

MINUTES  
MEETING OF THE BOARD OF TRUSTEES  
APPALACHIAN STATE UNIVERSITY

Friday, December 13, 2019

1:00 p.m.

Chancellor's Office Conference Room  
B.B. Dougherty Administration Building, Campus

CALL TO ORDER: The Board of Trustees of Appalachian State University met via conference call at the call of the Chair on Friday, December 13, 2019, at 1:00 p.m. in the Chancellor's Office Conference Room of the B.B. Dougherty Administration Building on the campus of Appalachian State University in Boone, North Carolina. Chair John M. Blackburn presided and called the meeting to order.

MEMBERS PRESENT VIA TELEPHONE:

James M. Barnes  
Donald C. Beaver  
John M. Blackburn  
DeJon M. Milbourne  
Charles V. Murray  
James K. Reaves  
Mark E. Ricks  
E. Bonnie Schaefer  
Kimberly M. Shepherd  
R. Thomas Sofield  
Carole P. Wilson

MEMBERS ABSENT:

M. Lee Barnes  
Scott K. Lampe

CONSTITUENCY REPRESENTATIVES

PRESENT VIA ADDITIONAL TELEPHONE LINE:

Mallory Sadler, Chair  
Staff Senate  
Donna Fiori, President  
Alumni Council  
Michael C. Behrent, Chair  
Faculty Senate

OTHERS PRESENT:

A. Dawn Antonucci  
Philip C Byers, Member, UNC  
Board of Governors  
Sheri Everts, Chancellor  
Hank T. Foreman

Doug Gillin  
Megan E. Hayes  
Joey Jones  
Paul Meggett  
Jonathan Reeder

MEDIA PRESENT:

Steve Behr  
*Watauga Democrat*

CONFLICT OF INTEREST NOTICE: Chair Blackburn read the following statement:

“Under the State Government Ethics Act, all voting members of the Board of Trustees have a duty to avoid conflicts of interest and appearances of conflicts. Looking at the agenda for today's meeting, does anyone know that you have a conflict of interest or an interest that would give rise to the appearance of a conflict of interest? If so, please let me know now.”

ROLL CALL: Chair Blackburn asked Dawn Antonucci to call roll to verify all participants on the call.

CLOSED SESSION: Chair Blackburn announced that he would entertain a motion for the Board to convene in closed session.

Upon motion duly made, seconded and approved, the Board convened in closed session to:

to prevent the disclosure of privileged or confidential information, [N.C.G.S. §132-1.7 (a)(1)];

to consult with the University's attorney in order to preserve the attorney-client privilege, [N.C.G.S. §143-318.11(a)(3)];

to establish or instruct the staff or an agent concerning the position to be taken by or on behalf of this Board in negotiating the amount of compensation and other material terms of an employment contract or proposed employment contract, [N.C.G.S § 143-318.11(a)(5)(ii)]; and

to 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)(6)].

[2<sup>nd</sup> Conference line was muted for closed session. Megan Hayes, Jonathan Reeder, Joey Jones & Steve Behr left the meeting at this time]

OPEN SESSION RECONVENED: Upon motion duly made, seconded and approved, the Board reconvened in open session at 1:19 p.m.

[2<sup>nd</sup> Conference line was unmuted for open session. Megan Hayes, Jonathan Reeder, Joey Jones & Steve Behr returned to the meeting at this time ]

AGENDA AMENDMENT: Trustee Mark Ricks made a motion to amend the agenda to include new information regarding authority to revise the contract for Athletic Director Doug Gillin.

Upon motion duly made, seconded and approved, the item was added to the agenda as item #5.

Head Football Coach Employment Contract for Shawn Clark

Mr. Doug Gillin, Athletics Director, presented a recommendation to approve the terms for the Head Football coaching contract as presented in the materials provided. (Attachment 1)

The recommendation was approved unanimously.

Athletics Director Contract for Doug Gillin

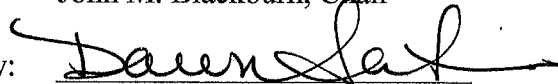
Chair Blackburn presented a recommendation to approve the revised Athletics Director contract for Doug Gillin as presented.

The recommendation was approved unanimously.

ADJOURNMENT: There being no further business, the meeting adjourned at 1:23 p.m.

John M. Blackburn, Chair

By:



Dawn Antonucci  
Assistant Secretary

## EMPLOYMENT AGREEMENT FOR FOOTBALL HEAD COACH

This Employment Agreement (the "Agreement") is made by and between Appalachian State University ("Appalachian") and **Shawn C. Clark** ("Coach") and shall be effective as of December 13, 2019 ("Effective Date"). 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 football 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 State University (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/apps/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](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"). 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 football 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; however, such other duties assigned by the Director of Athletics shall be consistent with duties typically assigned to head football coaches at the FBS level.

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 because 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 basis prohibited by federal or State law, or University or Appalachian policies, in any activity contemplated by this Agreement.

1.7 Notwithstanding any other provision of this Agreement, Coach may seek and obtain sport-related employment without prior consent of the Director of Athletics if Coach's employment is terminated pursuant to section 5.1.9.

2.0 Term:

2.1 The employment conferred herein is for a stated, definite term commencing as of the Effective Date and terminating on December 31, 2024 (the "Term"), subject to the EHRA Policies and the conditions stated herein.

3.0 Compensation:

3.1 Base Salary: Except as specified in Section 3.4 below, Coach's Base Salary shall be as defined in this Section 3.1 (Annual Salary and Car).

3.1.1 Annual salary: 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 shall be as follows:

- i. prorated from Effective Date – December 31, 2019: Four Hundred Twenty-five Thousand Dollars (\$425,000);
- ii. from January 1, 2020 – December 31, 2020: Four Hundred Twenty-five Thousand Dollars (\$425,000);
- iii. from January 1, 2021 – December 31, 2021: Four Hundred Twenty-five Thousand Dollars (\$425,000);
- iv. from January 1, 2022 – December 31, 2022: Four Hundred Twenty-five Thousand Dollars (\$425,000);
- v. from January 1, 2023 – December 31, 2023: Four Hundred Twenty-five Thousand Dollars (\$425,000).
- vi. from January 1, 2024 – December 31, 2024: Four Hundred Twenty-five Thousand Dollars (\$425,000).

3.1.2 Car: In addition to the annual salary, dependent upon and subject to the availability of funds of the Athletics Department and at Appalachian's sole discretion, Coach may receive either a courtesy car or a car allowance in a monthly amount to be determined by the Athletics Department, 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. In no event shall a vehicle stipend exceed \$600 per month. 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.

3.2 Retention Bonus: Beginning with the month in which the Effective Date of this Agreement occurs, and for each month of each succeeding calendar year of the Agreement (January 1 – December 31 calendar year, also referred to herein as a "Contract Year"), while Coach (i) is actively employed on the fifteenth (15<sup>th</sup>) day of a month during the Contract Year, (ii) has not given notice that he intends to terminate this Agreement without cause pursuant to Section 7 of this

Agreement, and (iii) has performed the essential functions of his job as set forth herein, Appalachian will pay Coach a monthly retention bonus as follows:

- i. Monthly retention bonus – December 2019 (pro rata) \$15,000.00/Month
- ii. Monthly retention bonus – Contract Year 2020 \$15,000.00/Month
- iii. Monthly retention bonus – Contract Year 2021 \$15,000.00/Month
- iv. Monthly retention bonus – Contract Year 2022 \$15,000.00/Month
- v. Monthly retention bonus – Contract Year 2023 \$15,000.00/Month
- vi. Monthly retention bonus – Contract Year 2024 \$15,000.00/Month

All retention bonus payments shall be less customary and applicable deductions and withholdings, through the monthly payroll for the month in which the retention bonus is earned.

3.3 Annual Fund/Personality Rights Payment: In addition to the compensation described in Sections 3.1 and 3.2, Coach hereby grants to Appalachian and its successors and assigns for the Term of this Agreement the exclusive right, license and authority to utilize Coach's name, likeness, image, voice, signature, and goodwill appurtenant thereto, including, but not limited to, photographs, portraits, video recordings and audio recordings of the foregoing, as applicable, in any and all forms of media whether written, electronic, wireless or any other medium now know or hereafter devised (collectively, "Personality Rights") in conjunction with promoting Appalachian events, activities or interests, whether or not related to the Sports Team. This right specifically includes the exclusive right to utilize Coach's Personality Rights in conjunction with the University's acknowledgment of third-party sponsors or vendors, as well as the right to file applications for copyright, trademark, domain name and other similar registrations and obtain such registrations involving the use of Coach's name, likeness, image, voice and signature pursuant to this Agreement. Coach shall retain all title and interest in his Personality Rights except as permitted by this Agreement. In exchange for the license of Coach's Personality Rights, Appalachian shall pay Coach an annual royalty, as set forth below, in equal monthly installments during the Term of this Agreement:

- i. For December 2019 (pro rata), \$145,000/Year
- ii. For Contract Year 2020, \$145,000/Year
- iii. For Contract Year 2021, \$170,000/Year
- iv. For Contract Year 2022, \$195,000/Year
- v. For Contract Year 2023, \$220,000/Year
- vi. For Contract Year 2024, \$245,000/Year

3.3.1 Annual Fund/Personality Rights Payment Requirements: Coach's obligation under this Section 3.3 shall include his appearance at a minimum of twenty-five (25) Yosef Club or University events/meetings each Contract Year, the dates of and activities at such appearances to be reasonably determined from time to time by the Director of Athletics.

3.3.2 Appalachian's obligation under this Section 3.3 shall accrue as owing and be paid in monthly payments to Coach beginning with the first full month following the Effective Date of the Agreement. Such monthly payments shall be equal to 1/12 of the total Annual Fund/Personality Rights Payment to which Coach may be entitled for the calendar year in which the Licensing/Personality Rights are paid. All Annual Fund/Personality Rights payments shall be less customary and applicable deductions and withholdings, through the monthly payroll for the month in which the retention bonus is earned.

3.3.3 In the event that Coach's employment is terminated pursuant to Sections 5.0, 6.0, or 7.0 of this Agreement, then Coach will be deemed to have already earned only the total royalty payment due during the calendar year of termination multiplied by a fraction, the numerator of which is the total number of days during the calendar year accruing through the date of termination of Coach's employment and the denominator of which is 365. Any such earned and unpaid fractional royalty payment shall be paid to Coach within thirty (30) days of the termination of his employment.

3.3.4 Notwithstanding the language contained herein, Appalachian acknowledges, understands, and agrees that Coach's primary responsibility is in coaching the football team, including the responsibility to prepare and administer the team's practice schedule, engage in recruiting efforts, game-plan for specific opponents and situations, and in general engage in administrative and professional activities related to the performance of the football team and program. Consequently, Appalachian agrees that any requests for Coach's services under Section 3.3 shall be limited and reasonable in scope, and shall not conflict with Coach's primary responsibility.

3.4 Coach's compensation may be reviewed periodically, subject to any policies adopted by the Board of Trustees of Appalachian State University or the Board of Governors of the University. Recommendations for 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, the Board of Trustees of Appalachian State University and the Board of Governors of the University or their respective designees. 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](http://policy.appstate.edu/Supplemental_Pay). The sum of the amounts described in Sections 3.1(a) and 3.1(b) constitute Coach's base salary for purposes of the Supplemental Pay Policy only. 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 Section 3.6 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.

3.5 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.

3.6 Coach may earn revenue other than as provided by this Agreement while employed by Appalachian with prior written 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](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 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 unless the Athletics Director has approved Coach's signed "Notice of Intent to Engage in External Professional Activities for Pay" prior to engaging in those activities.

3.7 In accordance with Appalachian policies and National Collegiate Athletic Association ("NCAA") Bylaw 11.3.2, 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, sports camps and clinics, television and radio programs, 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.

3.8 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 that are run through or sponsored by Appalachian. Appalachian expressly makes no guarantee of any compensation to Coach from such activities.

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

3.10 To assist Coach with the duties, responsibilities and obligations of promoting and enhancing Appalachian's Sports Team, Appalachian will provide Coach with up to sixteen (16) priority-level complimentary tickets to all home games, up to sixteen (16) priority-level tickets to all post-season games, up to (4) parking passes to all home games, and four (4) suite tickets and use of a private stadium box/suite for not less than one home contest each season. Coach shall be responsible for all taxes relating to any complimentary tickets provided by University. In addition, Coach's spouse and immediate family will be permitted to travel to all away and post-season contests with the Sports Team at no cost.

#### 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 Subject to departmental guidelines and budgetary limitations, and to the final approval of the Athletic Director concerning the employment, discharge, salaries and bonuses of all personnel assigned to the Sports Team who report directly to Coach, Coach shall have the



authority to employ, discharge, manage, and discipline all such employees. Coach will have access to an assistant coach salary pool for the first contract year in an amount not less than \$1,550,000 in order to hire coaches for the Sports Team;

4.1.3 Conduct himself and the Sports Team in accordance with the Constitution and the Bylaws of the Sun Belt Conference ("the Conference") and of the NCAA, all applicable 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 within the traditional high standards associated with Coach's profession and the material failure of Coach to so comply with such standards, as reasonably determined by Appalachian, will, at the option of Appalachian, be deemed a violation of the provisions of this Agreement and may, pursuant to the terms and conditions contained in Section 5.0 herein, be determined to be grounds for disciplinary action up to and including termination of this Agreement;

4.1.4 Use Coach's best reasonable efforts to recruit and retain only academically qualified student-athletes and promote, contribute to and encourage academic progress, in conjunction with Appalachian's faculty and administrators, of such student-athletes toward graduation in defined degree programs;

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

4.1.6 Use Coach's best reasonable efforts to ensure that assistant coaches, team managers, trainers, strength and conditioning coaches, support staff and other personnel who may be so assigned to work with the Sports Team from time to time, conduct themselves in a professional manner, both on and off the field, that will reflect positively on Appalachian. This includes taking appropriate management measures to correct any conduct that does not adhere to the standards set by Appalachian;

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

4.1.8 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;

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

4.1.10 Contribute to the positive culture of the Department by making best reasonable efforts to attend coaches' meetings, departmental staff functions, outings, etc., as well as requiring that Coach's staff does the same;

4.1.11 Maintain responsibility for and promote an atmosphere of compliance within the program overseen by Coach, and monitor the activities regarding compliance of all assistant coaches and other administrators 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 responsible for a violation of NCAA Bylaw 11.1.1.1 by the NCAA Committee on Infractions. Further, Coach will provide annual performance evaluations for all assistant coaches and staff who report to Coach, and

cause annual performance evaluations to be provided to all other staff engaged in the Sports Team program;

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

4.1.13 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; and

4.1.14 Comply with such other directives as 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 ineligible 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, 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, the Chancellor or the Chancellor's designee.

4.3 Coach will participate in weekly radio and television programs during the football season, including postseason, and seek to maximize print, radio, television and/or other media coverage favorable to Appalachian.

4.4 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, applicable Appalachian policies, rules or regulations, and/or as set forth in this Agreement. Such disciplinary action may include termination for cause in accordance with section 5.0 of this Agreement.

4.5 Coach agrees to faithfully and diligently perform the duties of this position, and to devote such time, attention, and skill to the performance of those 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 to and be under the immediate supervision of the Director of Athletics, and will regularly confer with the Director of Athletics or the Director's designee on matters concerning administrative and technical decisions. Coach agrees that Coach's willful failure to discharge any of these duties constitutes a breach of this Agreement that would allow Appalachian to terminate this Agreement "for cause" pursuant to section 5.0, below.

## 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, the term "for cause" includes any of the following:

5.1.1 A violation of the duties set forth in this Agreement after receiving written notice from Appalachian and failing to cure such violation within ten (10) days 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 after receiving written notice from Appalachian and failing to cure such violation within ten (10) days;

5.1.3 Any conduct of Coach that constitutes moral turpitude, or which brings significant public disrespect, contempt or ridicule upon Appalachian, or material 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 resulting in the Coach being found responsible for a violation of NCAA Bylaw 11.1.1.1 by the NCAA Committee on Infractions. For purposes of this subsection, whether or not a major or similar violation has occurred shall be reasonably and in good faith determined in the discretion of Appalachian after its review of the relevant facts and circumstances, and Appalachian shall consider any such violation for purposes of termination with cause regardless of whether said violation occurred while Coach, an assistant coach or staff member was employed by Appalachian or during prior employment at another NCAA member institution;

5.1.5 Egregious misconduct of Coach, or of assistant coaches or staff of which Coach knew, had reason to know, or should have known through the exercise of reasonable diligence, and thereafter Coach failed to take reasonable steps to prevent, minimize, or report such violation, or which Coach condoned, of such a nature that offends 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 insubordination, willful failure or refusal to cooperate with others in the Department or Appalachian, serious misconduct that adversely affects morale or a supervisor's ability to supervise in the Department or Appalachian, and other conduct that is substantively detrimental to Appalachian's legitimate interests;

5.1.7 Failure to promptly report to Appalachian's Title IX coordinator, any known violations of Appalachian's Discrimination, Harassment and Retaliation Policy or Workplace Violence Policy (including but not limited to, sexual harassment, sexual assault, sexual exploitation, intimate violence, and stalking) that involves any student, faculty, or staff.

5.1.8 Any serious misconduct by Coach, regardless of whether in a public or private forum, including but not limited to: (i) dishonesty; (ii) theft; (iii) misappropriation of Appalachian property; (iv) any act that will tend to degrade Coach in society or bring him into public disrepute, ridicule, controversy, embarrassment or scandal; (v) any act that will tend to shock, insult or offend the community or public morals or decency; (vi) injuring, abusing or endangering others; (vii) any act or thing that would lead Appalachian to reasonably believe that public association with Coach: (x) would tend to subject Appalachian to public disrepute, ridicule, controversy, embarrassment or scandal, (y) is seriously prejudicial to the best interests of Appalachian or its Sports Team, or (z) violates Appalachian's mission; or

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

5.2 In the event of termination of 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; provided, however, Coach shall be entitled to any amounts earned but not yet paid at the time of termination, including amounts under Section 3.1(a), and the Addendum attached hereto, as well as any theretofore unreimbursed business expenses incurred by Coach in the performance of his duties. Appalachian will not be liable to Coach for loss of any collateral business opportunities or any other benefits, perquisites, or income from any other sources, on or after the 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 sixty (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 on the decreasing graduated scale below for the contract year in which notice of termination is given:

<b>Termination Notice Provided on or Before</b>	<b>Amount to be Paid in Damages</b>
January 1, 2021	\$5 million
January 1, 2022	\$3 million
January 1, 2023	\$1.5 million
January 1, 2024	\$500,000
January 1, 2025	\$250,000

Appalachian will make such payment on or before the expiration of ninety (90) days following the effective date of termination.

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 by making reasonable efforts to obtain other football-related coaching employment following termination. If Coach obtains new football-related coaching employment, Appalachian's financial obligations under Section 6.3 will be reduced by the total compensation received by Coach in Coach's new position over the remaining Term. Willful 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.

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 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 other employment of any nature, under any circumstance, without first obtaining written permission from the Director of Athletics, such employment including, but not limited to, a football coach or administrator of or over a football 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 football broadcasting, requiring performance of duties prior to the expiration date of the term of this 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. In the event Coach materially breaches his obligations under the language contained herein, Coach also agrees to indemnify and hold Appalachian harmless for its costs in any judicial proceeding necessary or appropriate to enforce Appalachian's rights under Section 7.0, including reasonable court costs and attorneys' fees.

7.3 Coach acknowledges that Coach's acceptance of employment from any other person or entity prior to the date on which this Agreement expires constitutes a breach and automatic termination of this Agreement. In the event of such breach, Coach shall pay, or cause to be paid, Appalachian liquidated damages in lieu of any and all other legal remedies or equitable relief on the decreasing graduated scale below:

<b>Termination Notice Provided on or Before</b>	<b>Amount to be Paid in Damages</b>
January 1, 2021	\$5 million
January 1, 2022	\$3 million
January 1, 2023	\$1.5 million
January 1, 2024	\$500,000
January 1, 2025	\$250,000

Coach will make such payment to Appalachian on or before the expiration of ninety (90) days following the effective date of termination.

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 provisions of this section shall not 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.

7.5 Appalachian agrees not to unreasonably withhold permission for Coach to discuss another position pursuant to section 7.1 and section 7.3 above.

7.6 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. In the event of such termination due to Appalachian's breach, the parties agree that the liquidated damages detailed in this Section 7.3.1 and 7.3.2 shall not be owed to Appalachian, and that such termination will be treated as a Section 6.0 Termination Without Cause by Appalachian.

#### 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, as well as any theretofore unreimbursed business expenses incurred by Coach in the performance of his duties. 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) or more 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, as well as any theretofore unreimbursed business expenses incurred by Coach in the performance of his duties.

#### 9.0 Restrictions on Other Employment

In the event of a voluntary termination by Coach prior to the conclusion of the 2021 football season (including the conference championship game, if Appalachian is a participant), Coach agrees that Coach will not obtain employment as a coach with any Current 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. For purposes of this section, "Current Conference Member Institution" means a member of the Conference in which Appalachian competes at the time of the execution of this Agreement.

#### 10.0 Relationship between the Parties:

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:

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:

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 on the value of benefits provided to Coach, to the extent required by applicable laws and regulations.

#### 13.0 Public Record:

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:

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:

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:

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:

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 compensation described in Sections 3.1.1, 3.1.2, 3.3, and the Addendum is Athletics Department receipts. The source of funds for compensation described in subsection 3.2 is revenue from existing or future radio, television and/or other media or marketing contracts. The effect of this contingency may apply without the additional notice of intent not to renew otherwise required by Sections III.A 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. In the event Coach's compensation is negatively impacted due to funding issues described in this Section 16.0, Appalachian will waive the liquidated damages required by Section 7.0 herein.

18.0 No Assignment or Third Party Beneficiaries:

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. No provision of this Agreement may be construed to benefit a third party.

19.0 Notices:

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  
 Mark E. Ricks Athletics Center  
 Boone, NC 28608  
 Facsimile: 828-262-2556  
 Email: [gillindp@appstate.edu](mailto:gillindp@appstate.edu)

*If to Coach:*

Shawn C. Clark  
 Football Head Coach  
 Appalachian State University  
 Mark E. Ricks Athletics Center  
 Boone, NC 28608  
 Facsimile: 828-262-2501  
 Email: [clarksc2@appstate.edu](mailto:clarksc2@appstate.edu)



*With copy to:*  
Paul Meggett  
General Counsel  
Appalachian State University  
ASU Box 32126  
Boone, NC 28608

Overnight/Courier:  
438 Academy Street  
Boone, NC 28608  
Email: [meggettpa@appstate.edu](mailto:meggettpa@appstate.edu)

Any such notice, demand or request may also be transmitted to the appropriate above-mentioned party and shall be deemed sufficiently given (i) on the day personally delivered; (ii) three (3) business days after deposited in the U.S. Mail if mailed by registered or certified U.S. Mail, return receipt requested, postage prepaid; (iii) on the day of delivery if sent by recognized courier or overnight delivery; or (iv) via electronic mail transmission to the addresses given above. Each party may change its address at any time by giving the other party written notice of the new address in the manner set forth above.

20.0 Entire Agreement:

This Agreement constitutes the full and complete agreement of the parties in relation to the subject matter of this Agreement and supersedes all previous agreements, arrangements and understandings between 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.

**[SIGNATURES FOLLOW NEXT PAGE]**

Sincerely,

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Douglas P. Gillin  
Director of Athletics

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Sheri Everts  
Chancellor

**AGREED AND ACCEPTED:**

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Shawn C. Clark

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Date

**APPROVED by the Board of Trustees of Appalachian State University at its meeting on  
December 13, 2019.**

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John M. Blackburn, Chair  
Board of Trustees of Appalachian  
State University

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Date

## Addendum for Head Football Coach Shawn C. Clark

### Incentive Compensation

#### 1. Academic Performance of Football Team

1.1. In years in which Appalachian's Football Team's Academic Progress Rate (APR) is greater than or equal to 950, Coach will receive additional compensation from Appalachian in the amount of Fifteen Thousand Dollars (\$15,000).

1.2 Coach shall receive additional compensation of Seven Thousand Five Hundred Dollars (\$7,500) for each semester (fall term and spring term) that the aggregate football team grade point average is equal to or above 3.0 as determined by the Director of the Academic Support Program for Student-Athletes. The maximum amount is Fifteen Thousand Dollars (\$15,000) per year.

1.3 Coach shall receive additional compensation of Five Thousand Dollars (\$5,000) for each semester (fall term and spring term) that the aggregate football team grade point average is equal to or above 2.7 and below 3.0, as determined by the Director of the Academic Support Program for Student-Athletes. The maximum amount is Ten Thousand Dollars (\$10,000) per year.

1.4 During each academic year, only additional compensation may be earned under either section 1.2 or 1.3, but not both, each semester.

#### 2. Competitive Scheduling

2.1 In years in which Appalachian's Football Team plays a "guarantee" game against an NCAA Division I Football Team from the SEC, ACC, Big 12, Big Ten or PAC 12 conferences, or their respective successor conferences, at the opponent's stadium, in addition to the compensation specified above, Coach will receive additional compensation from Appalachian in the amount of Ten Thousand Dollars (\$10,000).

#### 3. Competitive Team Success

3.1 In years in which Appalachian's Football Team advances to a post-season football bowl or playoff game, in addition to the compensation specified above, Coach will receive additional compensation from Appalachian for participations and wins in the respective amounts set forth in the table below:

<b>Bowl Game Participation and Wins</b>	<b>Amount</b>
Non-New Year's Six Bowl Appearance	\$25,000
Win Non-New Year's Six Bowl Game	\$15,000
New Year's Six Bowl Appearance (non- CFP)	\$25,000
Win New Year's Six Bowl Game (Non-CFP)	\$10,000
CFP Playoff Appearance	\$50,000
CFP Playoff Win	\$25,000
CFP National Champion	\$50,000

3.2 In years in which Appalachian's Football Team wins their division championship and appears in the Conference Championship, in addition to the compensation specified above, Coach will receive additional compensation from Appalachian in the amount of Twenty-Five Thousand Dollars (\$25,000).

3.3 In years in which Appalachian's Football Team wins outright the conference championship game in addition to the compensation specified above, Coach will receive additional compensation from Appalachian in the amount of Fifty Thousand Dollars (\$50,000).

3.4 In years in which Coach is named the Conference Coach-of-the-Year or the National Coach-of-the-Year, in addition to the compensation specified above, Coach will receive additional compensation in the amount of Twenty Thousand Dollars (\$20,000) for each award.

3.5 In years in which Appalachian's Football Team wins nine (9) or more games, in addition to the compensation specified above, Coach will receive compensation from Appalachian in the amount of Twenty-five Thousand Dollars (\$25,000).

#### **4. Gross Ticket Revenue**

4.1 In years when the number of tickets sold for all home football games exceeds the number sold for all home football games in the preceding year by more than five percent (5%), in addition to the compensation specified above, Coach will receive additional compensation from Appalachian in the amount of Ten Thousand Dollars (\$10,000). For purposes of this Agreement, the number sold for each year shall be the amount verified by an auditor selected by Appalachian in its sole discretion or otherwise agreed by the parties.

#### **5. Compensation Subject to Withholding**

All supplemental compensation paid under the provisions of this Addendum will be subject to payroll withholding for State and federal income taxes and other items required by applicable laws or regulations.

#### **6. 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.