable in full within sixty (60) days of said termination. All payments shall be less Coach's portion of Social Security, and less federal and state withholding. 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: Two Million Dollars (\$2,000,000)
- C. Jan. 1, 2021 – Dec. 31, 2021: Two Million Dollars (\$2,000,000)
- D. Jan. 1, 2022 – Dec. 31, 2022: One Million Six Hundred Thousand Dollars (\$1,600,000)
- E. Jan. 1, 2023 – Dec. 31, 2023: One Million Six Hundred Thousand Dollars (\$1,600,000)
- F. Jan. 1, 2024 – Dec. 31, 2024: Eight Hundred Thousand Dollars (\$800,000)

Moreover, in the event of a leadership change by either the University President or the Director of Athletics during the Term, the University acknowledges and agrees that the amount as listed above applicable to a University Buy-Out during the Contract Year in which such leadership change occurs shall be adjusted to the amount for the Contract Year that immediately precedes such leadership change, and further acknowledges and agrees the amounts for each subsequent Contract Year shall be adjusted accordingly. For example purposes, if such leadership change occurs on February

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1, 2023, the applicable University Buy-Out amount for the then-current Contract Year shall remain the same (\$1,600,000), and the University Buy-Out amount for the following (final) Contract Year shall be adjusted from \$800,000 to \$1,600,000.

- G. The seventh paragraph of Paragraph 8 (Suspension and/or Termination) of the Contract shall be amended to read as follows (including the insertion of a new sub-paragraph as indicated herein):

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 administrator in college or professional sports, sport broadcasting, or other front-office position of a football program at another college or university or any professional football team (a "Position"), or accept a Position within one (1) year of terminating this Contract, Coach will pay University a buy-out, calculated based on the date of such termination ("Coach's Buy-Out") which supersedes the provisions of the P&A Handbook regarding Termination Payment and vacation payouts. 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 sixty (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:

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|---------------------------------|--|
| 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) |
| F. Dec. 2, 2023 – Dec. 1, 2024: | Four Hundred Thousand Dollars (\$400,000) |

Moreover, in the event of a leadership change by either the University President or the Director of Athletics during the Term, the University acknowledges and agrees all of the amounts as listed above otherwise applicable to a Coach's Buy-Out shall be immediately reduced by twenty-five percent (25%).

In consideration of Coach's receipt of the full payment outlined in this Section 8, Coach will, and does hereby, release and discharge the University, its officers, trustees and employees from any and all claims, actions, grievances, causes of action, damages, costs and liability of every kind and nature whether in law or equity, known or unknown, that he has or may have arising out of his employment with and termination from the University. This does not release or discharge the University from liability for claims under the state workers' compensation law, payroll, or accounting errors, and failure by the University to meet its contractual obligations under this Agreement.

- H. A new Paragraph 5(F) shall be added to the Contract, to read as follows:

The University agrees to, on an annual basis, the distribution of a retention bonus pool in an amount (not less than \$150,000) to be determined by the Director, in consultation with the University President, awarded at Coach's discretion to the Team's Assistant Coaching Staff and other football program staff members, without limitation to position classifications, on the second pay date of each July during the Term.

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- I. A new Paragraph 5(G) shall be added to the Contract, to read as follows:

The University agrees to, on an annual basis, the distribution of a Bowl Game bonus pool for the Team's countable position coaches in an amount to be determined by the Director, in consultation with the University President. The University acknowledges and agrees the bonus pool amount shall be sufficient to entitle each countable position coach to receive a bonus equal to not less than one-half the monthly salary for each such assistant coach at the time of the Team's participation in a post-season Bowl Game and shall be payable no later than the first pay period in February following the applicable season.

Except as modified or amended by this Amendment, all other provisions of the Contract shall remain in full force and effect. Each party is signing this Amendment on the date stated opposite that party's signature, to be effective as of the Amendment Effective Date.

Agreed to:

CENTRAL MICHIGAN UNIVERSITY


By: 
Robert O. Davies, President

5-19-20
Date

By: 
Michael Alford, Director of Athletics

5-19-20
Date

COACH

By: 
James F. McElwain, Head Football Coach

5/8/2020
Date