Coaches' Buyouts – Accountable Plans

By Martin J. Greenberg and Noah Carroll

I. Introduction

College coaching contracts have unique termination provisions that permit the coach and the university to terminate the contract prior to the end of its term. A university may terminate the coach prior to the end of the contract term not for cause providing a liquidated damages payment schedule with potentially an obligation on the coach's part to mitigate those damages. On the other hand, the coach may elect to terminate the contract and "jump" to another university providing that the coach pays the university that he is leaving a termination fee in the form of liquidated damages.

II. Jonathan Smith Contract Provisions

Jonathan Smith ("Smith") played quarterback at Oregon State University from 1998 to 2001.[1] He eventually became the head football coach at Oregon State from 2018 to 2023 and compiled a 34-35 win-loss record overall and 1-1 in bowl games.[2] In 2022, Smith received the Co-PAC12 Coach of the Year Award.[3] In November of 2023, Smith announced that he was terminating his contract with Oregon State to become the new head football coach at Michigan State University.[4]

Smith entered into an Employment Agreement and Notice of Appointment of Head Coach with Oregon State University in January of 2018. Paragraph C, Termination by Coach, on page 10 states as follows:

> C. Termination by Coach
>
> 1. Coach may terminate employment under this Agreement for any reason by giving advance written notice to University, such termination to become effective no earlier than 24 hours after University's receipt of such written notice.
>
> 2. Coach recognizes that the promise to work for University for the entire Term of this Agreement is the essence of this Agreement. Coach also recognizes that University is making a highly valuable investment in Coach's employment by entering into this Agreement and that University's investment would be lost if Coach were to resign or otherwise terminate employment with University before the end of the Term. In the event Coach terminates employment under this Agreement under this Section IV.C prior to the end of the Term, Coach will pay University liquidated damages as follows:

Contract Year	
Notice effective during Year 1	$3,500,000
Notice effective during Year 2	$3,000,000

[1] Jonathan Smith, Staff Directory, Oregon State University. https://ourbeavernation.com/staff-directory/jonathan-smith/457.

[2] Jonathan Smith, Sports-Reference.com, https://www.sports-reference.com/cfb/coaches/jonathan-smith-2.html.

[3] Daschel, Nick, *Oregon State's Jonathan Smith Pac-12 named co-coach of the year, record 19 Beavers make all-conference team,* OregonLive.com, Dec. 6, 2022, https://www.oregonlive.com/beavers/2022/12/oregon-states-jonathan-smith-pac-12-co-coach-of-the-year-record-19-beavers-on-all-conference-team.html.

[4] Daschel, Nick, *Oregon State's Jonathan Smith is leaving to become Michigan State football coach*, OregonLive.com, Nov. 25, 2023, https://www.oregonlive.com/beavers/2023/11/oregon-states-jonathan-smith-is-leaving-to-become-michigan-state-football-coach.html.

Notice effective during Year 3	$2,000,000
Notice effective during Year 4	$1,000,000
Notice effective during Year 5 or thereafter	$1,000,000

University may, at its sole discretion, reduce and or waive Coach's obligation under this Section IV.C. Payment is due 60 days after the effective date of the termination.

3. University has the option, in its sole discretion, to make Coach's termination effective at any time prior to the end of such notice period as long as the University pays Coach all compensation to which he is entitled up through the last day of the notice period. Thereafter all obligations of University cease except for University's obligation to pay Coach's earned but unpaid compensation and reimbursement for previously incurred and approved expenses.

4. Failing to terminate employment with the University before beginning employment outside the University violates this Agreement. University at its option may treat Coach's beginning such other employment as his termination of employment under this Section IV.C.[5]

The Employment Agreement was amended, and the Fourth Amendment dated 12/8/2022 to the Employment Agreement and Notice of Appointment extended the term of Smith's contract to and including Contract Year 11, i.e. March 1, 2028.[6] Paragraph H of said Amendment revised Paragraph IV.C.2 with respect to the buyout amount if coach terminates the contract early as follows:

H. In Section IV.C.2 of the Agreement, Contract Year 11 is hereby added and the liquidated damages beginning in Contract Year 6 are hereby adjusted as follows:

Contract Year	
Notice effective during Year 6	$3,000,000
Notice effective during Year 7	$2,500,000
Notice effective during Year 8	$2,000,000
Notice effective during Year 9	$1,500,000
Notice effective during Year 10	$1,000,000
Notice effective during Year 11	$0[7]

Smith exercised his right of termination and entered into a head football coach contract with Michigan State University. The provisions of said Terms Sheet are as follows:

This Terms Sheet is a record of Michigan State University's ("University") agreement to employ Jonathan Smith ("Coach") as its Head Football Coach, such employment to include, but not be limited to, the following terms and conditions and others negotiated in good faith between the two parties and consistent herewith.

[5] Employment Agreement and Notice of Appointment for Head Coach, Jonathan Smith, Oregon State University, Jan. 10, 2018, on file with the Author.

[6] First Amendment to Employment Agreement and Notice of Appointment for Head Coach , Jonathan Smith, Oregon State University, Mar. 1, 2020, on file with the Author.

[7] *Id.*

1. Term.

- Seven (7) year agreement through January 31, 2031.
- Effective November 25, 2023 through January 31, 2031.
- February 1 - January 31 shall be deemed a "Contract Year," with the exception of the first Contract Year which shall commence on November 25, 2023 and continue through January 31, 2025.

2. Annual Compensation

YR1 (2024) - $6,000,000 (Base) + $1,250,000 (Supplemental) = $7,250,000 (November 25, 2023 - January 31, 2025)
YR2 (2025) - $6,000,000 (Base) + $1,350,000 (Supplemental) = $7,350,000 (February 1, 2025 - January 31, 2026)
YR3 (2026) - $6,000,000 (Base) + $1,450,000 (Supplemental) = $7,450,000 (February 1, 2026 - January 31, 2027)
YR4 (2027) - $6,000,000 (Base) + $1,550,000 (Supplemental) = $7,550,000 (February 1, 2027 - January 31, 2028)
YR5 (2028) - $6,000,000 (Base) + $1,650,000 (Supplemental) = $7,650,000 (February 1, 2028 - January 31, 2029)
YR6 (2029) - $6,000,000 (Base) + $1,750,000 (Supplemental) = $7,750,000 (February 1, 2029 - January 31, 2030)
YR2 (2030) - $6,000,000 (Base) + $1,850,000 (Supplemental) = $7,850,000 (February 1, 2030 - January 31, 2031)
(Coach will consider payments from third parties to satisfy a portion of Annual Compensation, which provides University with excise tax savings.)

- For the first three seasons of this agreement, immediately upon the University's achievement of seven (7) total season wins, the Terms of this Agreement shall be extended automatically by one Agreement year.
- For each new Agreement Year added to the Term, the Annual Compensation shall be increased by One Hundred Thousand dollars ($100,000) above the Annual Compensation for the immediately preceding Agreement year.

3. Guarantee (University Terminates Without Cause)

- 85% of total remaining Annual Compensation due through the otherwise unexpired Term.
- Subject to offset for NFL or Division I coaching position, although Coach is not required to accept any position if such position is not in the best interest of his coaching career upon Coach's reasonable determination.
- Full amount shall be payable to Coach in equal monthly installments over the otherwise unexpired Term of the agreement. Notwithstanding the forgoing, the University agrees to modify the timing of the initial payment and/or the monthly installments to comply with Section 457(f) of the Internal Revenue Code and any applicable exceptions (namely, the severance exception and/or the short-term deferral requirement.)

- The University shall continue providing at the University's expense Coach's then-existing health insurance benefits during the entirety of the first three (3) full months following any such termination.

4. Buyout (Coach Terminates Without Cause) - If Coach terminates employment without just cause to accept other coaching employment prior to end of the Term, University shall be entitled to liquidated damages of:

Period	Date of Termination	Coach Liquidated Buyout
1	Start date - December 1, 2024	$7,000,000 Buyout
2	December 2, 2024 - December 1, 2025	$6,000,000 Buyout
3	December 2, 2025 - December 1, 2026	$4,000,000 Buyout
4	December 2, 2026 - December 1, 2027	$3,000,000 Buyout
5	December 2, 2027 - December 1, 2028	$2,000,000 Buyout
6	December 2, 2028 - December 1, 2029	$1,000,000 Buyout
7	December 2, 2029 and thereafter	$0 Buyout

- 50% shall be payable within sixty (60) days of accepting coaching employment, the remaining balance due in equal monthly installments over the following twelve (12) months.
- In the event Alan Haller is no longer serving as the Athletics Director at the time of termination, the above amount shall be reduced by 50%.

5. Perquisites

- Benefits. The Coach shall be eligible for those benefits accorded to similarly situated non-unionized University faculty and academic staff (including, without limitation, a retirement program and health, prescription drug, dental, and life and disability insurance coverages) except for tenure.
- Course Fee Courtesy. The Coach shall be immediately eligible for course fee courtesy credit for himself, the Coach's spouse and children, as otherwise descried in and subject to the University's Course Fee Courtesy Policy.
- Courtesy Vehicles. The University shall make available to the Coach, on a loan basis, two luxury dealer-provided automobiles, and comprehensive insurance for such vehicles, from the car dealer program of the department, or, at the University's discretion, on luxury dealer-provided automobile and a comparable.
- Cell Phone. The University shall pay monthly service charges for the Coach should the Coach decide to join the University plan.
- Club Membership. Purchase of a membership and payment of one reimbursement for monthly dues in (a) a country club selected by the Coach (which does not engage in discriminatory practice sin violation of applicable federal and state laws), and (b) the University Club of Michigan State University, which memberships are required for the conduct of development activities and entertainment associated with the Coach's official responsibilities.

- Personal Ticket Allocations (At premium locations). The University shall provide the Coach with:
    - Use of private stadium box or suite (24 tickets within suite for business or personal use) at Spartan Stadium.
    - Up to six complimentary season tickets to the Team's regular season home Football games.
    - Up to five complimentary single-game tickets to each of the University's regular season away Football games.
    - Up to six complimentary single-game tickets to any post-season Football game in which the Team is participating, with the option to purchase additional tickets if available.
    - Up to five complimentary season tickets to the University's regular season home Men's Basketball games.
    - Up to five complimentary season tickets to the University's regular season home Women's Basketball games.
    - Up to five complimentary season tickets to the University's regular season home Men's Hockey games.
    - Two complimentary parking passes for the Team's regular season home Football games.
    - One complimentary all-access event parking pass for all Michigan State Athletics events.
- Program Tickets. The University shall provide the Coach with 60 tickets to each of the Team's regular season home Football games. The Coach shall use these tickets ("Program Ticket") only for the promotion and development of the University.
- Team Travel. The Coach shall be provided additional seats on the team plane for their spouse and dependent children for football regular season and postseason competitions upon the request of the Coach.
- Private Air Travel. For the personal non-business travel for Coach and/or his guests and his family, use of a private plane for 50 hours annually.
- Relocation Expenses. The Coach may receive moving expenses of up to $75,000 through a lump sum payment, within 30 days of employment. Upon the Coach's request and the Athletic Director's approval, Coach may receive reimbursement for reasonable moving expenses above $75,000. The Coach shall be offered short-term housing for 90 consecutive days, as well as up to a 14-day rental vehicle if the designated courtesy vehicle is not available, and round-trip travel on one occasion for the Coach, one guest of the Coach, and the Coach's dependent children. Short-term housing, a rental vehicle, and airfare will be arranged by the University.
- Surviving Spouse Insurance Coverage. In the event the Coach dies while employed by the University, his surviving spouse may continue health and dental coverage on the terms and subject to the conditions of the University's Policy and Procedure for Health and Dental Benefits for Surviving Spouses and Surviving Other Eligible Individuals, as it may be amended from time to time.

6. Assistant Coaches & Support Staff – Such amounts subject to annual increases pending conference/national trends:

- The Coach shall be provided an annual salary budget of a minimum of $10,750,000 to hire ten assistant coaches and support staff members, including but not limited to: operations, recruiting, administrative, strength and conditioning, personnel, player development, quality control coaches, analysts, video, and creative media. Assistant coaches will also receive a courtesy vehicle within 14 days of hiring and performance incentives pursuant to applicable athletics department policies.
- The length of the term of any employment agreement for assistant position and strength coaches will not exceed two years. Coordinator and the head strength coach may receive three-year contracts subject to Athletics Director's approval, which shall not be unreasonably withheld. A portion of this budget may be allocated to the hiring of additional support staff, provided that such allocation is approved by the Athletics Director.
- Coach shall have the discretion to allocate salaries and conditions of employment between on-field assistants and off-field staff, subject to University policy.
- Reasonable support and logistics for the transition of assistant coaches and staff, consistent with the University policy.

7. Annual Performance Incentives – The University shall pay the foregoing bonuses to the Coach no later than 90 days following the end of every football season in which a relevant achievement is attained. Bonuses shall be earned as of the date of the achievement as they apply.

Post-Season Performance Incentives (Cumulative	Head Coach
CFP Championship Win	$400,000
CFP Championship Game Participation	$300,000
CFP Semi-Final Game Participation	$250,000
CFP Quarter-Final Game Participation	$200,000
CFP First Round Game Participation or Bye	$150,000
7+ Regular Season Wins and Participation in Post-Season Competition Not Part of the CFP	$100,000
6 Regular Season wins and Participation in Post-Season Competition Not Part of the CFP	$75,000
National Coach of the Year*	$35,000
Big Ten Coach of the Year	$25,000
Football Team Graduation Success Rate – 85% or higher	$25,000
The below outlines the post-season award for football as it pertains specifically to participation in the Big Ten Championship Game and is *in addition to* the progressive bonus provided above when applicable.	
Big Ten Championship Game Victory	$200,000
Big Ten Championship Game Participation	$200,000

*By nationally recognized poll or association (e.g., AFCA, AP, Sporting News, Bear Bryant, Walter Camp, ESPN, Eddie Robinson)

8. Other Terms & Conditions

- <u>Coach Acquisition Fee: The University shall be responsible for the payment of Coach's liquidated damages obligation ($3,000,000) to Oregon State University resulting from his acceptance of his employment with the University (the "Expense"). The Expense must be paid within sixty (60) days of the effective date of termination. The University has authorized this amount to be paid as a reimbursable employee business expense of Coach and does not consider it compensation. The University acknowledges that payment of the Expense is necessary to obtain the services of Coach, and therefore substantially benefits the University. Further, the University has determined that the requirements of its accountable plan have or will be satisfied with respect to the Expense. Should the expense be determined to be non-qualified under the University's accountable plan or if the Expense is taxes as Coach's income, the University will neutralize the tax impact to Coach, resulting from the University's payment of the expense. The tax neutralization payment (gross up) shall be received by Coach within 90 days of determination that tax is owed by Coach on the Expense.</u>
- The Coach shall report to the Athletics Director. The Coach's job duties and responsibilities and the University's expectations will be reviewed, revised, and assigned from time to time by the Athletics Director. A meeting between Coach and Athletics Director to discuss program status, progress, potential extension(s), etc., to occur within thirty (30) days of the team's final game of each season.
- Coach shall have the limited authorization to engage in appearance/speaking activities so long as such activities do not conflict with existing University marketing/endorsement rights-holders.
- The Coach or Coach's designee is obligated to notify the Athletics Director when entering into negotiations for employment with any other organization.
- Coach's duties shall be commensurate with generally accepted industry standards for similarly positioned head football coaches at NCAA Division I institutions.
- The University shall acknowledge that Coach's primary responsibility is in coaching the team (including, but not limited to, recruiting players, managing Coach's staff, practicing the team, instructing members of the team, game-planning, etc.), and any requests for additional services from Coach shall be reasonable in scope, limited, and subject to Coach's primary responsibility.
- Coach shall have the authority (subject to the final approval of the Athletics Director) to employ, manage, discipline, and terminate all assistant coaches and other direct reports within the football program, subject to athletics department or University policy.
- Guidelines applicable to a for cause termination by the University shall be commensurate with generally accepted industry standards. Nothwithstanding, the University acknowledges and agrees that the University does not intend that this Terms Sheet and/or the Agreement to be terminable for cause in the event of a minor or immaterial violation of an applicable rule, regulation, or policy, or in the event the alleged violation does not entail the risk of material institutional penalties.
- The University shall provide Coach written notice and a reasonable opportunity to meet with the Athletics Director to respond to any proposed suspension or termination. In addition, Coach shall be afforded a reasonable opportunity to cure a default in a timely and prompt manner, provided such default is of a nature that is capable of being cured as determined in the University's reasonable discretion.

- In a manner consistent with any applicable laws and NAA regulations, University will make good faith efforts to work cooperatively with collectives and/or other relevant third-parties regarding name, image, and likeness ("NIL") opportunities for Team student-athletes. Such support shall include allowing on-campus educational seminars.
- The parties shall consider, and address if appropriate, the potential for extenuating circumstances during the Term (e.g., conference realignment, program suspension, student athlete governance model, modifications to playoff format, etc.).
- Other terms and conditions subject to further good faith discussion and determination, as applicable.

Both parties agree to work diligently towards the execution of a comprehensive employment agreement ("Agreement") incorporating these and other material terms of employment. In the absence of, and pending execution of, an Agreement, the terms and conditions contained herein will be legally binding upon the parties until execution of such Agreement.

Both parties agree that this Terms Sheet may be executed in one or more counterparts and each shall be deemed to be an original, but all such counterparts shall together constitute the same document. Both parties further agree that the electronic signature of a party, whether digital or encrypted, included in this Terms Sheet is intended to authenticate this writing and to have the same force and effect as a manual signature. Delivery of a copy of this Terms Sheet bearing an original or electronic signature by electronic mail in "portable document format" (".pdf") form, or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, will have the same effect as physical delivery of the paper document bearing an original or electronic signature.

In witnesses whereof, each party to this Terms Sheet acknowledges and agrees that its contents contain a recitation of the agreement reached by the parties, and by signature below have caused it to be executed on the 25th day of November, 2023.[8]

In the Term Sheet under Coach Acquisition Fee, Michigan State shall be responsible for the payment of liquidated damages obligations pursuant to the Buyout Clause in the amount of $3M to Oregon State University resulting from Smith's acceptance of his employment with Michigan State.[9] Said amount must be paid within sixty (60) days of the effective date of termination.[10] Michigan State authorized this amount to be paid as a reimbursable employee business expense of coach and does not consider it compensation.[11] Michigan State acknowledged that payment of the liquidated damages is necessary to obtain the services of Coach Jonathan Smith and therefore substantially benefits Michigan State.[12] Michigan State determined that the requirements of its accountable plan have or will be satisfied with respect to the payment of the

[8] Michigan State University Head Football Coach Terms Sheet with Jonathan Smith, Nov. 25, 2023, on file with the Author. Emphasis added.
[9] *Id*.
[10] *Id.*
[11] *Id*.
[12] *Id.*

liquidated damages.[13] Should the liquidated damages be determined to be non-qualified under the University accountable plan or if the liquidated damages are taxable as coach's income, University will neutralize the tax impact to Coach resulting from Michigan State's payment of the liquidated damages.[14] The tax neutralization payment (gross up) shall be received by Coach within ninety (90) days of when the tax is owed by Coach on the payment of the liquidated damages.[15]

Therefore, with respect to Buyouts either the University directly pays the amount of the Buyout for liquidated damages or, in the alternative, reimburses the Coach for payment of the liquidated damages. There is an excellent article on the Tax Implications of Coach's Buyouts as written Jeffrey H. Kahn entitled *A Tax Audible: Coaches and Buyouts* as contained in the Vanderbilt Law Review, 68 VAND. L. REV. EN BANC 143 (2015).

III. Accountable Plans

An Accountable Plan is a plan for reimbursing employees. An example of this is found in the regulations of Indiana University which defines an Accountable Plan and Business Expense as follows:

> Accountable Plan: A plan for reimbursing employees and non-employees for business expenses. Under this plan, a reimbursement for expenses is not included in the individual's income. Individuals are required to substantiate expenses and return any excess reimbursement within a reasonable period of time. If any requirements are not met, the nonaccountable plan rules apply.
>
> Business Expense: An expense incurred in achieving the university's mission or directly related to the conduct of official university business and must be:
>
> - necessary
> - appropriate to the activity
> - reasonable in amount
> - serve a bona fide university purpose
>
> An expense that serves primarily to furnish the individual with a social or personal benefit is not a business expense. Expenses that primarily benefit a student's personal education are considered scholarships or fellowships and are not a business expense. These expenses do not meet the accountable plan criteria.[16]

Additional information describing an Accountability Plan is as expressed by Indiana University as follows:

---

[13] *Id.*
[14] *Id.*
[15] *Id.*
[16] Reimbursement Under the Accountable Plan, Indiana University, University Policy FIN-ACC-620, Nov. 12, 2019, https://policies.iu.edu/policies/fin-acc-620-reimbursement-under-accountable-plan/index.html.

Indiana University reimburses individuals under an accountable plan, as defined by the Internal Revenue Service (IRS), for ordinary and necessary business expenses incurred. An accountable plan is an organization's document plan for reimbursing individuals for business expenses. These include approved payments for travel for employees and non-employees, moving, faculty research accounts and allowable out-of-pocket expenses related to official university business. In order to qualify under the accountable plan, payments for expenses must meet the three requirements of IRS Regulation §1.62-2. These requirements include:

1. Business connection requirement - Advances, allowances or reimbursements are only for allowable business expenses that are paid or incurred by the individual in the course of conducting university business.

2. Substantiation requirement - The individual must substantiate each out-of-pocket business expense with a detailed record within a reasonable period of time (defined in TSOP 9.02 Accountable Plan Reimbursements <https://controller.iu.edu/compliance/fiscalofficer/sops/tsop/tsop-9.02>).

a. The equivalent of the original receipt(s) with amount of each business expenditure

b. Dates of expenditure and location

c. Business purpose

3. Return of funds requirement - If an advance was received, the individual must substantiate any amount within the prescribed period of time (defined in TSOP 9.02 Accountable Plan Reimbursements <https://controller.iu.edu/compliance/fiscal-officer/sops/tsop/tsop-9.02>) and return any amount in excess of the expenses substantiated to IU.

If an arrangement meets the requirements of paragraphs 1, 2, and 3 of this section, all reimbursements are treated under the accountable plan rules. These amounts are reimbursed and excluded from the individual's gross income. When the arrangement does not satisfy one or more of the requirements listed, the expense may still be reimbursed by the university; however, it will be treated under the nonaccountable plan rules, as defined by the IRS.[17]

Some other examples of Accountability Plans are utilized in other contracts with respect to paying for the coach's termination of a contract include:

[17] Reimbursement Under the Accountable Plan, Indiana University, University Policy FIN-ACC-620, Nov. 12, 2019, https://policies.iu.edu/policies/fin-acc-620-reimbursement-under-accountable-plan/index.html. See also 26 CFR § 1.62-2.

A. Michael K. Norvell, Florida State University, Employment Agreement, December 7, 2019

IV. Total Compensation.

I. Payment or Reimbursement of Contract Termination Expense.

University agrees to direct pay the Employee's previous employer the amount due and owing for Employee's contract termination expense due at the time of Employee's resignation. Such payment to be made to Employee's previous employer within ninety (90) days of the Effective Date of this Employment Agreement, unless otherwise agreed to by University and the previous employer. If Employee leaves the University for any reason, expect termination without cause by the University, or termination for cause by Employee, within ninety (90) days of the Effective Date, Employee shall be responsible for the remaining amount of the contact buyout due and owing to his previous employer.

University has authorized the contract termination expense payment referenced herein to be paid as a reimbursable employee business expense (the "Expense") of Employee and does not consider it to be compensation. University acknowledges that payment of the Expense was necessary to obtain the services of Employee, and therefore substantially benefits the University. Further, University has determined that the requirements of tis accountable plan have or will be satisfied with respect to the payment. Employee acknowledges that he has not and shall not be reimbursed for this Expense from any other source. Additionally, Employee acknowledges that he shall not take a deduction for the Expense on his personal income tax return. Should the Expense be determined to be non-qualified under University's accountable plan or if it taxed as Employee's income, University shall neutralize the actual financial impact to Employee resulting from University's payment of the Expense. In such case, Employee shall claim all deductions allowable under applicable tax law, including the Expense. University shall have a right to review Employee's pertinent tax information, including signed income tax returns (and any amended returns) for any applicable tax year to substantiate such amount as is necessary to effectuate this desired outcome. If at any time University determines that there is a structure and/or characterization of the Expense, or any other University tax liability hereunder, that is more favorable to or will serve to mitigate the University's liability under the Employment Agreement, University shall be permitted to use the structure it deems best provided said structure does not alter the net tax liability of Employee.[18]

[18] Employment Agreement, Florida State University, Michael K. Norvell, Dec. 7, 2019, on file with the Author.

B. Joshua K. Heupel, University of Tennessee, Employment Agreement, January 27, 2021

II. Compensation and Other Payments

Section 2.14. UCF Buyout. The University shall be responsible for the payment of Coach's buyout to the University of Central Florida, not to exceed 50% of remaining base salary, radio and television, and sponsorship and endorsement revenue compensation resulting from his acceptance of employment with the University (the "Expense"). The University has authorized this amount to be paid as a reimbursable employee business expense of the candidate and does not consider it compensation. The University acknowledges that payment of the Expense was necessary to obtain the services of the candidate, and therefore substantially benefits the University. Further, the University has determined that the requirements of tis accountable plan have or will be satisfied with respect to the Expense (it being agreed that the University will report this amount as being paid under its accountable plan as described in section 1.62-2 of the Treasury Regulations). The candidate acknowledges that he has not and will not be reimbursed for this expense from any other source. Additionally, the candidate acknowledges that he will not take a deduction for the Expense on his personal income tax return. Should the Expense be determined to be non-qualified under the University's accountable plan or if it taxed as Candidate's income, the University will neutralize the actual tax impact to the candidate resulting from the University's payment of the Expense. In such case, the candidate must claim all deductions allowable under applicable tax law, including the Expense. The parties will review the candidate's pertinent tax information, including signed income tax returns (and any amended returns) for 2021 (or other applicable tax year) to substantiate such amount as is necessary to effectuate this desired outcome.[19]

V. Conclusion

Jumping is the name of the game in college coaching employment. As previously indicated, both the university and the coach have protections in their contracts in the form of liquidated damages when the termination occurs earlier than the end date of the contract. In case of the coach terminating their contract early, I have often wondered how the termination fee is paid for by the coach. It is quite clear now that a coach's representative must become very familiar with the university's Accountable Plans and the tax regulations governing the same. Usually, movement is made much easier if a third-party, i.e. the recipient university, is actually paying the fee for the coach to move.

[19] Employment Agreement, Head Football Coach, The University of Tennessee, Joshua K. Heupel, Jan. 27, 2021, on file with the Author.

Noah Carroll is a student at the Kelly School of Business of Indiana University, majoring in Sports Management.

Thank you to Danelle Anderson Welzig for assistance in researching and editing this article.