



INTERCOLLEGIATE ATHLETICS Employment Contract – **ASSISTANT COACH**

Name: McHale, Daniel

Contract Type: Multi-Year

Sport: Basketball - Men

Title: Athletic Coach 3 (Y3020)

Working Title: Assistant Coach/Men's Basketball

This Employment Contract, ("Contract") is entered into between **The University of New Mexico ("UNM" or "University")** and **Daniel McHale ("Coach")**. This agreement shall supersede the ADDENDUM TO EMPLOYMENT CONTRACT OF DANIEL MCHALE, ASSISTANT COACH/MEN'S BASKETBALL entered into between the parties in July 2019.

1. **Position:** Coach shall be responsible for all duties assigned by and under the direct supervision of the Head Coach/Men's Basketball and the Director of Intercollegiate Athletics ("DIA"). Coach shall devote full-time to the duties and responsibilities of Assistant Coach/Men's Basketball and shall not engage in any other athletics-related employment, except as specifically approved by the DIA or as provided below. Further, under no circumstances, shall Coach interview for, negotiate for, or accept employment as a coach at any other institution of higher education or with any professional sports team, requiring performance of duties prior to the expiration of this Agreement, without the prior approval of the Head Coach and DIA. Such approval shall not be unreasonably withheld. Failure to provide such notice to the Head Coach and DIA shall constitute a material and actionable breach of this Agreement.
2. **Salary and Contract Period:** The contract term shall be for **two (2) years** for the period **May 1, 2020 through April 30, 2022** (the "Contract Term"), which constitutes **two (2)** separate and distinct contract employment years (each a "Contract Employment Year" or collectively the "Contract Employment Years"). Coach's base salary will be **One Hundred Seventy Thousand Dollars (\$170,000.00)** per Contract Employment Year. Coach will not be entitled to salary increases as provided in University Administrative Policy (UAP) 3500, Wage and Salary Administration, Section 4.1. Coach understands and agrees that this Agreement does not guarantee or entitle Coach to any annual increases in base salary unless otherwise expressly provided in this Section. Employer-paid fringe benefits shall be paid in addition to the base salary consistent with University policies, provided, however, that Coach may accrue up to 168 hours of paid annual leave but will not be entitled to payment for unused annual leave upon separation from employment as provided in UAP 3400, Annual Leave, Section 7.
3. **Other Compensation:** Coach may be granted the following compensatory benefits during the period of performance of this Agreement:
 - a. **Car Donor Program:** Subject to availability and at the discretion of the DIA, in accordance with the car donor program and in cooperation with local Albuquerque car and truck dealers, the University may provide a courtesy car for Coach's personal and business use. Coach shall be responsible for obtaining automobile liability insurance in accordance with insurance laws of the State of New Mexico, and will name the University as a third party beneficiary of such insurance policies. In addition, Coach shall comply with all other federal and state laws, National Collegiate Athletic Association (NCAA) rules, University policies, and any other policies or directives of the Athletic Department applicable to the car donor program. Coach understands and agrees that the provision of a courtesy car is in the exclusive discretion of the DIA, and that Coach will surrender any courtesy car provided upon request of the DIA. Coach further understands and agrees that any courtesy car provided pursuant to this Section constitutes taxable compensation to Coach and that Coach is solely responsible for the tax consequences associated therewith.

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- b. **Travel:** Coach's spouse (or domestic partner as described in UAP 3790, Domestic Partners) and minor dependent children may be added to the official University travel party for one regular season away game and for post-season away games within the continental United States as determined at the DIA's exclusive discretion and subject to availability of funds. Coach understands and agrees that the value of this benefit is likely taxable compensation to him and that Coach is solely responsible for the tax consequences associated therewith.
- c. **Incentive Payments:** An incentive payment is a direct cash payment over and above the Coach's base salary, in an amount to be determined by the DIA subject to the approval of the University President or designee and subject to availability of funds. Coach is eligible for an incentive payment upon achieving performance criteria established by the DIA in his exclusive discretion, and which are subject to annual review and revision by the DIA. Coach will be eligible for such incentive salary payments after completing the Contract Employment Year in which the incentive is earned. Incentive payments, if any, will be paid no later than **sixty (60)** days after the end of such Contract Employment Year. Coach understands and agrees that incentive payments, if any, are taxable compensation to him and that Coach is solely responsible for the tax consequences associated therewith.

All compensatory benefits are subject to compliance with University policies and procedures, the Mountain West Conference (MWC) rules and regulations, and the NCAA policies and procedures.

- 4. **Independent Income:** Subject to compliance with Athletics Department, University, MWC and NCAA policies, as currently in force and from time to time amended, and with advance written permission of the DIA, Coach may earn other athletics-related income during the period of this Agreement. Coach understands and agrees that such activities are independent of Coach's University employment and the University shall have no liability or responsibility for any claims arising therefrom. Coach agrees to indemnify the University and hold it harmless from any claims arising out of any independent contractual or other business and/or employment arrangements with third parties. Coach's advance written requests pursuant to this Section shall include the sources and amounts of any independent income contemplated by this Section. Coach understands and agrees that he is solely responsible for any tax liability associated with such activities.

With the written permission of the DIA, Coach may organize and conduct a camp, clinic, lessons, or sports league pursuant to the Athletics Department's summer camp policy. Coach understands and agrees to comply with the terms of UNM Athletics' Camp Manual Policy and Procedures provided by the UNM Athletics Compliance office including, but not limited to, income reporting and background checks. These activities are performed in addition to Coach's assigned duties and responsibilities, and shall not interfere with those assigned duties and responsibilities. Coach shall receive no compensation from the University in connection with these activities. Coach understands and agrees that he is solely responsible for any tax liability associated with such activities and that the University shall have no liability or responsibility for any claims arising therefrom. Coach shall be responsible for obtaining general liability insurance in accordance with insurance laws of the State of New Mexico, and will name the University as a third party beneficiary of such insurance policies. Coach agrees to indemnify the University and hold it harmless from any claims arising out of any camp-related activities.

- 5. **Conduct of Athletics Personnel:** Coach, hired to administer, conduct, and/or coach intercollegiate athletics, shall act with honesty and sportsmanship at all times in promoting the honor and dignity of fair play in the context of the high standards associated with collegiate competitive sports. Coach understands and agrees that honesty and sportsmanship at all times, and the promotion of the honor and dignity of fair play in the context of the high standards associated with collegiate competitive sports, are material to this Agreement, and that any conduct that undermines these values may be grounds for discipline, which can include termination for cause in accordance with Section 8.

Coach shall not engage in activities or conduct injurious to the reputation of the University, without limitation, including repeatedly conveying to one person, or conveying to an assembled public group, negative information concerning the University. This shall not prohibit Coach from making communications prohibited by whistleblower laws.


Coach's Initial DM

6. **Unethical Conduct:** Coach will refrain from unethical conduct. Unethical conduct may include, but is not limited to, the following examples of misconduct:
- a. Refusal to furnish information relevant to an investigation of a possible violation of an NCAA regulation when requested to do so by the NCAA or the University;
 - b. Knowing involvement in arranging for fraudulent academic credit or false transcripts for a prospective or an enrolled student-athlete;
 - c. Knowing involvement in offering or providing a prospective or an enrolled student-athlete an improper inducement or extra benefit or improper financial aid;
 - d. Knowingly furnishing the NCAA or the University false or misleading information concerning Coach's involvement in or knowledge of matters relevant to a possible violation of an NCAA regulation;
 - e. Receipt of benefits by Coach for facilitation or arranging a meeting between a student-athlete and an agent, financial advisor, or a representative of an agent or advisor;
 - f. Refusal to furnish information relevant to an investigation of a possible violation of federal or state law or University policy when requested to do so by lawfully authorized federal or state agents or University officials or when otherwise required to report under University policy; or
 - g. Refusal to comply with regulatory or policy requirements, including but not limited to the reporting requirements imposed by the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, Title IX of the Education Amendments of 1972 (the "Clery Act"), and any and all University policies relating thereto.

Coach's agreement to refrain from unethical conduct is a material term of Coach's employment and this Agreement. Coach expressly understands and acknowledges that unethical conduct is sufficient justification for **Termination of Agreement for Cause** as described in Section 8.

7. **Compliance With Laws, Policies, Rules and Regulations:** Coach shall be responsible for being fully knowledgeable of, and being in full compliance with, the policies, rules, and regulations of the University, the MWC, or any other conference with which the University may elect to affiliate, the NCAA (all as currently in force and as amended from time to time), as well as applicable federal laws, including, but not limited to the Clery Act; Title IX of the Education Amendments of 1972; applicable New Mexico laws; and University policies regarding crime reporting and sexual harassment, including, but not limited to sexual harassment, sexual misconduct, and sexual violence. Coach shall immediately report any apparent or confirmed violations of the above laws, policies, rules, and regulations occurring in the department to his Head Coach or the Division of Human Resources, as well as other University officials/departments as required by University policy. Upon receiving any information about a person who has experienced sexual misconduct, harassment, sexual assault or other sexual violence, Coach must report the information to OEO within 24 hours, or as soon as reasonably practicable, by calling OEO at 505-277-5251 or by email at oeo@unm.edu. If the University determines that Coach is in violation of MWC or NCAA rules and regulations while employed by the University, or was in violation of NCAA or conference rules and regulations during prior employment at another NCAA member institution, Coach shall be subject to disciplinary or corrective action as set forth in the NCAA enforcement procedure and may be suspended by the University at the University's sole discretion for a period of time without pay, or terminated as described in Section 8. If Coach fails to meet his obligations as stated in this Section and/or fails to complete any University-required campus security authority training within six (6) months of the Effective Date of his employment, or otherwise has failed or refused to meet his obligations under any law, regulation, policy or procedure, Coach may be subject to disciplinary action up to and including suspension and/or termination as described in Section 8. Because this Agreement creates no expectancy of or property interest in continued employment as set forth in Sections 8 and 10, no University Administrative Policy addressing and/or governing progressive discipline, suspension, discharge or the appeal process for suspension or discharge shall be applicable to the Coach.


Coach's Initial DM

Coach specifically acknowledges and agrees that his compliance with applicable laws, policies, rules, and regulations are material obligations of this Agreement.

- 8. Termination of Agreement for Cause:** The University reserves the right to terminate this Agreement for “adequate cause” at any time. “Adequate cause” includes violation of any material obligation of Coach under this Agreement or any amendments thereto; insubordination; neglect of duty; malfeasance; conduct involving moral turpitude; being charged with, indicted for, or being convicted of either (i) any felony; or, (ii) any misdemeanor involving gambling, drugs or alcohol; major or repeated minor violation of policies, rules, or regulations of the University; major or repeated secondary infractions of the MWC or NCAA rules (including any similar infraction which may have occurred at Coach’s prior employment); major or repeated minor violation of New Mexico or federal laws, regulations, or policies; failure to ensure such compliance by his staff or student-athletes in the Men’s Basketball program where applicable; willful or grossly negligent conduct injurious to the intercollegiate Men’s Basketball program at the University; or, any other reason constituting adequate cause for termination pursuant to official written employment policies of the University and/or its Athletics Department. If this Agreement is terminated for adequate cause, the University shall have no further liability except for base salary and fringe benefits accrued to the date of termination.

Nothing in this Section shall prevent, limit or otherwise interfere with the University’s right to terminate the services of the Coach without adequate cause at any time subject to the provisions of Section 10 herein. Therefore, this Section creates no expectancy of or property interest in continued employment and no University Administrative Policy addressing and/or governing progressive discipline, discharge or the appeal process for discharge shall be applicable to the Coach.

- 9. Termination by Request of Coach:** Coach may terminate this Agreement at any time upon **thirty (30) days’ notice** to the DIA. In the event that Coach terminates this Agreement pursuant to this Section, the University shall have no further liability except for base salary and benefits accrued to the date of termination.

Coach understands and agrees that termination of this Agreement pursuant to this Section prior to the expiration of the Contract Term of this Agreement will cause irreparable harm to the reputation and athletic programs of the University in an amount not capable of precise calculation or quantification. Therefore, if Coach terminates this Agreement within the first contract year of the term of this Agreement (**May 1, 2020 – April 30, 2021**), then Coach shall pay the University liquidated damages, and not as a penalty, the sum of **Fifteen Thousand Dollars (\$15,000.00)** within **sixty (60) days** of the termination of this Agreement.

If Coach terminates this Agreement within the second contract year of the term of this Agreement (**May 1, 2021 – April 30, 2022**), then Coach shall pay the University liquidated damages, and not as a penalty, the sum of **Ten Thousand Dollars (\$10,000.00)** within **sixty (60) days** of the termination of this Agreement.

Liquidated damages may be modified to a lesser amount at the discretion of the DIA, with approval of the University President.

Pursuant to this Section, any liquidated damages sum shall be paid in full to the University within sixty (60) days of termination. Failure to pay the full liquidated damages sum shall constitute a material and actionable breach of this Agreement. The liquidated damages shall be the University’s sole and exclusive quantification and limitation of Coach’s damages owed to the University pursuant to this Section and the University shall seek no other remedies or damages whatsoever against Coach related to Coach’s termination of this Agreement.

- 10. Termination by Request of University:** The University may voluntarily terminate this Agreement at any time by giving Coach a minimum of thirty (30) days’ written notice.
- a. **Severance:** In the event of termination of this Agreement by the University other than for cause as defined in Section 8, within contract year 1 (**May 1, 2020 – April 30, 2021**) the University may initiate and Coach may agree, if he so chooses, to accept payment of his base salary for the remainder of the Contract year and an additional sum of **Eighty-five Thousand Dollars (\$85,000.00)**.


Coach’s Initial DM

If the University terminates this Agreement within the second year of the term of this Agreement (**May 1, 2021 – April 30, 2022**), the University may initiate and Coach may agree, if he so chooses, to accept payment of his base salary for the remainder of the contract term.

This additional sum shall be deemed a severance payment to Coach. The sum described in this Section will be paid in monthly payments to Coach, with New Mexico and federal tax withholdings associated with the payment of salary, until paid in full. Coach understands and agrees that there will be no retirement withholding or contribution on the severance payments described in this Section, and that no benefits of any kind will accrue to Coach as a result of such payment. Coach agrees that as a condition of receiving any severance payments under this Section, except for any earned but unpaid compensation to the date of termination and any legally protected rights Coach has under any Coach benefit plan, Coach must execute a comprehensive release in the form to be determined by the University, in its sole discretion (the "Release"). Severance payments will not commence until Coach has fully executed the Release. If Coach brings a claim or lawsuit against the University, Coach will forfeit his right to receive any severance payments from the University, and will repay to the University any amounts received by him under this Section.

- b. **Mitigation/Offset:** Coach agrees that the University's obligation to make payments under this Section shall be subject to Coach's obligation to mitigate his damages by making reasonable, good faith and diligent efforts to obtain comparable employment as soon as reasonably possible after termination of this Agreement. Comparable employment includes employment as a head or assistant Men's Basketball coach at a Division I college or university or professional team. Should Coach obtain such comparable employment, the University's financial obligations under this Section shall cease so long as Coach's monthly compensation from such comparable employment, including base salary, deferred compensation, public relations and bonuses and incentive salary, but excluding reasonable and usual non-monetary fringe benefits such as health and life insurance, club memberships and use of vehicles ("Monthly Compensation"), is equal to or greater than the University's obligation to pay severance under this Section, prorated on a monthly basis.

If Coach's Monthly Compensation from such comparable employment is less than the University's monthly obligation to pay severance under this Section, the amount of the University's obligation to pay severance shall be reduced by the amount of Coach's Monthly Compensation from such comparable employment.

If, after diligent efforts to obtain comparable employment as described above, Coach obtains employment that is not comparable employment, his income from such employment (plus or minus raises and adjustments) shall be off-set against the University's obligations to pay severance under this Section.

Any amount received in mitigation of damages by Coach that acts as an offset against the amount being paid contractually by the University shall apply retroactively.

- c. **Notice:** Coach shall promptly, but no less than ten (10) days from acceptance of other employment, notify the DIA in writing of such employment and the total compensation to be paid to Coach for the employment during the Term of this Agreement (had it naturally expired). In addition, Coach agrees to provide the University with a copy of his W-2 form for each calendar year as long as the University has the obligation to make severance payments under this Section.

Except as otherwise expressly provided in this Section, all rights and obligations due from each party to the other under this Agreement shall cease upon the effective date of termination as set forth in the written notice required by this Section.

Additionally, no notice from the University shall be required for the Agreement to expire by its terms on **April 30, 2022**. There exists no expectancy of renewal of this Agreement beyond the term stated in Section 2 herein. The University's failure to provide timely notice in accordance with this Section does not entitle Coach to renewal of this Agreement.


Coach's Initial DM

- 11. Complete Agreement:** The standard printed employment contract and this Agreement to that contract, and any Exhibits attached hereto and incorporated herein by reference, constitute the final and complete agreement between the parties. In the event of a conflict between this agreement and the standard printed employment contract, the terms and conditions of this agreement shall govern. Any amendments or further addenda, hereafter agreed to by both parties, shall be in writing and executed with the same formality. All prior and contemporaneous negotiations and agreements pertaining to this Agreement are deemed incorporated into this Agreement and such documents and instruments are deemed to have been abandoned if not so incorporated. No verbal understandings, statements, promises, or inducements contrary to the terms of this Agreement exist.
- 12. Severability:** If any provision of this Agreement is held to be invalid or unenforceable for any reason, such provision shall be ineffective to the extent of such invalidity or unenforceability; provided, however, that the remaining provisions will continue in full force without being impaired or invalidated in any way unless such invalid or unenforceable provision or clause shall be so significant as to materially affect the Parties' expectations regarding this Agreement. The Parties shall replace any invalid or unenforceable provision with a valid provision which most closely approximates the intent and economic effect of the invalid or unenforceable provision.
- 13. Governing Law and Forum:** This Agreement, and any other amendments or addenda, shall be governed by and construed in accordance with the laws of the State of New Mexico and the policies and procedures of The University of New Mexico Board of Regents.
- 14. Arbitration:** The Parties agree to submit to binding arbitration any claims that they may have against each other, of any nature whatsoever, other than those prohibited by law, pursuant to the New Mexico Uniform Arbitration Act.

IN WITNESS HEREOF this Agreement has been duly executed by the parties hereto on the respective dates appearing below each party signature.

**THE REGENTS OF THE UNIVERSITY
OF NEW MEXICO**

Eddie Nunez
Eddie Nunez (May 1, 2020)

Eduardo J. Nuñez
Director of Intercollegiate Athletics

Date: May 1, 2020

COACH

Daniel M McHale
Daniel M McHale (May 1, 2020)

Daniel McHale
Assistant Coach/Men's Basketball

Date: May 1, 2020

Garnett S. Stokes
Garnett S. Stokes (May 2, 2020)

Garnett S. Stokes
President

Date: May 2, 2020

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