

University of Massachusetts Amherst
Head Basketball Coach First Amended Agreement

This First Amended Agreement is by and between the University of Massachusetts, Amherst with offices at 374 Whitmore Administration Building, Amherst, Massachusetts 01003 (the "University") and Derek Kellogg now of [REDACTED] ("Kellogg"). The University and Kellogg are hereinafter collectively referred to as the "Parties" and individually as a "Party". This First Amended Agreement shall be referred to as the "Agreement".

WITNESSETH:

WHEREAS, the Parties entered into a Head Basketball Coach Agreement dated October 16, 2012 (hereinafter the "Prior Agreement"), and

WHEREAS, the Parties mutually desire to amend, extend and restate the Prior Agreement in order to amend and extend the fixed term of appointment by another two (2) years.

NOW THEREFORE, in consideration of the above premises and mutual promises of the Parties, as set forth herein, and for other good and valuable consideration, the Parties agree as follows:

1. Employment

The University hereby employs Kellogg as the head coach of the men's basketball program and Kellogg hereby accepts said employment, subject to the terms and conditions stated herein. Kellogg shall work under the immediate supervision of the Athletic Director, and all matters of policy pertaining to the operation of the University's athletic program shall be subject to the direction and control of the Athletic Director.

2. Term

- (a) This is a fixed term appointment for a period of seven (7) years commencing April 23, 2012, and terminating April 22, 2019, unless terminated sooner as otherwise provided in this Agreement. This Agreement shall serve as its own notice of termination notwithstanding any other provision of University policy.
- (b) The time period from April 23 – April 22 for each year of the fixed term of this Agreement shall be referred to as a "Contract Year".
- (c) The University shall conduct an annual performance review of Kellogg following the 2014-2015 men's basketball season. If Kellogg receives a satisfactory or higher performance rating, then the fixed term of Kellogg's appointment set forth above in subsection (b) shall be extended for one (1)

- (d) additional year terminating on April 22, 2020, unless terminated sooner as provided in the Agreement.
- (e) The University shall conduct an annual performance review of Kellogg following the 2015-2016 season. If Kellogg receives a satisfactory or higher performance rating, then the fixed term of Kellogg's appointment set forth in subsection (b) above shall be extended for one (1) additional year terminating on April 22, 2020. Provided however, if the term of Kellogg's appointment shall have been extended pursuant to subsection (c) above, then the fixed term of Kellogg's appointment shall terminate on April 22, 2021, unless terminated sooner as provided in the Agreement.

3. Duties and Responsibilities

- (a) Kellogg shall devote his full time, attention, and energies to his duties as head coach of the men's basketball team. He shall comply fully with rules, regulations, and policies of the University, the National Collegiate Athletic Association (NCAA), and any and all conferences in which the men's basketball team participates, and he shall take every reasonable precaution to ensure that all members of his staff comply fully with such rules, regulations and policies. Kellogg shall be subject to all applicable disciplinary or corrective actions as set forth in the NCAA enforcement procedures as they may be amended from time to time.
- (b) Kellogg shall support the University's educational mission by using best efforts to maintain an environment in which the pursuit of academic excellence is a priority as reflected by student-athletes' class attendance, academic progress rates, grade point averages and graduation rates.
- (c) Kellogg shall use his best efforts to foster success in competition of the men's basketball team, promote an environment in which all employees and student athletes under Kellogg's supervision, or subject to Kellogg's control or authority, comport themselves in a manner consistent with good sportsmanship and in accordance with the high moral, ethical, and academic standards of the University.
- (d) Kellogg shall meet a budget plan submitted in writing and approved by the beginning of the fiscal year by the Athletic Director.
- (e) Kellogg shall use reasonable efforts to meet annual performance objectives established by the Athletic Director.
- (f) The University shall annually evaluate Kellogg's performance based upon the performance of his duties and responsibilities stated herein.
- (g) Kellogg grants the University the right, during the term of this Agreement to use, and the right to grant to University sponsors for the use of, his name,

nickname, initials, autograph, facsimile signature, voice, video or film portrayals, photographs, likeness, image, or facsimile image in any manner in connection with any radio, television, or other media services or endorsement contracts the University enters into for the benefit of the University. Except as otherwise provided in this Agreement, Kellogg shall retain all rights in and to his name and endorsement. Upon termination or natural expiration of this Agreement, the University shall have no further right to the continued or future use of Kellogg's name or endorsement.

4. Base Salary and Benefits

- (a) Effective April 23, 2014 through December 31, 2014, Kellogg shall receive, as compensation for his services as head men's basketball coach, an annual base salary of Two Hundred Eighty One Thousand Dollars (\$281,000). Effective January 1, 2015 Kellogg shall receive as compensation for his services as head men's basketball coach an annual base salary of Two Hundred Twenty-Five Thousand Five Hundred Dollars (\$225,500) throughout the term of this Agreement and any extension or extensions thereto. Kellogg is entitled to receive all cost-of-living increases provided to non-unit professional employees of the University and be eligible for any merit increases, for which non-unit professional employees are eligible, subject to meeting all eligibility requirements related thereto.
- (b) Kellogg shall be eligible for all fringe benefits (except vacation) that normally accrue to members of the non-unit professional staff, including participation in available retirement plans; medical, dental, vision, life and disability insurance plans; and reimbursement of all business-related expenses subject to change in accordance with University policies and procedures.
- (c) Kellogg shall be entitled to twenty (20) vacation days per Contract Year, which shall accrue at the rate of 6.15 hours per pay period. Kellogg shall not be entitled to carry over unused vacation days beyond any single contract year. Kellogg shall not be able to cash out any unused vacation days at the end of any contract year. Kellogg shall be entitled to payment for accrued but unused vacation days in the event of Termination by the University without cause in accordance with Section 9(g) of the Agreement.
- (d) As a supplemental benefit commencing January 1, 2015, the University shall make an employer contribution in the maximum amount permissible under Internal Revenue Code Section 415(c) and Section 403(b), for each calendar year of this Agreement, including any extension or extensions thereto, into one or more annuities and/or custodial accounts described in Internal Revenue Code Section 403(b) maintained by the University, up to applicable legal limits. Such contributions and earnings thereon shall be non-forfeitable.

5. Other Compensation

In addition to the compensation described in Section 4 above, Kellogg shall receive:

- (a) Effective April 23, 2014, during each remaining contract year of this Agreement and any extension or extensions thereto, Kellogg shall receive other compensation in the amount of Seven Hundred Sixty-Nine Thousand Dollars (\$769,000) to be paid in equal quarterly payments on or about July 22, October 22, January 22 and April 22 of each contract year. The aforesaid amount shall be subject to an annual cost of living adjustment increase of two percent (2%). There shall be no other increases applied to the aforesaid other compensation amount in any contract year of Kellogg's employment.

The other compensation set forth in this subsection 5(a) shall be paid to Kellogg for each contract year on the condition that he completely and cooperatively fulfills the following responsibilities:

- i. The delivery, making, and granting of various speaking and media appearances as coordinated through applicable Athletic Department staff and upon reasonable notice to Kellogg;
- ii. The broadcast of any television, radio or other media programs related to the University's men's basketball program, including but not limited to coaches' shows, pre-game and post-game shows; and off season shows. The University shall own all rights to such programs and shall be entitled to produce and market the programs or may negotiate with third parties to produce and market programs.

6. Performance Bonuses

In addition to the compensation described above in Section 4 and Section 5, effective with the commencement of the 2014-2015 academic year and men's basketball season, and in any contract year thereafter during which Kellogg is employed as the men's basketball coach and coaches the team's last game of the applicable season, pursuant to the terms of this Agreement, Kellogg shall be entitled to the bonus compensation sums earned during his employment set forth below in connection with the following exceptional achievements:

- (a) For each season in which the men's basketball team participates in the NCAA Division 1 Basketball Tournament; the University shall pay a bonus of \$75,000.
- (b) For each season in which the men's basketball team wins:
 - i. 20 regular season games; the University shall pay a bonus of \$15,000; or

- ii. Wins 23 or more regular seasons games; the University shall pay a bonus of \$25,000.

This subsection (b) bonus is non-cumulative.

- (c) For each season in which the men's basketball team finishes:
 - i. Top 3 (including ties) in the A-10 (or any other conference the University may be a part of during the term hereof) Final Season Standings; the University shall pay a bonus of \$20,000.

- (d) For each season in which the men's basketball team:
 - i. Wins the A-10 (or any other conference the University may be a part of during the term hereof) Conference Tournament Championship; the University shall pay a bonus of \$20,000

- (e) For each season in which the men's basketball team ranks in one of the following NCAA Final Season RPI categories:
 - i. Top 50 in the Country; the University shall pay a bonus of \$10,000 or
 - ii. Top 35 in the Country; the University shall pay a bonus of \$20,000 or
 - iii. Top 25 in the Country; the University shall pay a bonus of \$30,000 or
 - iv. Top 15 in the Country; the University shall pay a bonus of 40,000.

This subsection (e) bonus is non-cumulative.

- (f) For each season on which the men's basketball team ranks in one of the following NCAA Final Season Strength of Schedule categories:
 - i. Top 60 in the Country; the University shall pay a bonus of \$20,000 or
 - ii. Top 40 in the Country; the University shall pay a bonus of \$30,000 or
 - iii. Top 20 in the Country; the University shall pay a bonus of \$40,000.

This subsection (f) bonus is non-cumulative.

- (g) For each season of the men's basketball season during which regular season, home game average attendance at season end falls within one of the following ranges:
 - i. 6,000 to 6,999; the University shall pay a bonus of \$15,000 or
 - ii. 7,000 to 7,999; the University shall pay a bonus of \$20,000 or
 - iii. 8,000 or greater; the University shall pay a bonus of \$25,000.

This subsection (g) bonus is non-cumulative. The Parties agree that the calculation to determine regular season, home game average attendance shall include student ticket admissions but exclude all complimentary tickets and any tickets sold at less than one-third of face value.

- (h) For each season in which the men's basketball team participates in the NCAA Division 1 Basketball Tournament, the University shall pay a bonus of \$25,000 for each NCAA Tournament round win.

This subsection (h) bonus is cumulative for multiple wins.

- (i) For each season in which Kellogg is named Coach of the Year in the A-10 (or any other conference the University may be a part of during the term hereof) Conference; the University shall pay a bonus of \$15,000.

- (j) For each season in which Kellogg is named Naismith College Coach of the Year; the University shall pay a bonus of \$50,000.

- (k) For each season in which the men's basketball team participates in the post season National Invitational Tournament (NIT) and
 - i. Advances to the Final Four of the NIT; the University shall pay a bonus of \$10,000
 - ii. Wins the NIT; the University shall pay a bonus of \$15,000.

This subsection (k) bonus is cumulative.

- (l) The University seeks to promote academic success in all of its student athletes. While the University recognizes that the ultimate responsibility for academic achievement rests with the student athlete, Kellogg shall also use his best efforts to seek, identify and successfully recruit men's basketball players who are academically prepared for University studies and the worthwhile pursuit of a degree.

For each season in which the men's basketball team achieves a Final Season NCAA Graduation Success Rate (GSR) in one of the following categories:

Team GSR

- i. A team GSR of 85% to 89.9%; the University shall pay a bonus of \$20,000 or
- ii. A team GSR of 90% to 94.9%; the University shall pay a bonus of \$35,000 or
- iii. A team GSR of 95% or greater; the University shall pay a bonus of \$40,000.

This subsection (l) bonus is non-cumulative.

- (m) For each season in which the men's basketball team achieves a Final Season NCAA Team Academic Progress Rate (APR) in one of the following categories:

Team APR

- i. 945 to 949; the University shall pay a bonus of \$20,000 or
- ii. 950 to 959; the University shall pay a bonus of \$25,000 or
- iii. 960 or higher; the University shall pay a bonus of \$40,000.

This subsection (m) bonus is non-cumulative.

- (n) All bonuses in this section shall be paid to Kellogg as soon as practicable in a manner consistent with standard University payroll practices.
- (o) The University shall provide Kellogg with sixteen (16) season tickets for the men's basketball home games in each season he serves as head coach of men's basketball team. These tickets shall be assigned in the same location each season as designated by the Athletic Director.
- (p) The University shall annually provide Kellogg with reimbursement, up to a maximum of Ten Thousand Dollars (\$10,000), for the premiums related to the purchase of a life, disability, and/or car insurance policy, provided that such expense is appropriately documented in a manner acceptable to the University.

7. Camps and Clinics

- (a) Kellogg may operate basketball camps or clinics at the University during the term of the Agreement while serving as head coach of men's basketball team. Kellogg shall pay the University three percent (3%) of gross revenues from all such camps and clinics for indirect costs (percentage to be reviewed each spring to reflect any additional costs and changes due to inflation) and shall pay all direct costs connected with these activities. Kellogg shall operate said camps and clinics as a proprietary venture, but shall be subject to all rules and

regulations, which govern outside vendors who conduct proprietary operations on University property.

- (b) In connection with any Camps or Clinics described above, Kellogg shall maintain public liability insurance, with coverage for Sexual Molestation/Abuse and athletic injury coverage, with limits of at least Two Million Dollars (\$2,000,000) per claim and Four Million Dollars (\$4,000,000) in the aggregate at all times during the operation of said camps and clinics. Further, Kellogg shall furnish a certificate of insurance evidencing said insurance naming as additional insured the University, its Trustees, officers and employees. Sexual Molestation/Abuse coverage and athletic injury coverage requirement may be met by way of a separate policy. If such coverage is part of a General Liability policy, the certificate of insurance must indicate that such specific coverage is in fact in place.

8. Endorsement Contracts

- (a) Kellogg may enter into and retain revenue from endorsement or other consulting or services contracts with manufacturers of athletic equipment and apparel and other products and commercial entities, provided that Kellogg seeks in writing and receives the prior annual approval of the Chancellor for all such contracts, which approval shall not be unreasonably withheld. All such contracts shall be in accordance with state and federal law and the rules and regulations of the NCAA. During the Term of the Agreement, Kellogg agrees to fully comply with NCAA Division 1 Manual Article 11.2.2.
- (b) The University is not obligated to purchase equipment, apparel or other products or to require team members or employees to use equipment, apparel or other products which are the subject of said contracts, and any apparel or equipment donated under such contracts shall be subject to the acceptance by the Chancellor or by such other procedure or person as may be required by University policy for acceptance of gifts. However, the University may choose to enter into purchasing or other agreements with manufacturers or suppliers of equipment, apparel or other products which manufacturers or suppliers have a contractual relationship with Kellogg, or to enter into such agreements with manufacturers or suppliers that may be competitors of those having a contractual arrangement with Kellogg.

9. Termination

- (a) This Agreement shall terminate prior to its normal expiration as set forth in Section 2 and all rights and obligations of the Parties under this Agreement shall cease upon occurrence of any of the following:

- i. Kellogg's death or a disability which prevents Kellogg from materially performing his duties under this Agreement for a period of longer than sixty (60) days.
 - ii. The University may terminate Kellogg at any time for cause. For cause termination shall mean if at any time, during the term of the Agreement Kellogg shall; (aa) fail or refuse to perform the duties set forth in Section 3 of this Agreement (other than a failure under subsection 3(d) above), or (bb) be formally charged with or convicted of a felony, or (cc) commit or participate in, any act, situation, or occurrence which, in University's reasonable judgment, brings Kellogg and/or the University into public disrepute, embarrassment, contempt, scandal or ridicule; or (dd) fail to conform his personal conduct to conventional standards of good citizenship, with such conduct offending prevailing social mores and values including dishonesty, misrepresentation, fraud or violence that may or may not warrant arrest by the relevant authorities, or (ee) violate a University, NCAA or Conference rule or policy that causes damage to the University, or (ff) be the subject of a finding by the NCAA or a duly constituted body, independent of Kellogg and the University, that Kellogg or his staff has knowingly violated a major rule, regulation or policy of the NCAA, or any conference in which the men's basketball athletic program participates. Solely for determining "for cause" as it relates to the actions of others, Kellogg shall not be responsible for misconduct of third parties, assistants, or other representatives of the athletic interest of the University, unless Kellogg was aware of such misconduct and failed to promptly report it to the University or Kellogg failed to exercise diligent, careful supervision of his staff.
- (b) Kellogg recognizes that his promise to work for the University for the entire term of this Agreement and any extensions thereto is an essential consideration in the University's decision to enter into this Agreement and employ Kellogg as head coach of the men's basketball team. This Agreement would be diminished if Kellogg were to resign or otherwise terminate his employment as head coach of the men's basketball team prior to the expiration of this Agreement, particularly if Kellogg were to terminate his employment to be employed in another coaching position.
- (c) If Kellogg terminates this Agreement by resigning his position as head coach of the men's basketball team at the University, before completing the full term of this Agreement, and any extension thereto then in effect, Kellogg shall pay the University the applicable amount of liquidated damages set forth in the following schedule:

<u>Date of Termination by Kellogg</u>	<u>Liquidated Damages Payment Owed by Kellogg</u>
April 23, 2014 through April 22, 2015	\$1,000,000.00
April 23, 2015 through April 22, 2016	\$800,000.00
April 23, 2016 through April 22, 2017	\$700,000.00
April 23, 2017 through April 22, 2018	\$600,000.00
April 23, 2018 through April 22, 2019	\$500,000.00
April 23, 2019 through April 22, 2020 (if applicable extension is in effect)	\$250,000.00
April 23, 2020 through April 22, 2021 (if applicable extension is in effect)	\$0.00

- (d) The full amount of the liquidated damages payment shall be due and payable to the University within thirty (30) days of Kellogg's resignation. The University shall accept the liquidated damages payment in satisfaction of Kellogg's obligation under subsection 9(c) above, whether tendered by Kellogg or by Kellogg's new employer.
- (e) In the event Kellogg terminates the Agreement, all benefits, including compensation and bonuses, otherwise due and payable to Kellogg, shall terminate immediately. Additionally, all rights and obligations of the Parties under the Agreement, except as provided above in this Section 9, shall cease immediately.
- (f) The Parties have bargained for and agreed to liquidated damages provisions stated in Section 9(c) of this Agreement, giving consideration to the fact that the University will incur administrative, recruiting and resettlement costs in obtaining a replacement for Kellogg, in addition to potentially increased compensation costs and loss of ticket revenue and other revenue, all of which damages are extremely difficult to determine, if Kellogg terminates this Agreement. The Parties further agree that the payment of such liquidated damages by Kellogg and acceptance thereof by the University shall constitute adequate and reasonable compensation for damages and injury suffered by the University because of such termination by Kellogg. The foregoing shall not be, nor be construed to be, a penalty.
- (g) In its sole discretion and in addition to the provisions of Section 9(a)(ii), the University may elect to terminate this Agreement at any time without cause upon fifteen (15) days written notice to Kellogg. In the event of such termination, the University shall pay Kellogg an amount equal to fifty percent (50%) of the aggregate compensation set forth in Sections 4(a) and 5(a) which Kellogg would have earned for the remainder of the then fixed term (including any extensions then in effect) of the Agreement at the time of termination. Payment to Kellogg shall also include any Section 6 Performance Bonuses actually earned by Kellogg prior to termination of the Agreement pursuant to

this subsection. Payment pursuant to this subsection to Kellogg shall not include the replacement of any revenue amounts due Kellogg pursuant to Section 8 Endorsement Contracts, any fringe benefits and any other athletically-related income or benefits derived by virtue of Kellogg's position as head coach of the men's basketball team. Payment to Kellogg under this subsection will be made in substantially equal monthly installments, subject to all applicable state and federal tax reporting and withholding requirements. The number of monthly installments shall be equal to the remaining number of months in the unexpired, fixed term (including any extensions then in effect) of this Agreement at the time termination notice is delivered by the University. The first monthly installment shall be payable to Kellogg no later than thirty (30) days from the end of the 15 day written notice of termination.

- (h) Any and all payments under subsection (g) above shall be made subject to the appropriate set off amount based upon Kellogg's duty to use reasonable and diligent efforts to obtain employment as a professional or collegiate basketball coach. This duty shall arise as soon as is practicable upon termination without cause by the University. Further, all payments made to Kellogg under subsection (g) shall be subject to Kellogg's duty to accept any commercially reasonable employment offer as a professional or collegiate basketball coach. Upon Kellogg obtaining employment as a professional or collegiate basketball coach, the University shall be entitled to a dollar-for-dollar set-off of its obligation, by the amount of gross compensation (before all withholdings including but not limited to applicable state and federal taxes) Kellogg earns during the remainder of the unexpired fixed term (including any extensions then in effect) of the Agreement at the time of Kellogg's termination without cause by the University. This set-off amount shall include all income, salary, monetary bonuses, and other monetary remuneration received from Kellogg's new employer. This set-off amount shall not apply to a performance bonus paid to Kellogg which is related directly to the success of his new employer's team, provided such bonus is ordinary and customary in the professional and collegiate coaching marketplace.
- (i) The Parties have bargained for and agreed to the payments set forth in subsection 9(g) and related mitigation and set off provisions of subsection 9(h) of this Agreement, giving consideration to the fact that termination of this Agreement without cause by the University, may cause Kellogg to lose certain benefits and incentives, supplemental compensation, or other athletically-related compensation associated with Kellogg's employment with the University, which damages are extremely difficult to determine with certainty. The Parties further agree that the payment, mitigation and set off provisions set forth in subsections 9(g) and 9(h) shall constitute adequate and reasonable compensation to Kellogg for any and all damages and injuries suffered by Kellogg caused by such termination by the University. Kellogg agrees the payment, mitigation and set off provisions of this Agreement shall not be, nor be construed to be a penalty.

- (j) Kellogg agrees that as a condition of receiving any payments due pursuant to subsection 9(g) of this Agreement, Kellogg shall execute a, comprehensive release in the form provided by University subject to mutual good faith negotiation. Generally, the release shall require Kellogg to release and forever discharge University and its trustees, officers, directors, agents, attorneys, successors and assigns from any and all claims, suits and/or causes of action that grow out of or are in any way related to Kellogg's employment with University, with the exception of the Massachusetts Public Employee Labor Relations Act, as amended; the Massachusetts Public Employee Labor Relations Act, as amended; Title VII of the Civil Rights Act of 1964, as amended; Sections 1981 through 1988 of Title 42 of the United States Code, as amended; the Age Discrimination in Employment Act of 1967, 29 U.S.C. § 623, et seq.; the Immigration Reform Control Act, as amended; the Civil Rights Act of 1866, 29 U.S.C. § 1981, et seq.; the Rehabilitation Act of 1973, 29 U.S.C. § 701, et seq.; the Americans With Disabilities Act of 1990, as amended; the Civil Rights Act of 1991; the Massachusetts Wage and Hour Laws, G.L. chs. 149 and 151; the Massachusetts Law Against Discrimination, G.L. c. 151B; the Massachusetts Equal Rights Act, G.L. c. 93; the Massachusetts Civil Rights Act, G.L. c. 12 §§ IIH and III; the Massachusetts Privacy Statute, G.L. c. 214, § 1B, as amended; the Massachusetts Sexual Harassment Statute, G.L. c. 214 § IC; and any and all other claims under any other federal, state or local human rights, civil rights, wage hour, pension or labor law, rule, statute, code, and/or regulation.” Upon Kellogg's termination of employment with University, Kellogg will be presented with a release and if Kellogg fails to execute the release or negotiate the release in good faith, Kellogg agrees to forego any payment from University pursuant to subsection 9(g) above. Kellogg acknowledges that he is an experienced person knowledgeable about the claims that might arise in the course of employment with University and knowingly agrees that the payments provided for in this Agreement upon termination of his employment by the University for no cause are satisfactory consideration of the release of all possible claims described in the release.

10. Men's Basketball Program Support

- (a) The University shall add the sum of Two Hundred Thousand Dollars (\$200,000) to the men's basketball team's air travel budget line item commencing with 2014-2015 academic year and men's basketball season. The aforesaid one time increase shall be carried in the team's air travel budget line item by the University in each contract year Kellogg is employed by the University. For avoidance of doubt, additional increases of Two Hundred Thousand Dollars (\$200,000) for team air travel will not be funded by the University during the term of Kellogg's employment.

- (b) The University shall provide the sum of Eighty Five Thousand (\$85,000) to the men's basketball budget for staff salary increases. Excluding himself, Kellogg may use the full amount to provide base salary increases to members of the men's basketball program staff for the 2014-2015 academic year. The base salary increases, both as to the amounts and recipients, shall be determined by Kellogg in conformance with University policy and procedure and after consultation with the Athletic Director. For avoidance of doubt, the aforesaid sum of Eighty Five Thousand Dollars (\$85,000) shall be a one time addition to the basketball program's budget line item for base salaries by the University for the 2014-2015 academic year. For avoidance of doubt, the University shall not be obligated to fund any additional increases to the basketball program's base salaries budget line item during the Kellogg's term of employment. For the avoidance of doubt, all agreed to increases to program staff will be funded each contract year in an amount not less than Eighty Five Thousand Dollars (\$85,000).
- (c) During each contract year Kellogg is employed under this Agreement, the University shall provide the certain sums to the men's basketball program to fund the performance bonuses payable to the men's basketball program staff. The bonus amounts and the recipients, of any such bonus, excluding Kellogg, shall be determined by Kellogg in conformance with University policy and procedure and after consultation with the Athletic Director. Kellogg shall distribute the bonus sums indicated below to the men's basketball program staff in connection with the following exceptional achievements:
- i. A-10 (or any other conference the University may be a part of during the term hereof) Conference Regular Season First Place Finish (including ties), the sum of Twenty Five Thousand Dollars (\$25,000).
 - ii. A-10 (or any other conference the University may be a part of during the term hereof) Conference Tournament Champions, the sum of Thirty Thousand Dollars (\$30,000).
 - iii. If the men's basketball team participates in the NCAA Division 1 Basketball Tournament, the sum of Forty Thousand Dollar (\$40,000).
 - iv. NCAA Division 1 Basketball Tournament wins per round, the sum of Fifteen Thousand Dollars (\$15,000) per win.
 - v. Post season NIT Tournament wins per round, the sum of Five Thousand Dollars (\$5,000) per win.
 - vi. All bonuses set forth in this subsection 10(c) are cumulative.

men's basketball program staff for the 2014-2015 academic year. The base salary increases, both as to the amounts and recipients, shall be determined by Kellogg in conformance with University policy and procedure and after consultation with the Athletic Director. For avoidance of doubt, the aforesaid sum of Eighty Five Thousand Dollars (\$85,000) shall be a one time addition to the basketball program's budget line item for base salaries by the University for the 2014-2015 academic year. For avoidance of doubt, the University shall not be obligated to fund any additional increases to the basketball program's base salaries budget line item during the Kellogg's term of employment. For the avoidance of doubt, all agreed to increases to program staff will be funded each contract year in an amount not less than Eighty Five Thousand Dollars (\$85,000).

- (c) During each contract year Kellogg is employed under this Agreement, the University shall provide the certain sums to the men's basketball program to fund the performance bonuses payable to the men's basketball program staff. The bonus amounts and the recipients, of any such bonus, excluding Kellogg, shall be determined by Kellogg in conformance with University policy and procedure and after consultation with the Athletic Director. Kellogg shall distribute the bonus sums indicated below to the men's basketball program staff in connection with the following exceptional achievements:
- i. A-10 (or any other conference the University may be a part of during the term hereof) Conference Regular Season First Place Finish (including ties), the sum of Twenty Five Thousand Dollars (\$25,000).
 - ii. A-10 (or any other conference the University may be a part of during the term hereof) Conference Tournament Champions, the sum of Thirty Thousand Dollars (\$30,000).
 - iii. If the men's basketball team participates in the NCAA Division 1 Basketball Tournament, the sum of Forty Thousand Dollar (\$40,000).
 - iv. NCAA Division 1 Basketball Tournament wins per round, the sum of Fifteen Thousand Dollars (\$15,000) per win.
 - v. Post season NIT Tournament wins per round, the sum of Five Thousand Dollars (\$5,000) per win.
 - vi. All bonuses set forth in this subsection 10(c) are cumulative.

11. Governing Law

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

12. Severability

If any provision of this Agreement shall be determined to be void, invalid, unenforceable or illegal for any reason, it shall be ineffective only to the extent of such provision, and the validity and enforceability of all the remaining provisions shall not be affected thereby.

13. Limitations and Modification

- (a) All payments made under this Agreement shall be subject to all applicable federal, state and local taxes.
- (b) This Agreement shall supersede any inconsistent language in the Personnel Policy for Non-Unit Professional Staff (Trustee Doc. T94-023).

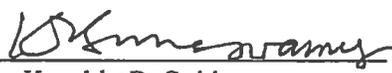
14. Entire Agreement

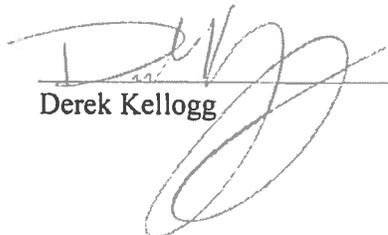
This Agreement supersedes all prior agreements with respect to the subject matter hereof, including the Prior Agreement and constitutes the entire agreement between the Parties hereto. This Agreement may be modified only by written amendment signed by the Chancellor and Director of Athletics of the University and Kellogg.

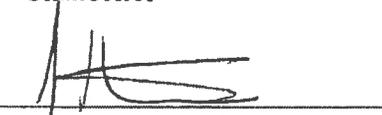
IN WITNESS WHEREOF, Derek Kellogg and the authorized representative(s) of the University have executed this Agreement on this 24 day of SEPT., 2014.

University of Massachusetts:

Head Basketball Coach:

By: 
Kumble R. Subbaswamy
Chancellor


Derek Kellogg

By: 
John F. McCutcheon
Director of Athletics