

MINUTES
MEETING OF THE BOARD OF TRUSTEES
APPALACHIAN STATE UNIVERSITY
OPEN SESSION

Thursday July 14th, 2016
Chancellor's Conference Room
B.B. Dougherty Administration Building

CALL TO ORDER: The Board of Trustees of Appalachian State University convened in open session on Thursday, July 14th, 2016 at 2:00 pm in the Chancellor's Conference Room, B.B. Dougherty Administration Building, Fourth Floor, on the campus of Appalachian State University in Boone, North Carolina and by telephone conference. Mr. Bradley T. Adcock, Chair, presided and called the meeting to order.

MEMBERS PRESENT:

Bradley T. Adcock
George M. Baldwin
James M. Barnes
Donald C. Beaver
Susan M. Branch
Jalyn Howard
Charles V. Murray
Alice G. Roess
Carole P. Wilson

OTHERS PRESENT:

Dayton Cole
Debra Covington
Sheri Everts
Doug Gillin
Brittney Whiteside
Jonathan Reeder
Leonie Kruger

CLOSED SESSION: Chair Adcock announced that he would entertain a motion that the Board convene in closed session. Upon motion duly made, seconded and approved, the Board convened in closed session to:

1. prevent the disclosure of privileged information under Chapter 126 of North Carolina General Statutes or regulations. [N.C.G.S § 143-318.11 (a)(1)];
2. consult with its attorney to preserve the attorney-client privilege [N.C.G.S § 143-318.11 (a)(3)];
3. consider the qualifications, competence, performance, character, fitness, conditions of appointment, or conditions of initial employment of an individual

public officer or employee or prospective public officer or employee. [N.C.G.S § 143-318.11 (a)(5)];

PUBLIC SESSION RECONVENED: Upon motion duly made, seconded and approved, the Board reconvened in open session.

Chair Adcock recognized Mr. Dayton Cole, General Counsel to entertain a motion to approve the Head Baseball Coach employment agreement. Upon motion duly made, seconded and approved, the Board unanimously approved the Head Baseball Coach Employment Contract.

ADJOURNMENT: Chair Adcock called a motion to be adjourned. Upon motion duly made, none opposed the motion.

BRADLEY T. ADCOCK, Chair



Leonie C. Kruger
Recording Secretary

EMPLOYMENT AGREEMENT FOR BASEBALL HEAD COACH

This Employment Agreement (the "Agreement") is made this 14th day of July, 2016, by and between Appalachian State University ("Appalachian") and Kermit K. Smith ("Coach"). In consideration of the mutual covenants, promises and conditions in this Agreement, Appalachian and Coach agree as follows:

1.0 Employment:

1.1 Subject to the terms and conditions stated in this Agreement, Appalachian agrees to employ Coach as head baseball coach at Appalachian, and Coach agrees to and accepts the terms and conditions of employment outlined in this Agreement.

1.2 Coach's employment at Appalachian will be subject to all applicable policies and procedures adopted and approved by the Board of Governors of The University of North Carolina (the "University"), the Board of Trustees and the Chancellor of Appalachian and Appalachian's Department of Athletics (the "Department"), all as may be revised from time to time. Coach's position is classified as EHRA non-faculty and is not subject to the State Human Resources Act, North Carolina General Statutes, Chapter 126, except for articles 6, 7, 14 and 15 thereof. The employment policies contained in Chapter 300 of The UNC Policy Manual, approved by the Board of Governors of the University, and adopted as institutional policies by the Board of Trustees of Appalachian (collectively, the "EHRA Policies") apply to Coach. In the event of any conflict between the terms of this Agreement and the EHRA Policies, the EHRA Policies will govern. Coach acknowledges and agrees that Coach has reviewed and understands the policies and procedures of the University found at <http://www.northcarolina.edu/policy/index.php> (in particular, Policy 300.2.1, a copy of which has been provided to Coach with this Agreement) and those of Appalachian found at http://policy.appstate.edu/Policy_Manual, and has been provided with a copy and has reviewed and understands those in the Department Policies and Procedures Manual. Coach acknowledges and agrees that Coach's position is not a position eligible for tenure.

1.3 Coach will work under the immediate supervision of the Director of Athletics of Appalachian, (the "Director of Athletics") and/or the Director of Athletics' designee. The Director of Athletics and the Chancellor will evaluate Coach's performance on an annual basis and the Director of Athletics will provide Coach with an annual performance evaluation.

1.4 Coach will coach and be responsible for the baseball team (the "Sports Team"), and perform such other duties in the intercollegiate athletics program of Appalachian as may be assigned from time to time by the Director of Athletics. Appalachian reserves the right to reassign Coach to duties other than as set forth in this Agreement while continuing the salary and benefits stated herein. In no event, however, will Coach be assigned to any position which is not consistent with Coach's education and experience. In the event of reassignment, Appalachian will not be liable to Coach for loss

of any collateral business opportunities or any other benefits, perquisites, or income from any sources whatsoever.

1.5 Appalachian is committed to providing equal opportunity in employment to all applicants and employees. Appalachian does not discriminate with respect to hiring or the terms and conditions of employment, on the basis of race, color, national origin, religion, sex, gender identity and expression, political affiliation, age, disability, veteran status, genetic information or sexual orientation (the "Equal Employment Opportunity Policy" or "EEO Policy"). Appalachian actively promotes diversity among students and employees. Coach will implement the EEO Policy in all recruitment, supervision and other activities with applicants and employees.

1.6 Appalachian is committed to providing students equal opportunities to participate in and receive the benefits of its educational and extra-curricular programs and activities. Coach will not discriminate against students on any business prohibited by federal or State law, or University or Appalachian policies, in any activity contemplated by this Agreement.

2.0 Term:

2.1 The employment conferred herein is for a stated, definite term commencing on August 1, 2016 and terminating on July 31, 2020, subject to the EHRA Policies and the conditions stated herein.

3.0 Compensation:

3.1 The annual salary for the work performed in this position during the stated term is payable in approximately equal monthly installments, less customary and applicable deductions and withholdings. Subject to all necessary approvals required by University policies the total annual salary ("Base Salary") shall be as follows:

1. From August 1, 2016 – July 31, 2017: One Hundred Fifteen Thousand Dollars (\$115,000);
2. From August 1, 2017 – July 31, 2018: One Hundred Eighteen Thousand, Four Hundred Fifty Dollars (\$118,450);
3. From August 1, 2018 – July 31, 2019: One Hundred Twenty-Two Thousand and Three Dollars (\$122,003); and
4. From August 1, 2019 – July 31, 2020: One Hundred Twenty-Five Thousand, Six Hundred and Sixty-Three Dollars (\$125,663).

3.2 Coach's compensation may be reviewed periodically, subject to any policies adopted by the Board of Trustees of Appalachian or the Board of Governors of the University. Increases in salary during the term of Coach's employment, if any, are at the sole discretion of the Director of Athletics and subject to the approval of the Chancellor and the Board of Trustees of Appalachian. Currently, Appalachian's supplemental pay policy (the "Supplemental Pay Policy") limits supplemental income to 20% of an employee's base salary during the academic term and 38.4% during the non-academic term

(i.e., the summer). A copy of the existing Supplemental Pay Policy can be found at http://policy.appstate.edu/Supplemental_Pay. Coach acknowledges and agrees that Coach has reviewed and understands the Appalachian Supplemental Pay Policy. Coach acknowledges and agrees that all supplemental income described in Sections 3.6 and 3.8 of this Agreement is subject to the Supplemental Pay Policy. Incentive compensation, if any, will be provided in accordance with the Addendum attached hereto and incorporated herein.

3.3 While actively employed, Coach will be entitled to receive all employment-related benefits that are normally available to other EHRA non-faculty employees with like appointments. Such benefits may include group family health insurance, group family life insurance, and a retirement program. Coach acknowledges that fringe benefits provided by Appalachian are subject to change from time to time by Appalachian, the University and/or the North Carolina General Assembly.

3.4 Coach may earn other revenue while employed by Appalachian with prior approval of the Director of Athletics and the Chancellor. Any outside compensation opportunities are specifically subject to compliance with the "Policy on External Professional Activities for Pay" of the Board of Governors of the University (specifically UNC Policy 300.2.2.1[R]), found at <http://www.northcarolina.edu/policy/index.php>, and Appalachian's policies on external professional activities and conflicts of interest and commitment, found at: http://policy.appstate.edu/Policy_Manual. Coach acknowledges and agrees that Coach has reviewed and understands such policies. Additionally, such opportunities are subject to all other relevant State and Federal policies and laws concerning conflicts of interest. Such activities are independent of Coach's employment with Appalachian, and Appalachian will have no responsibility for any claims arising therefrom. Opportunities for outside compensation will include, but are not limited to, engaging in any radio, television, motion picture, Internet, stage, writing or any similar activity, personal appearances, speeches, commercial endorsements, camps, and clinics, except as outlined below. Subject to specific reporting requirements established by Appalachian, no external activities for pay will be allowed without having on file with the Athletics Director a signed approval of the "Notice of Intent to Engage in External Professional Activities for Pay" prior to engaging in those activities.

3.5 In accordance with Appalachian policies and NCAA Bylaw 11.2.2, which are incorporated herein by reference, Coach will report annually on July 1 to the Chancellor through the Director of Athletics all athletically-related income from sources outside Appalachian, including, but not limited to, income from annuities or any other sources, including sports camps and clinics, television and radio programs, commercial endorsements, consulting agreements, and all other athletically-related income from any source other than Appalachian. Further, Coach agrees to provide or cause to be provided to Appalachian reasonable and prompt access to all records related to such income.

3.6 With respect to the operation of camps and/or clinics using Appalachian service marks, trademarks, and other indicia, or for any such operation on Appalachian's property, such activity will only be allowed with the prior written approval of the Director

of Athletics, and will be conducted in accordance with all applicable Appalachian policies, including those requiring the payment of fees for use, if any, of Appalachian facilities, indicia or other property. To the extent any such camp or clinic is operated through Appalachian or is otherwise under the sponsorship of Appalachian, Coach's compensation therefrom will be subject to Appalachian's Supplemental Pay Policy. Coach acknowledges and agrees that Coach has reviewed and understands the Appalachian Supplemental Pay Policy. Further, Coach agrees that such policy applies to income earned through camps and/or clinics which are run through or sponsored by Appalachian. Appalachian expressly makes no guarantee of any compensation to Coach from such activities.

3.7 While actively employed, Coach will be entitled to annual leave in accordance with the EHRA Policies.

3.8 In addition to the monthly salary, dependent upon and subject to the availability of funds of the Athletics Department, Coach may receive either a courtesy car or a car allowance in the amount of Three Hundred Fifty Dollars (\$350) per month less customary withholding and deductions for vehicle expenses in lieu of mileage and/or rental car expenses incurred in the performance of Coach's employment responsibilities. Should the Director of Athletics, or the Director's designee, determine in his/her sole discretion, that the courtesy car or stipend shall no longer be provided to Coach, Coach will be informed as soon as practicable.

4.0 Coach's Duties and Responsibilities:

4.1 Coach is employed by Appalachian as Head Coach of the Sports Team with all the duties, responsibilities, and obligations normally associated with such position at a university such as Appalachian. Duties will include, but not be limited to, the following:

4.1.1 Coach and oversee conduct of all activities of the Sports Team in keeping with the educational purpose, traditions, integrity and ethics of Appalachian by fostering educational values and maintaining a program of integrity;

4.1.2 Conduct himself/herself and the Sports Team in accordance with the Constitution and the Bylaws of the Sun Belt Conference (or such other conference with which Appalachian may be affiliated from time to time) ("Conference") and of the National Collegiate Athletic Association ("NCAA"), all State and Federal laws, the University's policies and procedures, Appalachian's policies and procedures, and the Department's policies and procedures, all of which as may be amended from time to time. Coach shall conduct himself/herself within the traditional high standards associated with Coach's profession. Failure of the Sports Team to comply with the same standards will, at the option of Appalachian, be deemed a violation of the provisions of this Agreement and may be determined to be grounds for disciplinary action up to and including termination of this Agreement;

4.1.3 Recruit and retain only academically qualified student-athletes and promote, contribute, and encourage academic progress, in conjunction with Appalachian's faculty and administrators, of such student-athletes toward graduation in defined degree programs;

4.1.4 Use Coach's best effort to ensure that student-athletes on the Sports Team conduct themselves in a sportsmanlike manner and in other ways that will result in a positive image of Appalachian both on and off the field;

4.1.5 Maintain responsibility for the fiscal and budgetary functions associated with the Sports Team under the direction of the Director of Athletics;

4.1.6 Provide a positive energy and excitement to the campus community and Appalachian's fan base in order to increase student and fan attendance for the Sports Team;

4.1.7 Maintain a visible and positive presence with students, faculty, and staff;

4.1.8 Contribute to the positive culture of the Department by attending coaches meetings, departmental staff functions, outings, etc., as well as ensuring that Coach's staff does the same;

4.1.9 Maintain responsibility and promote an atmosphere for compliance within the program overseen by Coach, and monitor the activities regarding compliance of all assistant coaches and other administrators involved with the program who report directly or indirectly to Coach. In addition, Coach is responsible for compliance with policies of the University, Appalachian, the Department, the Conference and the NCAA. Coach stipulates that Coach's employment may be suspended for a period of time, without pay, or terminated, if Coach is found to be involved in deliberate or serious violations of NCAA Regulations. Likewise, Coach stipulates that Coach's employment may be suspended for a period of time, without pay, or terminated, if the Athletics Director or Chancellor of Appalachian determines that Coach knew or should have known that assistant coaches or other staff subject to Coach's supervision were involved in deliberate or serious violations of NCAA Regulations. Further, Coach will provide annual performance evaluations for assistant coaches and staff;

4.1.10 Conduct recruiting activities, practices, game preparation, and coaching duties so as to develop and maintain a program of the highest quality and which is competitive within the Conference and the NCAA;

4.1.11 Maintain and enforce any and all disciplinary policies and drug policies of the University, Appalachian, the Department, the Sports Team, the Conference and the NCAA;

4.1.12 Attend meetings of the Appalachian Yosef Club to promote the Sports Team, the number of meetings and related activities to be determined on an annual basis by the Director of Athletics; and

4.1.13 Comply with such other directives that the Director of Athletics may reasonably make from time to time.

4.2 It is recognized by the parties that a student-athlete may be declared not eligible for competition for academic reasons, because Appalachian believes such student-athlete would not be an appropriate representative of Appalachian, as a disciplinary sanction under Appalachian's student conduct code, or because Appalachian believes that such student-athlete is not eligible according to the rules for athletic competition specified by the Conference or the NCAA or for similar reasons. This decision may be made either by Coach, the Director of Athletics or the Chancellor.

4.3 Coach will seek to maximize print, radio and television coverage favorable to Appalachian.

4.4 Coach agrees that Appalachian may use, without additional compensation, Coach's name, picture, likeness and voice in connection with programs and endorsements that promote Appalachian athletics and in all other respects for purposes of this Agreement.

4.5 If Coach is found to be in violation of NCAA or Conference rules and regulations, whether while employed by Appalachian or during prior employment at another NCAA member institution, Coach will be subject to disciplinary action as set forth in NCAA enforcement procedures and/or applicable Appalachian policies, rules or regulations. Such disciplinary action may include termination for cause in accordance with section 5.0 of this Agreement.

4.6 Coach agrees to faithfully and diligently perform the duties of this position, and to devote such time, attention, and skill to the performance of these duties as necessary to perform the responsibilities of the position of Head Coach for the Sports Team. During the term of this Agreement, Coach will report and be under the immediate supervision of the Director of Athletics and/or the Director of Athletics' designee and will regularly confer with the Director of Athletics or such designee on matters concerning administrative and technical decisions. Coach agrees that Coach's failure to discharge any of these duties constitutes a breach of this Agreement that would allow Appalachian to discharge Coach "for cause" pursuant to section 5.0 of this Agreement.

5.0 Termination for Cause:

5.1 Appalachian has the right to terminate this Agreement “for cause” in accordance with EHRA Policies. In addition to the meaning of “for cause” in University and/or Appalachian policies and procedures, as well as its normally understood meaning in employment agreements, the term “for cause” includes, but is not limited to, any of the following:

5.1.1 A violation of the duties set forth in this Agreement or refusal or unwillingness to perform such duties in good faith and to the best of Coach’s abilities;

5.1.2 A violation by Coach of any of the other terms and conditions of this Agreement;

5.1.3 Any conduct of Coach that constitutes moral turpitude, or which would tend to bring public disrespect, contempt or ridicule upon Appalachian, or failure to follow the high moral and ethical standards commonly expected of a coach as a leading representative of the Department at Appalachian;

5.1.4 A major (Level I or Level II) violation by Coach, or knowing participation by Coach in a major violation, or similar violation by an assistant coach or staff member of which Coach had reason to know, or should have known through the exercise of reasonable diligence, or which Coach condoned, of: (i) an NCAA rule, regulation or bylaw; (ii) a Conference regulation or bylaw; or (iii) any University/Appalachian policy, regulation, rule or procedure. For purposes of this subparagraph, whether or not a major violation has occurred shall be reasonably determined in the discretion of Appalachian after its review of the relevant facts and circumstances;

5.1.5 Misconduct of the Coach, or of assistant coaches or staff of which the Coach knew, had reason to know, or should have known through the exercise of reasonable diligence, or which Coach condoned, of such a nature that such misconduct would offend the traditions and ethics of Appalachian, or which brings discredit to Appalachian;

5.1.6 Any conduct of Coach that would constitute legitimate grounds for termination under the common law of North Carolina or under case law interpreting Title VII of the Civil Rights Act of 1964, as amended, including, but not limited to, insubordination, failure or refusal to cooperate with others in the Department or Appalachian, conduct that adversely affects morale or a supervisor’s ability to supervise in the Department or Appalachian, and other conduct that is detrimental to Appalachian’s legitimate interests;

5.1.7 Failure to positively represent Appalachian and Appalachian's athletics programs in private and/or public forums; or

5.1.8 Financial exigency or program curtailment or elimination as provided for in the EHRA Policies.

5.2 In the event of termination of the Coach's employment "for cause" prior to the expiration of this Agreement, all obligations of Appalachian to make further payments and/or provide other consideration hereunder will cease as of the end of the month in which such termination occurs. In addition, Appalachian will not be liable to Coach for loss of any collateral business opportunities or any other benefits, perquisites, or income from any sources whatsoever.

5.3 Coach has the right to terminate this Agreement, if Appalachian is in substantial breach of the terms of this Agreement and such breach is not remedied within thirty (30) days from the Director of Athletics' receipt of written notice thereof from Coach. Neither party will have any further obligation to the other from and after the effective date of such termination.

6.0 Termination Without Cause:

6.1 Appalachian may terminate this Agreement without cause at any time by giving written notice to Coach, subject to the following provisions:

6.2 Appalachian shall, on or before the expiration of 60 days following the effective date of termination, pay Coach any Incentive Compensation already earned, but not yet paid, under the Addendum to this Agreement.

6.3 The parties recognize that a termination of this Agreement by Appalachian without cause prior to its natural expiration could cause Coach to lose certain benefits, supplemental compensation, or external compensation relating to Coach's employment at Appalachian, which damages are difficult to determine with certainty. Therefore, the parties have agreed upon this liquidated damages provision.

6.3.1 In the event of a termination without cause pursuant to this Section, Appalachian shall pay Coach liquidated damages in lieu of any and all other legal remedies or equitable relief in the amount of seventy-five percent (75%) of the Base Salary only that would have been owed to Coach under Section 3.1 for the remainder of the term of this Agreement. Payment of such liquidated damages, if any, will be made on a monthly basis, subject to customary and applicable deductions and withholdings, until all payments due under this Section 6.3 have been paid in full.

6.3.2 The parties agree that, pursuant to this liquidated damages provision, Appalachian will not be liable to Coach for any loss of any collateral business opportunities or any other benefits, perquisites, or income from

any sources whatsoever that might ensue as a result of Appalachian's termination of this Agreement without cause.

6.4 Notwithstanding any other provision of this Agreement, Coach agrees to mitigate Appalachian's obligation to pay liquidated damages. The compensation due the Coach under paragraph 6.3 will be reduced by the Coach's earned income from all other sources during the Remainder Term. The measure of income earned by the Coach during the Remainder Term will be determined by Appalachian from signed individual or joint income tax returns of the Coach covering any and all parts of the Remainder Term as submitted by the Coach to the United States Internal Revenue Service (IRS). The Coach hereby agrees to provide Appalachian certified copies of said tax returns at the same time they are filed with the IRS, authorizes Appalachian to obtain directly from the IRS certified copies of all such tax returns, and agrees to execute and cause execution of any documents necessary to effect such authorization upon request. Coach will refund immediately to Appalachian any payments in excess of the compensation remaining due under this paragraph after reductions have been calculated. Failure of Coach to perform any obligations set forth in this paragraph, or acceptance by Coach of new employment at a salary exceeding that which Coach was earning at Appalachian at the time of termination under Section 6.0, will relieve Appalachian of all further obligations under this Agreement. The obligations of the Coach to refund payments and provide tax returns to Appalachian will extend beyond the ending date of the term of this Agreement or any extension thereof.

7.0 Termination By Coach:

7.1 Coach agrees that the promise to work for Appalachian for the entire term of the Agreement is essential to Appalachian. The parties agree that the Coach has special, exceptional, and unique knowledge, skill and ability as a Coach for the Sports Team, which, in addition to the continuing acquisition of coaching experience at Appalachian, as well as Appalachian's special need for continuity in its Sports Team, render Coach's services unique. Coach therefore agrees, and hereby specifically promises, not to actively seek, negotiate for or accept baseball related employment, under any circumstance, without first obtaining written permission from the Director of Athletics, such employment including, but not limited to, a baseball coach or administrator of or over a baseball program at any institution of higher education which is a member of the NCAA or for any professional team participating in any professional league or conference in the United States or elsewhere, or in baseball broadcasting, requiring performance of duties prior to the expiration date of the term of the Agreement or any extension thereof.

7.2 Coach agrees that Appalachian will have the right, in addition to any other rights which Appalachian may possess, to obtain an injunction by appropriate judicial proceedings to prevent Coach from performing coaching activities or other related services in violation of this Agreement, for any person, university, firm, corporation or other entity; and against any other breach of this Agreement. Coach also agrees to indemnify and hold Appalachian harmless for its costs in any judicial proceeding necessary or appropriate to enforcement of Appalachian's rights under this Agreement, including court costs and attorneys' fees.

7.3 Coach acknowledges that Coach's acceptance of employment from any other person or entity without first obtaining the permission of the Director of Athletics constitutes a breach of this Agreement. In the event of such breach, Coach shall pay Appalachian liquidated damages in lieu of any and all other legal remedies or equitable relief in the amount of Coach's Base Salary as set forth in 3.1 of this Agreement multiplied by the number of full and partial contract years remaining under the Agreement. Payment of the total amount of liquidated damages shall occur over the remaining term of the Agreement as follows: 1) on the effective date of breach by Coach, payment shall be made of amounts due with respect to the remainder of that contract year; and 2) payments due hereunder with respect to each subsequent contract year shall be made on or before the last day of such subsequent contract year, until all amounts due under this section have been paid in full.

7.4 This is an agreement for personal services. The parties recognize and agree that a termination of this Agreement by Coach prior to its natural expiration could cause Appalachian to lose its valuable investment in Coach's continued employment at Appalachian and could cause Appalachian additional damages beyond its lost investment, including but not limited to a possible adverse effect on recruiting. The parties further agree that it is difficult or impossible to determine with certainty the damages that may result from such termination by Coach and that the liquidated damages provision of this section are not to be construed as a penalty, but as an attempt by Coach and Appalachian to establish adequate and reasonable compensation to Appalachian in the event Coach terminates this Agreement prior to its natural expiration. Therefore, the parties have agreed on this liquidated damages clause.

8.0 Termination for Death or Disability of Coach:

8.1 This Agreement shall terminate automatically if Coach dies, or if Coach becomes disabled and is unable to perform the essential functions of the job with or without a reasonable accommodation.

8.1.1 If this Agreement is terminated pursuant to this section because of death, Coach's salary and all other benefits shall terminate as of the calendar month in which death occurs, except that Coach's personal representative or other designated beneficiary shall be paid all such death benefits, if any, as may be contained in any benefit plan now in force or hereafter adopted by Appalachian and due to Coach as an EHRA non-faculty employee. Coach's personal representative or designated beneficiary shall be paid all earned but unpaid compensation pursuant to the terms of this Agreement.

8.1.2 In the event that Coach becomes and remains unable, in the sole judgment of the Director of Athletics, to perform the essential functions of Coach's employment hereunder for a period of ninety (90) days because of medical illness or incapacity and Appalachian thereupon affords notice of termination, except for payment of amounts due Coach accrued hereunder

prior to the date of termination and payment of any disability benefits to which Coach may be entitled pursuant to any disability program in which Coach is enrolled through Appalachian, Appalachian shall have no further liability to Coach pursuant to this Agreement. Specifically and without limitation, at the end of such ninety (90) day period, all salary and other benefits shall terminate, except that Coach shall be entitled to receive any disability benefits to which Coach is entitled under any disability program in which Coach is enrolled through Appalachian.

9.0 Restrictions On Other Employment:

9.1 In the event of a termination of this Agreement prior to its natural expiration, Coach agrees that Coach will not obtain employment as a coach with any Conference member institution for the Remainder Term under this Agreement. The parties agree that money damages would be inadequate to remedy a breach of this covenant; therefore, Appalachian shall have the right to obtain from any court such equitable, injunctive, or other relief as may be appropriate, including a decree enjoining Coach from violating this section.

10.0 Relationship Between the Parties:

10.1 The relationship between Coach and Appalachian will be determined solely by the terms and conditions of this Agreement, including, but not limited to, the EHRA Policies and all other applicable Appalachian, Department and University policies and procedures as they may be amended from time to time.

11.0 Ownership of Information:

11.1 All materials or articles of information including, without limitation, personnel records, recruiting records, team information, films, statistics or any other material or data 1) furnished to Coach by Appalachian; or 2) developed by Coach on behalf of Appalachian or at Appalachian's direction, or for Appalachian's use or otherwise in connection with Coach's employment hereunder; are and shall remain the sole and confidential property of Appalachian. If Appalachian requests access to or the return of such materials at any time during, or at or after the termination, of Coach's employment, Coach shall immediately deliver all such information to Appalachian.

12.0 Taxes:

12.1 Coach acknowledges that, in addition to the salary provided for in this Agreement, certain benefits that Coach receives incident to this employment relationship with Appalachian may give rise to taxable income. Coach agrees to be responsible for the payment of any taxes (including federal, state and local taxes) due on such income. Coach also understands that Appalachian shall withhold taxes on amounts paid or due to Coach, and the value of benefits provided to Coach, to the extent required by applicable laws and regulations.

13.0 Public Record:

13.1 Coach acknowledges and understands that, upon execution of this Agreement, the payment amounts and other terms and conditions contained herein shall not be confidential and shall be considered a public record within the meaning of the North Carolina Public Records Act, N.C. Gen. Stat. § 132-1 *et seq.*

14.0 Governing Law:

14.1 This Agreement will be governed by and construed under the laws of the State of North Carolina without regard to its conflicts of law provisions. The courts of North Carolina will be the forum for any lawsuits arising from or incident to this Agreement. The parties agree that any rule to the effect that an agreement shall be construed against the party drafting it shall have no application to this Agreement.

15.0 Severability:

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

16.0 Board of Trustees' Approval:

16.1 The parties understand that, in accordance with a policy of the Board of Governors of the University, this Agreement will not be valid until it is approved by the Board of Trustees of Appalachian.

17.0 Compensation Conditional:

17.1 Since support for this position is funded in whole or in part from sources other than continuing State budget funds, the continuation of your employment in this position is contingent upon the continued availability of funds from such other sources to support this position. The source of funding for this position is Athletics Department receipts. The effect of this contingency may apply without the additional notice of intent not to renew otherwise required by Sections III.B and III.C of *The UNC Policy Manual*, Policy 300.2.1; provided, you shall be informed at the earliest practicable date of the occurrence of such a funding contingency.

18.0 Non-assignment:

18.1 Neither party to this Agreement will assign this Agreement as a whole, or in part, without the written consent of the other. Any attempt to do so will render this Agreement null and void.

19.0 Notices:

19.1 Whenever it will be required or permitted that notice or demand be given or served by either party to this Agreement on the other, unless otherwise specifically provided, such notice or demand will be given or served in writing by hand delivery or certified mail, return receipt requested, addressed as follows:

If to Appalachian:

Mr. Douglas P. Gillin
Director of Athletics
Appalachian State University
Athletics Center
Boone, NC 28608
Facsimile: 828-262-2556

If to Coach:

Kermit K. Smith
Head Coach Baseball
Appalachian State University
Athletics Center
Boone, NC 28608
Facsimile: 828-262-2556

With copy to:
Office of General Counsel
Appalachian State University
ASU Box 32126
Boone, NC 28608

20.0 Entire Agreement:

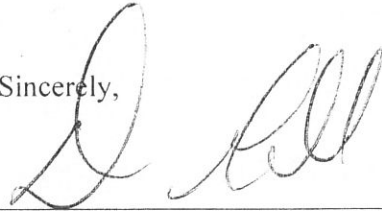
20.1 This Agreement constitutes the full and complete agreement of the parties. No prior or subsequent written or oral understandings or representations pertaining to the subject matter of this Agreement shall be binding upon the parties unless contained herein or set forth in the form of written amendments(s) to this Agreement, executed by both parties prior to becoming effective.

21. Offer Conditional

21.1 This offer is conditional upon acceptance and will be held open until 5:00 p.m. Eastern Standard Time on July 27, 2016. Please indicate your acceptance by signing and dating the enclosed copy in the space indicated and returning it to the Director of Athletics at or before that time. Your failure to do so will be deemed to constitute a rejection of an initial offer of employment or resignation from employment, as the case may be.

[END OF TEXT; SIGATURES FOLLOW NEXT PAGE]

Sincerely,



Douglas P. Gillin
Director of Athletics



Sheri N. Everts
Chancellor

AGREED AND ACCEPTED:



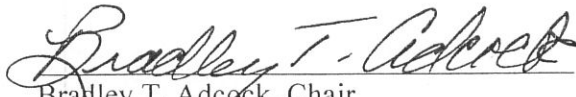
Kermit K. Smith

Kermit Smith

Print Name

July 18, 2016
Date

APPROVED by the Board of Trustees of Appalachian State University at its meeting on
July 14, 2016.



Bradley T. Adcock, Chair
Board of Trustees of Appalachian State University

July 21, 2016
Date

Addendum for Head Coach Baseball

Kermit K. Smith

Incentive Compensation

1. Academic Performance of Baseball Team

1.1 In years in which the Academic Progress Rate (APR) is 950 or above, Coach will receive additional compensation from Appalachian in the amount of Two Thousand Five Hundred Dollars (\$2,500).

1.2 Coach shall receive additional compensation of Two Thousand Five Hundred Dollars (\$2,500) for each academic year (fall and spring term combined) that the aggregate team grade point average is 3.0 or above as determined by the Director of the Academic Support Program for Student-Athletes.

2. Competitive Team Success

2.1 In years in which Appalachian's baseball team wins outright or shares the regular season Conference championship, Coach will receive additional compensation from Appalachian in the amount of Five Thousand Dollars (\$5,000).

2.2 In years in which Appalachian's baseball team advances to the NCAA Regionals additional compensation in the amount of Five Thousand Dollars (\$5,000); for advancing to the NCAA Super Regionals additional compensation in the amount of Five Thousand Dollars (\$5,000); and for advancing to the NCAA College World Series additional compensation in the amount of Ten Thousand Dollars (\$10,000).

2.3 In years in which Coach is named the Conference Coach-of-the-Year, in addition to the compensation specified above, Coach will receive additional compensation in the amount of Two Thousand Five Hundred Dollars (\$2,500).

3. Compensation Subject to Withholding

All incentive compensation paid under the provisions of this Addendum will be subject to customary and applicable deductions and withholdings, including but not limited to State and federal income tax withholding.

4. Time of Payment

All amounts owed to Coach pursuant to this Addendum shall be paid within sixty (60) days of the close of the Sport Team's season or the satisfaction of the condition stated if such condition occurs after the close of the season.