

AMENDED AND RESTATED EMPLOYMENT AGREEMENT

THIS AMENDED AND RESTATED EMPLOYMENT AGREEMENT ("Agreement") is entered into by and between William Swinney ("Coach") and Clemson University (the "University"), an educational institution and agency of the State of South Carolina (the "State"), and is effective January 1, 2019 (the "Effective Date").

WHEREAS, Coach is currently employed by the University as the head coach of the University's men's varsity intercollegiate football team (the "Team");

WHEREAS, the University wishes to continue to employ Coach, in the capacity of head coach of the Team, all upon the terms and conditions set forth in this Agreement, and Coach is willing to accept such employment on such terms and conditions;

WHEREAS, this Agreement amends, restates and supersedes the Employment Agreement between the parties dated and effective as of January 1, 2014, as amended by a First Amendment effective as of April 13, 2016 and a Second Amendment effective as of September 1, 2017 (the "Current Agreement"); and

WHEREAS, Coach has exclusively licensed certain of his publicity, personality, trademark, appearance, and other intellectual property rights to KATBO, LLC ("Licensing Company") for the commercial exploitation of those rights, and University has obtained a license to those rights pursuant to the Amended and Restated Licensing Agreement attached as Exhibit A (the "Licensing Agreement");

NOW, THEREFORE, in consideration of the mutual agreements hereinafter set forth, Coach and the University have agreed and do hereby agree as follows:

1. **Term of Agreement.** The term of this Agreement ("Term") shall commence on the Effective Date and shall continue through December 31, 2028 (the "Expiration Date"), unless sooner terminated in accordance with the provisions of Section 18 below. For purposes of this Agreement, the term "Contract Year" shall mean each period of January 1 through December 31, or portion thereof, occurring during the Term.

2. **Employment; Duties.**

(a) **Employment.** The University hereby employs Coach, and Coach hereby accepts employment with the University, as head coach of the Team upon all the terms and conditions set forth in this Agreement. Coach shall be an unclassified State employee with the terms of his employment restricted solely to this Agreement (except to the extent that applicable State or University policies, procedures, rules, regulations and plans are expressly incorporated by reference herein). It is understood and agreed that Coach hereby waives any and all grievance rights under the University's grievance procedure and the South Carolina State Employee Grievance Procedure Act. Furthermore, Coach understands and acknowledges that his employment with the University is not a tenure-track position and will not lead to tenure, nor will Coach be afforded any rights under the University Faculty Manual.

(b) **Basic Duties.** Coach shall report to the University's Athletics Director with respect to the performance of his duties. He shall be responsible to the Athletics Director and the University's President with respect to all matters relating to his employment. Coach's duties shall include:

(i) Serving as head coach for the Team (including without limitation the making of customary coaching decisions such as development and implementation of the systems and strategies used on the field, conduct of practice and training, selection of Team members, deployment of players, and all other matters relating to the practice for and play of games, as well as the performance of all other duties customarily associated with the position of head coach of a major National Collegiate Athletic Association (“NCAA”) Division I football program);

(ii) Performing his duties and operating the University’s intercollegiate football program with personal integrity and in a manner that is consistent with and in compliance with all of the following, as applicable and as now or hereafter in effect during the Term: (A) federal, state and local laws, codes, rules, regulations and ordinances (collectively, “Laws”), (B) University policies, procedures, rules, regulations, and directives, including without limitation those related to admission practices, academic and other student discipline, and the effective administration of drug testing, education and use prevention (collectively, “University Requirements”), and (C) constitutions, bylaws, rules, regulations and interpretations of the NCAA, the Atlantic Coast Conference or any other league or conference of which the University shall become a member during the Term (the “Conference”), and any other governing body to which the University may be subject (collectively, “Governing Body Requirements”).

(iii) Promoting a culture of compliance with, and actively supervising assistant coaches, staff, student athletes and other individuals under his direct or indirect supervision using his best efforts to maintain compliance with, all Governing Body Requirements.

(iv) Using his best efforts, in conjunction with the University, to ensure that all academic standards, requirements and policies of the University, including but not limited to those for the Student Athletic Enrichment Program, are observed by him and by individuals under his direct or indirect supervision at all times, including those in connection with the recruiting and eligibility of prospective and current student athletes for the University’s intercollegiate football program.

(v) Using his best efforts to ensure that all student athletes recruited for the University’s intercollegiate football program receive Coach’s guidance in the importance of academic performance, are provided proper academic counseling, and are encouraged to and given every opportunity to meet the degree requirements necessary to graduate from the University.

(vi) Using his best efforts to recruit, coach and train student athletes with good character, talent and academic ability to compete successfully against major college competition in a quality football program, and to demonstrate concern for their welfare.

(vii) Recognizing that as part of the University’s administration and its publicly visible representative, Coach has an affirmative duty to support the policies and academic priorities of the University in his actions and in public discourse, while building the University’s intercollegiate football program.

(viii) Keeping public comments about University policies or actions taken by University administrators in a positive tone recognizing that any statements he makes about the University and its administrators are often publicized.

(ix) Using his best efforts to establish and maintain a frequent and systematic program of personal communication with the University’s student body, faculty and staff.

(x) Having primary responsibility for developing and administering the budget for the University’s intercollegiate football program, subject to the approval of the Athletics Director.

(xi) Submitting to the Athletics Director an annual evaluation of the University's intercollegiate football program, to include an evaluation of his coaching staff and such additional information as may be requested by the Athletics Director. This evaluation is to be submitted each Contract Year within six (6) weeks of the completion of the football season, including post-season competition, if any.

(xii) Assisting the Athletics Director in a departmental leadership role by ensuring his sport's representation in meetings of the Athletics Department Coaches' Council and monthly departmental staff meetings, as well as supporting the success of other University sports through selected appearances.

(xiii) Performing such other obligations as are set forth in this Agreement or otherwise reasonably assigned by the Athletics Director consistent with Coach's status as head coach of the Team.

(xiv) Engaging in (and using his best efforts to ensure that every person under Coach's direct or indirect supervision is engaging in) safe and responsible treatment of student athletes on the Team. Coach shall refrain from any act or omission (including but not limited to physical and/or emotional abuse of student athletes) that creates, or could reasonably be expected to create, an unreasonable risk of harm to a student athlete. Without limiting the preceding sentence, Coach shall comply with any and all applicable University Requirements pertaining to medical clearance for participation, including deferring to University sports medicine personnel in accordance with University Requirements.

(c) Additional Duties (Appearances). Coach duties under this Agreement shall also include:

(i) General. Coach agrees to perform the appearances reasonably consistent with that of a head football coach at a major Division I institution, including as delineated herein.

(ii) Broadcasts. Coach acknowledges that from time to time the University may be presented with opportunities for the production and distribution of radio, television and/or internet broadcasts relating to the University's intercollegiate football program and/or the University's athletics program in general (the "Broadcasts"). Coach agrees to appear and participate in such Broadcasts in accordance with the reasonable requests of the University. In addition, Coach agrees to record generic or topical promotions for such Broadcasts, and such other shows or events as reasonably determined by the University for the promotion of the University's athletics program. The Broadcasts shall include (without limitation) a weekly TV Show to be prerecorded during the week between Saturday and Thursday. All other Broadcast requirements will be scheduled according to Coach's availability and not to interfere with his duties as Head Football Coach, provided however that Coach shall make reasonable efforts to be available as requested.

(iii) Promotional Activities.

a. Coach acknowledges that from time to time opportunities to promote publicize and/or raise funds for the University, the University's intercollegiate football program and/or its athletics program, and/or to participate in promotional activities or events of advertisers, sponsors, or affiliates of the University, will be presented to the University. Such opportunities may involve personal appearances, speeches, press conferences, and other similar activities and events which shall include, but not necessarily be limited to, meeting with donors or sponsors. Coach acknowledges and agrees that he may be required to participate in or to make special appearances at such activities and events in accordance with the reasonable requests of the University.

b. Without limiting the generality of the foregoing, Coach shall attend a reasonable number, but at least ten (10), IPTAY Related Events each year.

c. Such opportunities described above will be scheduled according to Coach's availability and not to interfere with his duties as Head Football Coach, provided however Coach shall make reasonable efforts to be available as requested.

(iv) Manufacturer Relationships. Coach acknowledges that from time to time the University may enter into one or more agreements with athletics equipment and/or apparel manufacturers (collectively, the "Manufacturer") for use by the Manufacturer of Coach's personal services and expertise in the sport of football and/or for Coach's endorsement of the Manufacturer's products. In addition to reasonably providing such personal services and expertise to the Manufacturer, Coach shall grant or cause his Licensing Company to grant to such Manufacturer the exclusive right and license to the unlimited use in any media (now known or hereafter created, including the internet) of Coach's name, likeness, image etc., in connection with the production, advertisement, marketing, promotion, or sale of the Manufacturer's products throughout the Term. Throughout the Term, Coach shall take such reasonable actions as are necessary to enable the University to comply with its obligations under its agreement(s) with the Manufacturer, including without limitation wearing and/or using exclusively the products of the Manufacturer as and to the extent required thereby. During the Term, Coach and his Licensing Company shall not enter into or maintain any endorsement, promotional, consulting, or similar agreement (i) with any person or entity that licenses, manufactures, brands, or sells athletic products, whether through retail locations, exclusively on-line, by direct mail, television shopping networks, or otherwise; (ii) that would prohibit or otherwise restrict the Manufacturer's use of Coach's name, name, likeness, image etc., or subject such use to a third party's approval, or (iii) that would otherwise cause the University to violate its agreement(s) with the Manufacturer.

(v) Other Requests: Coach agrees to comply with such other reasonable appearance requests by University that are consistent with the promotion of the University and its athletics interests which would customarily be asked of a head football coach at a major Division I institution. Such requests will be scheduled according to Coach's availability and not to interfere with his duties as Head Football Coach provided however Licensor and Coach shall make reasonable efforts for Coach to be available as requested.

(d) Internal Communications Protocols. Coach shall follow any and all protocols established by the President and the Athletics Director from time to time with respect to contact with University officials about matters of concern relating to the University's intercollegiate football program and/or the Athletics Department. The foregoing shall not be deemed to prohibit non-substantive social discourse between Coach and University officials in the context of social or other gatherings at which Coach and one or more University officials are present, but discussion of all substantive issues (including without limitation items of concern) about the intercollegiate football program or the Athletics Department shall be handled in accordance with established protocols.

3. Standard of Performance; Outside Activities. Throughout the Term, Coach shall devote Coach's entire professional attention and energy to the business and affairs of the University on a full-time basis, exercising his best efforts, skills, and knowledge. Notwithstanding the preceding, Coach may also engage, in his personal capacity (including through his Licensing Company) and not as an employee of the University, in any other permissible activities referred to in this Agreement as well as such other activities (e.g., the making of advertisements, participation in charitable endeavors including but not limited to the All in Team Foundation) as are not inconsistent with (i) the Governing Body Requirements; (ii) the University Requirements; (iii) any other contract to which the University is a party of which Coach has prior notice; and (iv) the provisions of this Agreement. No such other activities,

including those of Coach's Licensing Company, shall conflict with or be detrimental to Coach's duties as head coach of the Team, or be competitive with or otherwise detrimental to the University's interests. Any contractual commitments made by Coach and/or the Licensing Company in connection with such activities must be coterminous with Coach's employment as head coach of the Team, and the use of any registered University marks in any such activities shall be subject to the written approval of the University and consistent with the University's trademark licensing program. All such activities, except as otherwise provided in this Agreement, are independent of Coach's employment with the University, and the University shall have no responsibility or liability for any claims arising from them. Coach agrees to indemnify and hold harmless the University, its Board of Trustees and its employees from any and all suits, claims, demands, damages, liabilities, costs and expenses, including reasonable attorney fees, arising from any such outside activity. Coach shall provide reasonable advance notice to the Athletics Director of all such outside activities contemplated under this Section 3 so that the Athletics Director can inform Coach of any conflicts with Coach's obligations under this Agreement or if such outside activities conflict with or are detrimental to the University's interest.

4. Compliance With Applicable Rules.

(a) Compliance. In performing his duties under this Agreement, Coach shall be familiar with, shall adhere to, and shall promote within the football program and the Athletics Department a culture of compliance with, all applicable Governing Body Requirements and University Requirements. Without limiting the generality of the foregoing, Coach shall not accept or receive directly or indirectly (including without limitation through the Licensing Company) any monies, benefits or any other gratuities whatsoever from any person or entity if such action would be in violation of any applicable Governing Body Requirement, University Requirement or Law (including without limitation the South Carolina Ethics Act). Coach shall use his best efforts in good faith to cause all Team members and University personnel whom he is responsible for supervising (directly or indirectly) to comply with all applicable Governing Body Requirements and University Requirements, and all Laws in connection with University business. If Coach shall become aware of any person violating any Governing Body Requirement and/or University Requirement, and/or any Law in connection with University business, Coach shall immediately report such violation to the University's Athletics Director and Director of Compliance.

(b) Consequences of Violation. Without limiting other available remedies, in the event that Coach (directly or acting through or on behalf of the Licensing Company) is found to be in violation of Governing Body Requirements while employed pursuant to this Agreement, he shall be subject to disciplinary or corrective action as set forth in relevant NCAA, Conference, other governing body, and/or (subject to Section 2(a)) University disciplinary and/or enforcement procedures. Without limiting other available remedies, Coach may be suspended for a period of time without pay, or Coach's employment may be terminated for Cause as provided for in this Agreement, if he is found to have been involved in repeated or significant violations of Governing Body Requirements. For purposes of this Agreement, significant violations shall include, but are not limited to, any violation in which Coach is found to have been involved that the University determines could reasonably be expected to result sanctions against the University such as probation, forfeiture of athletic contests, loss of scholarships, prohibition against league or conference championship or telecast appearances, significant restrictions on a coach's right to recruit, or any other similar sanction that the NCAA, Conference, or other governing body may impose under its Governing Body Requirements in effect from time to time.

(c) Title IX Policies. Coach shall adhere to all University Requirements adopted for purposes of compliance with Title IX of the Education Amendments of 1972, the Violence Against Women Act's amendments to the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, and/or any similar state or local law (collectively, "Title IX Policies"). Without limiting

the preceding sentence, Coach shall specifically adhere to all reporting obligations under the Title IX Policies, pursuant to which he must report matters immediately and directly to the University's Title IX Coordinator as required by the Title IX Policies.

(d) Obligation to Cooperate and Furnish Certain Information. Coach shall furnish to the University, upon request, any information that the University reasonably deems relevant and necessary or useful for purposes of any investigation of any potential infraction of any Governing Body Requirement or University Requirement. In addition, Coach shall cooperate fully in the NCAA infractions process, including the investigation and adjudication of potential infractions of any NCAA Governing Body Requirement, as well as corresponding processes of the Conference. Full cooperation includes, but is not limited to (i) affirmatively reporting instances of noncompliance to the NCAA or Conference (as applicable) in a timely manner and assisting in developing full information to determine whether a possible violation has occurred and the details thereof; (ii) timely participation in interviews and providing complete and truthful responses; (iii) making a full and complete disclosure of relevant information, including timely production of relevant materials or information requested, and in the format requested (with the exception of any materials protected by the attorney-client privilege, work-product doctrine, or any other applicable evidentiary privilege/protection recognized by either the Federal or South Carolina Rules of Civil Procedure or common law); (iv) disclosing and providing access to all electronic devices used in any way for business purposes; (v) providing access to all social media, messaging and other applications that are or may be relevant to the investigation; and (vi) preserving the integrity of an investigation and abiding by all applicable confidentiality rules and instructions. This provision shall survive any expiration or termination of this Agreement.

5. Salary.

During the Term, the University shall pay Coach an annual base salary at the rate of \$245,000 per Contract Year, payable in accordance with the University's payroll policies and practices as in effect from time to time, and subject to applicable deductions and withholdings. For all purposes under this Agreement, the term "Base Salary" shall refer to Coach's base salary rate then in effect pursuant to this Section 5, and shall not include any bonus, benefits or other amounts payable to Coach as provided in this Agreement. The Base Salary rate set forth above is an annual rate; accordingly, if Coach is employed for less than twelve (12) full months during a Contract Year, the Base Salary for that Contract Year will be prorated accordingly.

6. Licensing Consideration.

(a) Any consideration paid to the Licensing Company for use of certain intellectual property and other rights of Coach shall not be taken into account for purposes of computing the University's contributions to any pension or employee benefit plan.

(b) Coach agrees to indemnify and hold University harmless for any tax consequences (including without limitation, interest, fines and penalties) to University caused by University payments made to the Licensing Company being recast as income to Coach by the appropriate local, state, Federal, or foreign governmental taxing authorities.

(c) Coach agrees that a breach by the Licensing Company of the Licensing Agreement will be considered a breach by him of this Agreement. Coach shall execute Exhibit B to this Agreement personally guaranteeing the performance of the Licensing Company.

7. Supplemental Compensation.

(a) In view of the level of commitment and effort required by Coach to fulfill his duties under this Agreement as the head coach of a major NCAA Division I football program, during the Term the University shall pay to Coach the following (“Supplemental Compensation”) at the annual rates identified in the schedule below, payable in accordance with the University’s payroll policies and practices as in effect from time to time, and subject to applicable deductions and withholdings.

<u>Contract Year</u>	<u>Rate</u>
January 1, 2019- December 31, 2019	\$5,505,000
January 1, 2020- December 31, 2020	\$5,505,000
January 1, 2021- December 31, 2021	\$5,755,000
January 1, 2022- December 31, 2022	\$5,755,000
January 1, 2023- December 31, 2023	\$6,005,000
January 1, 2024- December 31, 2024	\$6,255,000
January 1, 2025- December 31, 2025	\$6,505,000
January 1, 2026- December 31, 2026	\$6,755,000
January 1, 2027- December 31, 2027	\$7,255,000
January 1, 2028- December 31, 2028	\$7,255,000

The parties acknowledge that for a portion of 2019, by agreement of the parties, Supplemental Compensation has been paid at the rate heretofore in effect under the Current Agreement, and agree that Supplemental Compensation shall be adjusted so that as of May 31, 2019, Coach shall have received Supplemental Compensation as the applicable rate appearing above through that date. From and after June 1, 2019, Supplemental Compensation shall be paid at the rates appearing above.

(b) The Supplemental Compensation rates, as in effect from time to time, are annual rates; accordingly, if Coach is employed for less than twelve (12) full months during a Contract Year, the Supplemental Compensation for that Contract Year will be prorated accordingly.

(c) The amounts paid to Coach pursuant to this Section 7 shall not be taken into account for purposes of computing the University’s contributions to any pension or employee benefit plan, except to the extent that the terms of the applicable plan expressly provide otherwise.

8. **Performance Bonuses.**

(a) With respect to each complete season (including postseason games) in which Coach coaches the Team as its head coach, provided that the most recently calculated multi-year NCAA Academic Progress Rate (“APR”) score for the Team is not less than 950, Coach shall earn and be paid the following amounts, less any applicable deductions and withholdings:

- (i) For postseason performance, Coach shall be paid:
 - (A) \$50,000 if the Team plays in the Conference Championship Game, plus \$150,000 if the Team wins the Conference Championship Game; and
 - (B) an additional bonus to be calculated pursuant to one of the following Sections 8(a)(i)(B)(1), (2) or (3) (it being understood and agreed that only one bonus may be earned per season pursuant to this Section 8(a)(i)(B)):

- (1) \$100,000 if the Team plays in a College Football Playoff (“CFP”) “New Years 6” Bowl Game; or
 - (2) \$200,000 if the Team plays in the semifinal game of the CFP, plus \$200,000 if the Team plays in the championship game of the CFP, plus \$250,000 if the Team wins the championship game of the CFP; or
 - (3) \$50,000 if the Team wins eight or more regular season games and plays in a postseason bowl game other than a game identified in Sections 8(a)(i)(B)(1) or 8(a)(i)(B)(2) above.
- (ii) Coach shall be paid \$25,000 if he is named as Conference Head Football Coach of the Year by the Conference Sports Media Association.
 - (iii) Coach shall be paid \$50,000 for each National Coach of the Year award given by a nationally recognized entity (e.g., AP, AFCA, Bobby Bowden, Bobby Dodd, Bear Bryant, CBS Sports, Home Depot, Maxwell, Sports Illustrated, Sporting News or Walter Camp) he receives with respect to the season, up to a maximum of three such awards for any given season.

(b) With respect to each complete season (including postseason games) in which Coach coaches the Team as its head coach, the University shall make available for bonuses the sum of \$75,000 if the NCAA single year APR score of the Team roster for the academic year during which such season occurs is equal to or greater than 950 but less than 975, or \$100,000 if the NCAA single year APR score of the Team roster for the academic year during which such season occurs is equal to or greater than 975 (the “Academic Performance Bonus Pool”). The Academic Performance Bonus Pool shall be paid to Coach, assistant coaches, the director of football operations, and/or other University employees whose primary duties relate to the football program, in such proportions as the Athletics Director shall determine in the Athletics Director’s sole discretion following consultation with Coach. In order to receive a payment under this Section 8(b), the payee must be employed and performing substantial services for the University on the date the APR is determined.

(c) Any bonus payable pursuant to this Section 8 shall be paid within sixty (60) days after the triggering event. The amounts paid pursuant to this Section 8 shall not be taken into account for purposes of computing the University’s contributions to any pension or employee benefit plan.

8A. Retention Bonuses.

(a) Provided that Coach continues to be employed and acting as head coach of the Team through January 1, 2021, the University shall (subject to the terms of this Section 8A(a)), within fourteen (14) days, pay Coach, as a retention bonus, the sum of \$1,000,000 (less applicable deductions and withholdings). Such amount shall be forfeited by Coach in its entirety if Coach fails to continue to be employed and performing such services for the University through January 1, 2021, regardless of the reason he is no longer so employed. If, after receipt of University’s payment to Coach pursuant to this Section 8A(a), Coach ceases to be employed and acting as head coach of the Team prior to March 1, 2021, he shall reimburse the University, within fourteen (14) days of demand, the \$1,000,000 payment (including amounts paid directly to coach and amounts withheld and remitted by Coach to the appropriate taxing authorities).

(b) Provided that Coach continues to be employed and acting as head coach of the Team through January 1, 2023, the University shall (subject to the terms of this Section 8A(a)), within fourteen (14) days, pay Coach, as a retention bonus, the sum of \$1,000,000 (less applicable deductions and withholdings). Such amount shall be forfeited by Coach in its entirety if Coach fails to continue to be employed and performing such services for the University through January 1, 2023, regardless of the reason he is no longer so employed. If, after receipt of University's payment to Coach pursuant to this Section 8A(a), Coach ceases to be employed and acting as head coach of the Team prior to March 1, 2023, he shall reimburse the University, within fourteen (14) days of demand, the \$1,000,000 payment (including amounts paid directly to coach and amounts withheld and remitted by Coach to the appropriate taxing authorities).

(c) The deferred amounts payable pursuant to Sections 8A(a)-(b) shall not accrue any interest during the period of deferral; shall not be taken into account for purposes of determining the University's contributions to any pension or employee benefit plan on behalf of Coach; and shall be subject on the payment dates to withholding taxes and all payroll taxes in accordance with applicable law on that date. All amounts payable to Coach by the University under this Section 8A shall be a general unsecured obligation of the University to him. The University shall not be required to set aside or accumulate any funds to pay such obligation, nor shall Coach have any claim against any funds which the University, as a matter of sound fiscal planning as determined by it, may elect to set aside or accumulate to fund such obligation when it becomes payable. If the University elects to set aside or accumulate funds to satisfy its obligation, such election, and any funds set aside or accumulated, shall not create, or be construed to create, a trust of any kind or a fiduciary relationship between the University and Coach. Any funds set aside or accumulated shall remain, at all times, part of the University's general assets. Any right Coach has to deferred amounts under this Agreement shall not be senior to claims of the University's general creditors, shall not be subject in any manner to anticipation, pledge, or encumbrance, and shall not be subject to attachment, garnishment, levy, execution or other legal or equitable process for the debts, contracts, liabilities of Coach or his beneficiaries.

9. Benefits.

(a) Standard Benefits. For so long as he is employed and acting as head coach of the Team pursuant to this Agreement, Coach shall be entitled to participate in the same fringe benefit programs which are afforded to all unclassified University Athletics Department personnel including annual leave, sick leave, group health insurance, group life insurance, and the State's retirement program. If any benefits are based in whole or in part upon salary paid to Coach, such consideration shall be made based exclusively upon the Base Salary provided pursuant to Section 5, except to the extent that the terms of the applicable plan expressly provide otherwise. Notwithstanding any provisions herein to the contrary, Coach's Base Salary, Supplemental Compensation and any other form of compensation shall not be adjusted due to any University or State of South Carolina mandated cost of living or similar adjustments.

(b) Club Membership. For so long as he is employed and acting as head coach of the Team pursuant to this Agreement, the University shall pay Coach's membership dues in a country club approved by the University, up to an amount not to exceed ten thousand Dollars (\$10,000) per year.

(c) Automobiles. For so long as he is employed and acting as head coach of the Team pursuant to this Agreement, University shall furnish to Coach two (2) new, full-size automobiles from the University's dealer program, and shall reimburse Coach, or pay directly, for standard (per University policy) automobile liability and comprehensive insurance and property taxes, if applicable, upon said vehicles, to be paid within sixty (60) days of Coach's written notice to University of such expenses (but only upon Coach's presentation to the University of appropriate documentation, vouchers or other statements as required by the University). The two (2) automobiles will be replaced at least every twelve

(12) months with two (2) new automobiles. Alternatively, Coach can elect to receive one (1) automobile as provided for herein and a monthly stipend in the sum of \$1,000 per month. In the event that dealer program vehicles are not available, Coach shall receive two (2) automobile stipends of \$1,000 each. For purposes of accurately calculating and reporting the value of his use of the automobile(s) as gross income to him with respect to federal and state income taxation, Coach agrees to observe the same record keeping requirements established by the University for business and personal use of its motor vehicles by other employees.

(d) On-Campus Summer Camp/Other Activities.

(i) Coach may, directly or through an entity controlled by Coach, conduct (i) summer youth football camps for up to four (4) weeks each summer during the Term on the University campus, and/or (ii) separate camps for adult women and men for up to five (5) days each summer during the Term on the University campus (each of the foregoing a "Camp" and collectively the "Camps"), pursuant to the terms of a written agreement between the University and Coach or his controlled entity. Coach shall comply, and shall cause all Camps to comply, with applicable Governing Body Requirements, University Requirements, including those of the University's Pre-Collegiate Programs Office, and Laws. Coach shall have the opportunity to use University facilities in the conduct of the Camps, subject to availability. For the use of University facilities, Coach shall be charged the standard rate charged to others for similar services furnished by the University. For purposes of summer youth Camps only, camps for rising high school seniors and younger, Coach shall be able to use, without licensing fees, the University's name, likeness, and image for apparel associated with the registration costs of such Camps, subject to the approval of the Athletic Director and the Director of Licensing. Coach shall be responsible for all costs incidental to the Camps, including uniform charges.

(ii) Notwithstanding Section 9(d)(i), the parties may agree that one or more of the Camps will be conducted by the University, in which case Coach or his controlled entity will operate such Camp(s) on behalf of the University pursuant to terms established by written agreement between the University and Coach or his controlled entity.

(e) Family Travel. For so long as he is employed and acting as head coach of the Team pursuant to this Agreement, the University shall pay the reasonable travel expenses incurred by Coach's spouse and dependent children in attending Team games held outside the city of Clemson, South Carolina.

(f) Tickets. For so long as he is employed and acting as head coach of the Team pursuant to this Agreement, the University will provide to Coach, at no charge, (i) twenty (20) tickets to each of the University's home and away football games and forty (40) tickets to any postseason football game in which the Team shall participate, (ii) use of one (1) twenty-two (22) seat executive suite in the football stadium during all home football games, (iii) six (6) tickets to each University home men's basketball game, and (iv) six (6) tickets to each University home baseball game. All use of such tickets and suite shall be subject to applicable Governing Body Requirements.

(g) Term Life Insurance. The University shall provide Coach with University-provided supplemental term life insurance, in addition to any University group life insurance coverage for which he may be eligible. This supplemental term life insurance coverage shall provide Coach, for so long as he continues to be employed and acting as head coach of the Team, with \$10,000,000 worth of death benefit coverage. Such insurance coverage shall be provided to Coach only if he is insurable at reasonable cost, and shall only commence after Coach has provided all the necessary information to the University's insurance agent. Coach shall be permitted to designate the beneficiaries of the supplemental term life insurance coverage. In the event that Coach is not insurable at reasonable cost as determined by the

University, the parties shall amend this Agreement to provide the aforementioned \$10,000,000 death benefit in some other manner.

(h) Split-Dollar Life Insurance Benefits. Coach shall be eligible for split dollar life insurance benefits as and to the extent provided in, and as long as he satisfies the applicable requirements of, (i) the Cap-Ex Agreement between Coach and the University dated as of March 29, 2018, as amended by an Amendment No. 1 effective as of May 8, 2018, and (ii) the Cap-Ex Agreement between Coach and the University dated as of November 18, 2019, in each case as said agreements may subsequently be amended by Coach and the University from time to time (the "Cap-Ex Agreements"). The Cap-Ex Agreements are hereby incorporated by reference into this Agreement.

9A. Good Faith Market Review.

(a) Beginning with the 2022 collegiate football season, if and within 120 days after the football team appears in the CFP (or surviving system) Semi-Final Game, the parties agree to complete a good faith review and negotiation of aggregate compensation under this Agreement and the Licensing Agreement. After said review and negotiation, if the parties fail to reach an agreement for a market adjustment of such compensation and the University did not offer terms that would make the aggregate annual compensation under this Agreement and the Licensing Agreement no less than third (3rd) in aggregate compensation (including licensing arrangements) amongst active head coaches at institutions which are eligible to compete for the CFP (or surviving system), the University agrees to waive for the remaining Term any liquidated damages which would be due from Coach to the University upon termination of this Agreement pursuant to Section 18(e). For purposes of this provision, the average compensation per year (APY) over the remaining term shall be used as the primary market comparison. The parties agree to jointly engage, if needed, an independent valuation expert to assist with determining market valuations (the valuation expert's opinion shall be non-binding).

(b) No such review and negotiation will be required (but is not prohibited) in a given Contract Year if the parties entered into an agreement for a market based adjust pursuant to this Section 9A in the immediately preceding Contract Year.

(c) This Section 9A shall not prevent the parties from mutually agreeing to amend the terms of this Agreement at any other point during the Term.

10. Reimbursement of Expenses. In addition to payment of expenses expressly provided for in this Agreement, the University shall pay on Coach's behalf all reasonable expenses necessarily incurred by him in the performance of his duties. All such expenses shall be reimbursed in accordance with University policies and shall be subject to the approval of the University's Athletics Director, which shall not be unreasonably withheld or delayed. Any expenses that are eligible for reimbursement under this Agreement shall be paid within sixty (60) days following submission of supporting documentation in accordance with University policy, but in no event later than the March 15th date that immediately follows the calendar year in which such expenses were incurred.

11. Disclosure of Outside Income; Information Rights.

(a) Reporting. Coach shall report annually in writing to the President of the University, on or before September 1 of each year during the Term, all athletically related income and benefits from sources outside the University, including but not limited to income from endorsement or consultation contracts with apparel companies or equipment manufacturers, from television and/or radio programs, and/or from ownership, control or management of a foundation, organization or other entity. For purposes of this Section, income or benefits are considered athletically-related if they have an athletics

nexus, are related to Coach's reputation or ability, or are provided because Coach is affiliated or employed with the University. Such disclosure shall include income paid by parties other than the University to the Licensing Company.

(b) Camp Accounting. Coach shall provide an annual accounting or report of the expenses and revenues of any Camp operated by Coach (or any entity controlled by him) pursuant to Section 9(d). The University shall have the right to conduct, at its expense, a full audit of any such Camp, using an accountant of its choice.

12. Assistant Coaches.

(a) Employment of Assistant Coaches. The University shall employ as assistant coaches for the Team persons selected by Coach, approved by the University's Athletics Director, and acceptable to the University. Coach shall have the right to dismiss assistant coaches within the procedural and policy guidelines of the University if he determines it is in the best interest of the University's intercollegiate football program at the University. Coach shall utilize his best efforts during the Term to develop a coaching staff consistent with the needs, policies, and regulations of the University.

(b) Assistant Coaches' Compensation. The University shall budget for assistant coaches' salaries each year an amount determined by the University's Athletics Director in consultation with Coach.

13. Staff Budget. The University shall budget for staff (excluding assistant coaches) salaries and expenses during each year of this Agreement an amount determined by the University's Athletics Director in consultation with Coach. Coach, subject to the procedural and policy guidelines of the University, shall have the right to determine how the budgeted amount for staff salaries will be allocated among the staff. Staff shall be entitled to participate in any welfare, health and life insurance, and retirement benefit and incentive programs as may be adopted from time to time by the University on the same basis as provided to similarly situated employees of the University and in accordance with the University's policies, procedures and plans applicable to them.

14. Schedule. The annual schedule of contests for the Team shall be determined by the Athletics Director in consultation with Coach.

15. Transportation in Furtherance of Duties. During the Term, the Athletics Department airplane or such other transportation as necessary and appropriate will be available for reasonable use by Coach in connection with his official duties as head coach of the Team, subject to prior approval of the Athletics Director and such other approvals as required by University policy.

16. Representation of the University.

(a) By Coach. Coach shall represent the University in a dignified manner. He shall also conduct both his employment activities and his personal life in a manner that will not, in the University's reasonable determination: bring disgrace or embarrassment to the University or Coach; tend to shock, insult, or offend the greater Clemson, South Carolina and/or University alumni communities; manifest contempt or disregard for diversity, public morals or decency; or violate University Requirements with respect to personal conduct.

(b) By Others. Coach shall use his best efforts in good faith to cause all Team members and University personnel whom he is responsible for supervising (directly or indirectly) to conduct both their activities in connection with the Team and their respective personal lives in a manner that will not, in the

University's determination: bring disgrace or embarrassment to the University or themselves; tend to shock, insult, or offend the greater Clemson, South Carolina and/or University alumni communities; manifest contempt or disregard for diversity, public morals or decency; or violate University Requirements with respect to personal conduct.

17. **Use of Name, Etc.** Consistent with the Licensing Agreement, Coach consents to the use of, and will cause the Licensing Company to comply with the Licensing Agreement for the use of, Coach's name, nickname, initials, autograph, signature, voice, video or film portrayals, photograph, image or likeness, and any other means of endorsement or identification of or by Coach, including statistical, biographical, or other information or data relating to Coach, by the University or by any party under contract with the University in the conduct and promotion of the University's athletics program and as otherwise provided in this Agreement.

18. **Termination of Coach's Employment**

(a) **Death.** In the event Coach's employment hereunder ceases prior to the Expiration Date by reason of Coach's death, the University shall pay any Accrued Obligations (as defined in Section 18(f) below).

(b) **Disability.** In the event of Coach's substantial physical or mental incapacity lasting in excess of ninety (90) days which cannot reasonably be accommodated by the University and which interferes with Coach's ability to perform essential functions of the duties and responsibilities set forth herein ("Disability"), Coach's employment under this Agreement may be terminated by the University for Disability, subject to any requirements that may be imposed by applicable law. In such event, the University's sole liability shall be to pay Coach any Accrued Obligations (as defined in Section 18(f) below), and for any disability benefits to which Coach may be entitled under a University group disability plan.

(c) **Termination For Cause.** In addition to any other remedy permitted by this Agreement or applicable law, the University may, by written notice, terminate Coach's employment for Cause at any time.

For purposes of this Section 18(c), "Cause" shall be defined to include, as determined by the University in its reasonable and good faith discretion, any one (1) or more of the following:

- (i) any material breach of this Agreement by Coach;
- (ii) (1) any act or omission, whether occurring prior to or during the Term, that the University determines constitutes a violation by or permitted by him or the Licensing Company, or
 - (2) any act or omission, whether occurring prior to or during the Term, that the University determines constitutes a violation by personnel he is responsible for supervising (directly or indirectly) which he knows or should have known about and does not immediately report as required by this Agreement, or
 - (3) any act or omission, whether occurring prior to or during the Term, that the University determines constitutes a violation by any other person which he knows about and does not immediately report as required by this Agreement, or
 - (4) any act or omission, whether occurring prior to or during the Term, that the University determines constitutes a violation for which he is otherwise responsible

under the applicable standards (including but not limited to responsibility by virtue of a failure to promote an atmosphere of compliance or to monitor personnel who report, directly or indirectly, to him),

in any of the foregoing (1)-(4) of any Governing Body Requirement, which is regarded as a major or serious violation (*e.g.*, repeated violations or violations that the University determines could reasonably be expected to result in sanctions such as probation, forfeiture of athletic contests, loss of scholarships, prohibition against conference or championship or telecast appearances, significant restrictions on a coach's right to recruit (resulting from a violation in which Coach is found to have been involved as described above), etc.). For purposes of this Section 18(c)(ii), the decision as to whether a violation of a Governing Body Requirement has been committed rests solely with the University. However, if Coach is terminated for Cause under this Section 18(c)(ii) and the applicable Governing Body renders a final determination establishing facts indicating that Cause as defined in this Section 18(c)(ii) does not exist, provided there are no other facts or circumstances justifying a termination for Cause, the termination shall be treated as a termination without cause under Section 18(d) below and the provisions of Section 18(d) shall apply and shall be Coach's sole remedy for any cause of action based on this Agreement;

(iii) conviction of (or entry into pre-trial intervention as a result of) any criminal statute that constitutes a felony or constitutes a misdemeanor involving moral turpitude;

(iv) fraud, dishonesty, or gross misfeasance, whether occurring prior to or during the Term;

(v) commission of any act, whether occurring prior to or during the Term, that in the University's determination: brings disgrace or embarrassment to the University or Coach; tends to shock, insult, or offend the greater Clemson, South Carolina and/or University alumni communities; manifests contempt or disregard for diversity, public morals or decency; or violates applicable University Requirements with respect to personal conduct;

(vi) any other act, whether occurring prior to or during the Term, which brings serious discredit to the University's intercollegiate football program or would be likely to cause prospective student-athletes to elect not to attend the University;

(vii) any other cause adequate to sustain the termination of any other unclassified non-faculty employee pursuant to the University's Progressive Discipline Policy;

(viii) a material breach of the Licensing Agreement by the Licensing Company;

(ix) failure of Coach to fully and promptly cooperate with the University, the NCAA or the Conference in any investigation of possible violations of a Governing Body Requirement or University Requirement;

(x) material breach of any Title IX Policy by Coach (it being understood that the foregoing shall not limit the University's right to terminate this Agreement for Cause based upon violations of other University Requirements otherwise constituting Cause under this Section 18(c)); or

(xi) failure by Coach to engage in (and/or to use his best efforts to ensure that personnel under Coach's direct or indirect supervision engage in) safe and responsible treatment of student athletes on the Team, including without limitation failure to comply with any University Requirement pertaining to medical clearance for participation, or any other act or omission (including but not limited to physical and/or emotional abuse of student athletes) that creates, or could reasonably be expected to create, an unreasonable risk of harm to a student athlete.

In the event of Coach's termination for Cause, this Agreement shall terminate without further obligation by the University, except for the payment of any Accrued Obligations (as defined in Section 18(f) below).

Termination for Cause Process: Prior to a determination to terminate Coach for cause, the Athletic Director shall present Coach with the reasons justifying termination and shall provide Coach not less than five (5) days within which to respond to those reasons, orally and/or in writing to the Athletic Director and University Counsel, with such information as he believes relevant to the Athletic Director's determination. In the event that the University terminates Coach's employment for cause, it will provide Coach written notice of his termination for cause that specifies the grounds for termination, such delivery by person or nationally recognized overnight carrier to Coach's residence, as such is on file in the Athletic Director's Office.

(d) Termination Without Necessity of Demonstrating Cause.

(i) The University may, by providing five (5) days written notice, terminate Coach's employment without necessity of demonstrating Cause at any time. In the event that the University terminates Coach's employment pursuant to this Section 18(d) and as long as Coach continued to perform services as head coach of the Team through such termination date, the University shall pay Coach, as Coach's sole remedy based upon termination of this Agreement and in full and final satisfaction of any claims arising from termination of Coach's employment, a severance benefit in the following applicable amount (the "Severance Benefit"):

<u>Effective Date of Termination</u>	<u>Damages</u>
January 1, 2019-December 31, 2019	\$50,000,000
January 1, 2020-December 31, 2020	\$50,000,000
January 1, 2021-December 31, 2021	\$47,500,000
January 1, 2022-December 31, 2022	\$47,500,000
January 1, 2023-December 31, 2023	\$45,000,000
January 1, 2024-December 31, 2024	*
January 1, 2025-December 31, 2025	*
January 1, 2026-December 31, 2026	*
January 1, 2027-December 31, 2027	*
January 1, 2028-December 31, 2028	*

*In the event of termination pursuant to this Section 18(d) on or after January 1, 2024 through December 31, 2028, the severance benefit shall be equal to the sum of (A) the remaining Base Salary and Supplemental Compensation that would otherwise have been due prior to the Expiration Date had termination not occurred, plus (B) an amount equal to the Royalties that would have been payable to the Licensing Company pursuant to the Licensing Agreement prior to the Expiration Date had termination of this Agreement, and concomitant termination of the Licensing Agreement, not occurred. Except as expressly set forth in the preceding sentence, no amount shall be payable to Coach or the Licensing Company based upon any termination of the Licensing Agreement as a result of the termination of Coach's employment hereunder.

Coach shall not be required to seek other employment in order to receive the severance benefit contemplated by this Section 18(d), and the University shall pay the severance benefit regardless of whether Coach seeks or obtains other employment after the termination of his employment with the University. If Coach obtains other employment, the University expressly waives and acknowledges that it is not entitled to any mitigation of the severance benefits owed to Coach.

(ii) The Severance Benefit shall be payable, at University's option, (A) in equal monthly installments over for the then remaining Term, or (B) in a lump sum on or within ninety (90) days after the effective date of the termination occurs. If University terminates prior to December 31, 2027, the Severance Benefit will be paid in monthly installments. The parties acknowledge that in the event the University elects to pay the Severance Benefit in monthly installments pursuant to the foregoing clause (A), there is a likelihood that Internal Revenue Code ("Code") section 457(f) ("IRC 457(f)") will require some or all of the monthly payments to be taxable to Coach before their scheduled payment dates. Therefore, unless in the reasonable opinion of the University's counsel Code Section 457(f) does not so apply, the University may elect, in its sole determination, in whole or in part to pay the Applicable Portion (as defined below) of such amounts before the scheduled payment date (a "Tax Distribution"). If University elects to pay a Tax Distribution, each subsequent payment shall be reduced by a prorated portion of any such Tax Distribution. The "Applicable Portion" means the amount the University determines is necessary to satisfy all applicable state and federal income and employment tax withholding on the Severance Benefits that are taxable before the scheduled payment date under IRC 457(f).

(e) Termination by Coach.

(i) Coach recognizes that his promise to work as head coach of the Team for the entire Term is of the essence of this Agreement to the University. Coach also recognizes that the University is making a highly valuable investment in his continued employment by entering into this Agreement and that its investment would be lost were he to resign or otherwise terminate his employment

with the University prior to the Expiration Date. The parties agree that Coach may, nevertheless, terminate his employment under this Agreement prior Expiration Date, subject to the terms of this Section 18(e), by giving the University five (5) days written notice and shall not make publically known his termination of this Agreement until such five (5) day period has expired.

(ii) In the event that Coach elects to terminate this Agreement prior to the Expiration Date, and if Coach accepts, on or before December 31, 2027, employment as, or with duties similar to, a collegiate head coach (but not an NFL head coaching position), Coach shall pay the University a lump sum within ninety (90) days after the later of (A) the effective date of termination or (B) his acceptance of such other position, as liquidated damages due the University and not as a penalty, but subject to reduction or waiver in the sole discretion of the University, the applicable amount set forth below:

<u>Effective Date of Termination</u>	<u>Damages</u>
January 1, 2019- December 31, 2019	\$4,000,000
January 1, 2020- December 31, 2020	\$4,000,000
January 1, 2021- December 31, 2021	\$3,000,000
January 1, 2022-December 31, 2022	\$3,000,000
January 1, 2023-December 31, 2023	\$2,000,000
January 1, 2024-December 31, 2024	\$2,000,000
January 1, 2025-December 31, 2025	\$2,000,000
January 1, 2026-December 31, 2026	\$1,000,000
January 1, 2027-December 31, 2027	\$1,000,000;

provided, however, that in the event that such employment is as the Head Coach of the University of Alabama varsity intercollegiate football team (whether any employment agreement is with the University of Alabama or another entity), the amount of liquidated damages payable by Coach shall be 150% of the otherwise applicable amount set forth above. In such event, Coach shall pay such increased amount as set forth above; *provided*, however, that if Coach previously paid the amount set forth above in connection with the acceptance of another position, Coach shall pay the additional 50% within ninety (90) days after accepting the University of Alabama position (if such acceptance occurs within 14 months after the effective date of termination of this Agreement).

In the event of termination pursuant to this Section 18(e), the University’s sole obligation to Coach shall be to pay any Accrued Obligations (as defined in Section 18(f)).

(iii) Coach and the University acknowledge that the University will clearly be damaged if Coach terminates this Agreement prematurely and that it is difficult to calculate with reasonable certainty the amount of prospective damages. They further acknowledge that the amount and payment of liquidated damages provided above are reasonable in light of the anticipated and actual harm that will be caused the University in the event this Agreement is terminated prematurely by Coach pursuant to this Section 18(e).

(f) Accrued Obligations. As used in this Agreement, “Accrued Obligations” shall mean the sum of (i) any portion of Coach’s Base Salary and Supplemental Compensation earned through the date of death or termination of employment, as the case may be, which has not yet been paid; and (ii) any other compensation previously earned and accrued that has not yet been paid. “Accrued Obligations” shall not include any form of severance payment or contingent bonus.

(g) No Consequential Damages, Etc. In no case shall the University be liable to Coach for incidental or consequential damages of any sort (including without limitation the loss of any collateral

business opportunities or any other benefits, perquisites or incomes resulting from activities such as, but not limited to, camps, media appearances (including television and radio shows), commercial endorsements, apparel, equipment or shoe contracts, consulting relations or from any other sources) based upon the termination of this Agreement pursuant to this Section 18, regardless of the basis (or lack thereof) for such termination.

19. Confidential Information; University Property.

(a) Confidentiality. Coach acknowledges that while employed by the University Coach will occupy a position of trust and confidence and will receive and have access to Confidential Information, as hereinafter defined. Coach acknowledges that such Confidential Information is specialized, unique in nature and of great value to the University, and that such information gives the University a competitive advantage. During the Term and thereafter, Coach shall not use the Confidential Information or disclose the Confidential Information to any third party, except (i) as required to perform Coach's duties to the University in a manner consistent with professional standards and obligations; (ii) as authorized by the University; (iii) in furtherance of the University's legitimate business interests; (iv) to comply with applicable Law, Governing Body Requirements or accreditation standards; or (v) to the extent such Confidential Information shall have become public other than by Coach's unauthorized use or disclosure. Notwithstanding the foregoing, in no event shall Coach use or disclose Confidential Information if such use or disclosure will expose the University to competitive disadvantage or legal liability, or will otherwise harm the University. For purposes of this Agreement, "Confidential Information" means any information not generally available to the public or not in the public domain at the time of separation regarding the University or its actual or prospective students, employees, alumni or donors, including without limitation information regarding actual or potential activities of the University; admissions information; fundraising information; financial statements, budgets, projections, or other financial information; the identities of persons under consideration for positions as trustees, officers or employees of the University; vendor contracts and/or pricing; customer information and/or pricing; information regarding actual or potential NCAA, Conference, legal or regulatory proceedings; and any other information that should by its nature or context be recognized as University proprietary and/or confidential.

(b) Return Of Documents And Property. Coach agrees to deliver or return to the University, at the University's request at any time or upon termination or expiration of Coach's employment or as soon thereafter as possible, all property furnished by the University to Coach in the course of Coach's employment by the University, including without limitation computer equipment, car, keys, and documents, records, lists, data, drawings, prints, and notes related to university business. Such property shall not include personal mementos and personally owned material property and intellectual property of Coach.

(c) Notification of Certain Communications. The parties agree that should another coaching opportunity be presented to Coach or should Coach be interested in another coaching position during the Term of this Agreement, Coach shall notify the Athletics Director of such opportunity or interest and obtain permission from the Athletics Director before Coach, or any representative of Coach, holds discussions or engages in other communications with anticipated coaching position principals, provided that the Athletics Director's permission for said discussions or communications shall not be unreasonably withheld.

(d) Remedies for Breach. Coach expressly agrees and understands that the remedy at law for any breach by Coach of this Section 19 will be inadequate and that damages flowing from such breach are not usually susceptible to being measured in monetary terms. Accordingly, it is acknowledged that upon Coach's violation of any provision of this Section 19 the University shall be entitled to obtain from any

court of competent jurisdiction immediate preliminary and/or permanent injunctive relief restraining any threatened or further breach as well as an equitable accounting of all profits or benefits arising out of such violation. Nothing in this Section 19 shall be deemed to limit the University's remedies at law or in equity for any breach by Coach of any of the provisions of this Section 19, which may be pursued by or available to the University.

(e) Survival of Provisions. The obligations contained in this Section 19 shall, to the extent provided in this Section 19, survive the termination or expiration of Coach's employment with the University and, as applicable, shall be fully enforceable thereafter in accordance with the terms of this Agreement. Coach agrees that the restrictions set forth in this Section 19 are reasonable and necessary in order to adequately protect the University's interests, and agrees not to challenge the reasonableness of any such restriction in any proceeding to enforce it. If it is determined by a court of competent jurisdiction that any restriction in this Section 19 is excessive in duration or scope or is otherwise unenforceable, it is the intention of the parties that such restriction may be modified or amended by the court to render it enforceable to the maximum extent permitted by law.

20. Entire Agreement; Prior Agreements. This Agreement (including the Cap-Ex Agreements incorporated by reference herein pursuant to Section 9(h)), constitutes the entire agreement between the parties and terminates and supersedes any and all prior agreements and understandings (whether written or oral) between the parties with respect to the subject matter of this Agreement, including without limitation the Current Agreement. Coach acknowledges and agrees that neither the University nor anyone acting on its behalf has made, and is not making, and in executing this Agreement, the Coach has not relied upon, any representations, promises or inducements except to the extent expressly set forth in this Agreement. In the event of any conflict between the terms of this Agreement and any University Requirement the terms of this Agreement shall control.

21. Assignment; Successors. This Agreement is personal in its nature and none of the parties hereto shall, without the consent of the others, assign or transfer this Agreement or any rights or obligations hereunder, provided that, in the event of the merger, consolidation, transfer, or sale of all or substantially all of the assets of the University with or to any other individual or entity, this Agreement shall, subject to the provisions hereof, be binding upon and inure to the benefit of such successor and such successor shall discharge and perform all the promises, covenants, duties, and obligations of the University hereunder, and all references herein to the "University" shall refer to such successor.

22. No Third Party Beneficiaries. This Agreement is not intended to benefit any third party, nor shall any person who is not a party hereto be entitled to enforce any of the rights or obligations of a party under this Agreement.

23. Withholding. Whether or not expressly stated in this Agreement, the University shall make such deductions and withhold such amounts from each payment and benefit made or provided to Coach hereunder, as may be required from time to time by applicable Law. Coach shall comply with all applicable reporting and record-keeping requirements in regard to compensation, benefits, and reimbursed expenses.

24. Construction. Notwithstanding any provisions in this Agreement to the contrary: (i) this Agreement is intended to comply with Section 409A of the Internal Revenue Code and the regulations and interpretive guidance thereunder ("409A Requirements"), to the extent the Agreement is subject to the 409A Requirements and is not otherwise exempt under one of the applicable exemptions to the 409A Requirements; (ii) it is intended that any exercise of authority or discretion by the University or Coach under this Agreement shall comply with the provisions of the 409A Requirements so as not to subject Coach to the payment of any interest or tax penalty which may be imposed under the 409A Requirements;

and (iii) this Agreement shall be interpreted and applied in all circumstances in a manner that is consistent with the intent of the parties that amounts earned and payable pursuant to this Agreement shall not be subject to the premature income recognition or adverse tax provisions of the 409A Requirements.

25. Heading References. Section headings in this Agreement are included for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

26. Waiver; Modification. Failure to insist upon strict compliance with any of the terms, covenants, or conditions hereof shall not be deemed a waiver of such term, covenant, or condition, nor shall any waiver or relinquishment of, or failure to insist upon strict compliance with, any right or power hereunder at any one or more times be deemed a waiver or relinquishment of such right or power at any other time or times. This Agreement shall not be modified in any respect except by a writing executed by each party hereto.

27. Severability. Subject to Section 19(e), in the event that a court of competent jurisdiction determines that any portion of this Agreement is unenforceable or in violation of any law or public policy, only the portions of this Agreement that are unenforceable or that violate such law or public policy shall be stricken. All portions of this Agreement that are enforceable or that do not violate any law or public policy shall continue in full force and effect. Further, any court order striking any portion of this Agreement shall modify the stricken terms as narrowly as possible to give as much effect as possible to the intentions of the parties under this Agreement.

28. Notices. All notices and other communications under this Agreement shall be in writing and shall be given by first-class mail, facsimile, receipted overnight courier, certified or registered with return receipt requested, or hand delivery acknowledged in writing by the recipient personally, and shall be deemed to have been duly given three days after mailing or immediately upon duly acknowledged receipt by hand delivery, overnight courier, or facsimile to the respective persons named below. Either party may change such party's address for notices by written notice duly given in accordance with this Section.

If to the University:

Director of Athletics
100 Perimeter Rd
Clemson, SC 29634

If to Coach:

Home Address on File with University.

With a copy to:

Russ Campbell & Patrick Strong
Balch Sports
1901 6th Ave. N.
Ste. 1500
Birmingham, AL 35203

29. Governing Law; Jurisdiction. This Agreement and the legal relations thus created between the parties hereto shall be governed by and construed under and in accordance with the internal laws of the

State of South Carolina without reference to the principles of conflicts of laws. Any and all disputes between the parties which may arise pursuant to this Agreement will be heard and determined before a federal or state court of competent subject matter jurisdiction located within South Carolina. The parties acknowledge that such courts have jurisdiction to interpret and enforce the provisions of this Agreement, and the parties consent to, and waive any and all objections that they may have as to, personal jurisdiction and venue in such courts.

30. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original but all of which together will constitute one and the same instrument. The exchange of copies of this Agreement and of signature pages by facsimile transmission, by electronic mail in "portable document format" (.pdf) form, or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, or by combination of such means, shall constitute effective execution and delivery of this Agreement as to the parties and may be used in lieu of the original Agreement for all purposes. Signatures of the parties transmitted by the foregoing means shall be deemed to be their original signatures for all purposes.

31. **Survival.** Sections 3, 4(d), 6(b), 17, 19, 23, 24, 27, 29 and 31 of this Agreement, as well as other obligations arising during the Term which by their context are to be performed in whole or in part subsequent to termination or expiration, shall survive the termination or expiration of Coach's employment with the University and, as applicable, shall be fully enforceable thereafter in accordance with the terms of this Agreement.

[Signatures Appear On Next Page]

IN WITNESS WHEREOF, the University has caused this Agreement to be executed and delivered and Coach has executed and delivered this Agreement as of the respective dates set forth below.

CLEMSON UNIVERSITY

By: J. P. Clement
Title: President
Date: _____, 2019

By: Jan Rachbark
Title: Athletics Director
Date: 11-18, 2019

William C. Swinney
WILLIAM SWINNEY
Date: 11/18/19, 2019