

COUNTY OF PITT

STATE OF NORTH CAROLINA

EMPLOYMENT AGREEMENT

HEAD FOOTBALL COACH

THIS EMPLOYMENT AGREEMENT, made and entered into on this the 12th day of April, 2019 by **East Carolina University** ("ECU" or "UNIVERSITY"), an educational institution and agency of the State of North Carolina, and Mike Houston ("COACH") (the "Agreement"). ECU and COACH may be referred to herein individually as a "Party" or, collectively, as the "Parties."

WITNESSETH:

WHEREAS, ECU is a constituent institution of the University of North Carolina and maintains an intercollegiate athletics department within Division I of the National Collegiate Athletics Association ("NCAA");

WHEREAS, COACH is experienced as a coach in the field of athletics and desires to perform duties as Head Football Coach, responsible for coaching ECU's NCAA Division I football team ("Team") and the UNIVERSITY's intercollegiate football program (the "Football Program");

WHEREAS, the parties previously agreed to the terms contained in a document captioned "ECU Head Football Coach Memorandum of Understanding" dated December 2, 2018 (hereinafter, the "MOU"), for purposes of memorializing the basic material terms of employment for COACH, but with the express intent to negotiate additional details regarding his employment to be integrated with the terms of the MOU into one head coaching agreement, which is the purpose of this Agreement;

WHEREAS, the parties intend for the terms of the parties' agreement as contained in the MOU to be replaced in their entirety by the terms and conditions of this Agreement; and

WHEREAS, the parties acknowledge that although this Agreement is sports-related, the primary mission of ECU is education, and, accordingly, the primary purpose of all ECU's legal arrangements, including this Agreement, is the furtherance of ECU's educational mission.

NOW, THEREFORE, in consideration of the promises and mutual covenants hereinafter set forth, the parties agree as follows:

I. TERM OF EMPLOYMENT

- A. ECU employs COACH as Head Football Coach for a term of five (5) years beginning on December 3, 2018 and ending on December 2, 2023 (the "Term"). Each twelve month period during the Term beginning on December 3 and ending on December 2 shall be referred to herein as an "Agreement Year." COACH accepts employment in this position and agrees to faithfully, diligently, and competently perform the duties of COACH, as set forth herein. COACH's employment under this Agreement shall continue until the ending date set forth above, unless terminated earlier as provided herein or extended beyond the date as the parties shall agree in writing and as approved by ECU's Chancellor (the "Chancellor") and, if required by applicable policy, by UNIVERSITY'S Board of Trustees.
- B. COACH shall be considered a non-faculty Senior Academic and Administrative Officer-Tier II ("SAAO Tier II") employee. The position of COACH is classified as an employee exempt from the North Carolina State Human Resources Act ("EHRA"), such positions being known as EHRA Non-Faculty (or EPA Non-Faculty) at ECU. COACH'S employment is subject to the East Carolina University "Employment Policy for Employees Exempt from the State Human Resources Act" as adopted by the Board of Trustees, and as revised from time to time (the "Policy"). The Policy and other policies and rules to which COACH is subject and shall abide are contained in the Code of the UNC Board of Governors and ECU's policies, regulations and rules. Such policies may be accessed at: <http://www.ecu.edu/PRR> and <https://www.northcarolina.edu/apps/policy/index.php?pg=toc&id=12&add ed=&return url=%2Fapps%2Fpolicy%2Findex.php%3Fpg%3Dtoc%26id%3D> and are incorporated herein by reference. COACH accepts and shall abide by the Code of the UNC Board of Governors and ECU's policies, regulations and rules.
- C. The Director of Athletics for the UNIVERSITY ("Director" or "Director of Athletics") shall provide a written evaluation of the COACH's performance on an annual basis.
- D. It is expressly understood and agreed by the parties that this Agreement is not effective until COACH has satisfied ECU's background check requirements and, should COACH not satisfy said requirements, this Agreement is null and void and without legal consequence to the Parties.

II. DUTIES

- A. ECU hereby employs COACH as the Head Football Coach of the Team with all the duties, responsibilities, and obligations normally associated with the position of Head Football Coach at a major university. Duties include, but are not limited to, the following:
- (1) COACH will serve as the Head Football Coach of the Team and devote his full time, energy, and abilities for the exclusive benefit of ECU as specifically

set forth herein. COACH will be responsible for performing all the duties, responsibilities, and obligations normally associated with the position of Head Football Coach at a major university;

- (2) The COACH shall perform all duties specified herein in strict compliance with the constitution, by-laws, rules, and regulations of the NCAA, and the American Athletic Conference (the "AAC") and any other association, conference, or like organization approved by the NCAA with which ECU is or may become affiliated (the "Conference"), including recruiting rules, and with the policies of East Carolina University and its Athletics Department and of the Board of Governors of The University of North Carolina (the "BOG") and any applicable State or federal law, rule or regulation, as, collectively, the same are now constituted or as any of the same may be amended during the Term;
- (3) The Football Program under the direction of the COACH must comply with all policies, rules, and regulations of ECU and the BOG and the constitutions, bylaws, policies, rules and regulations of the NCAA and the Conference. Each time "Athletic Program Personnel" or "Football Program Personnel" is used throughout this Agreement, the phrase shall refer to all assistant football coaches and other ECU employees, contractors, student athletes and volunteers under the supervisory responsibility, both direct and indirect, of the COACH, as well as all functions and responsibilities assigned to persons in those positions. The COACH shall be responsible for instructing, supervising, and monitoring the conduct of Football Program Personnel with the goal of assuring full compliance with the constitution, by-laws, rules, and regulations of the NCAA and the Conference, including recruiting rules, and with the policies of East Carolina University and its Athletics Department and of the BOG and any applicable State or federal law, rule or regulation, as, collectively, the same are now constituted or as any of the same may be amended during the Term. In the event the Coach becomes aware of or has reasonable cause to believe that any violation of the constitution, bylaws, rules or regulations of the NCAA or the Conference or other applicable policies or laws may have taken place, he shall report the same promptly to the Director of Athletics or the Chancellor;
- (4) The COACH shall make all reasonable efforts to promote and encourage sportsmanship in his coaches, players, and fans in attendance at intercollegiate football contests;
- (5) Devote his best efforts full time in leadership, supervision, and promotion of ECU's Team and Football Program that supports said Team, including, but not limited to, with regard to using best efforts to ensure compliance with applicable laws, rules, and requirements, and the promotion of the mission of ECU and its intercollegiate athletics program, ECU's high standard of academic excellence, and the general health and welfare of student-athletes;

- (6) The parties agree that the policies regarding the athletic program at ECU shall be determined by ECU; however, the implementation of the daily routine and administration as they pertain to the Football Program shall be the primary responsibility of the COACH in compliance with all policies, rules, and regulations of the NCAA, Conference, ECU, and the BOG;
- (7) Use best efforts to ensure that the Football Program is and/or operates in compliance with the Constitution and Bylaws of the Conference and also with the Constitution, Bylaws, rules and regulations of the NCAA; all State and Federal laws, and policies and procedures of The University of North Carolina and ECU;
- (8) Understand, observe and uphold all standards, including but not limited to academic standards and requirements, policies, rules and regulations of ECU as well as the Constitution and Bylaws of the Conference and of the NCAA, all applicable State and Federal laws, and all policies and procedures of The University of North Carolina and ECU as may be amended from time to time, and use best efforts to ensure compliance with all of the same standards, requirements, policies, rules, regulations, Constitution, Bylaws, laws and procedures by all coaches and other athletic department personnel under the supervisory responsibility of COACH, both direct and indirect, as well as the Football Program and all functions and responsibilities assigned to those persons;
- (9) Use best efforts to foster academic values, maintain program integrity, and encourage and contribute to the academic progress of all Team members under his supervision and to use best efforts to ensure that all academic standards, requirements, and policies of ECU are observed including those in connection with the recruiting and eligibility of prospective and current student athletes, and specifically with regard to the recruiting of student athletes who are academically qualified;
- (10) Use best efforts to ensure the safety and welfare of student-athletes under COACH's supervision; use best efforts to ensure that coaching and administrative staff actively support the Football Program and ECU's joint commitment to academic achievement for each student-athlete under COACH's supervision, to include promoting academic advising and counseling services; promote an environment that encourages student-athletes to achieve the best grades possible and to make progress toward a degree in a defined academic program;
- (11) Interview, screen, and recommend to the Director of Athletics for employment all assistant football coaches. The hiring of assistants and all personnel within the Football Program shall comply with all applicable ECU policies and regulations. The COACH shall recommend to the Director of Athletics the salaries of the assistant coaches and each year shall provide written annual evaluations of their performances to the Director. The

COACH shall recommend to the Athletic Director that an assistant coach be terminated if the assistant's services are not satisfactory to the COACH;

- (12) Maintain and enforce any and all disciplinary policies and drug/alcohol policies of ECU;
- (13) Maintain effective relations with governing boards, associations, conferences, committees, alumni, students, faculty, and staff;
- (14) Each Agreement Year make appearances/speeches at Pirate Club fundraising socials and events. COACH agrees to make reasonable efforts to accommodate any such requests based upon his other outstanding commitments. Only those appearances made at the request of ECU shall count toward satisfaction of the obligations of COACH under this paragraph;
- (15) Promptly advise the Director of Athletics if the COACH has any reason to believe that any violation of NCAA or Conference constitutional provisions, bylaws, rules, or regulations has occurred or will occur and shall cooperate fully in any investigation of possible violations conducted or authorized by the UNIVERSITY, the Conference, or the NCAA at any time, including but not limited to the NCAA infractions process, including the investigation and adjudication of a case;
- (16) Promptly advise the Chancellor, Director of Athletics, and the Senior Associate Athletic Director for Compliance if the COACH has any reason to believe that ECU's Football Program may be at risk of being deemed ineligible to compete in any NCAA or Conference competition due to academic, conduct related or other compliance concerns;
- (17) Perform such other duties as assigned from time to time by the Director of Athletics;
- (18) The COACH shall not attempt to raise money to support the football budget without the prior written approval of the Director of Athletics. All requests of financial support from the Pirate Club for the football program will be channeled through the Director of Athletics to the Executive Committee of the Pirate Club;
- (19) The COACH shall not instruct or knowingly permit his assistants to do anything that this Agreement prohibits COACH from doing; and
- (20) If COACH is found to have committed violations of NCAA rules or regulations, whether while employed by ECU or during prior employment at another NCAA member institution, COACH shall be subject to disciplinary action as set forth in the provisions of the NCAA infractions process and applicable ECU policies, regulations or rules, including the Policy. Such

disciplinary action may include, but is not limited to, suspension without pay or termination for cause.

- B. COACH agrees to faithfully, diligently, and competently perform the duties of Head Football Coach, and to devote such time, attention, and skills to the performance of said duties as necessary to meet the responsibilities of the position of Head Football Coach. COACH shall report to and be under the immediate supervision of the Director of Athletics. COACH agrees that the failure to discharge any of the duties of Head Football Coach constitutes a breach of this Agreement that would allow ECU to terminate COACH for cause pursuant to section XI of this Agreement.

- C. If COACH is found to have committed violations of NCAA rules or regulations, whether while employed by ECU or during prior employment at another NCAA member institution, COACH shall be subject to disciplinary action as set forth in the provisions of the NCAA infractions process and applicable ECU policies, regulations or rules, including the Policy. Such disciplinary action may include suspension without pay or termination for cause in accordance with section XI of this Agreement. In the event that any future or amended NCAA or Conference rule, regulation, bylaw, or constitutional provision should render ineffectual this Section II.C. as a basis for protecting the institutional integrity of ECU, then COACH and ECU will, to the extent possible, engage in good faith negotiations to revise this Section II.C. or to substitute an alternative provision that would allow for a materially similar duty to be imposed upon the COACH with materially similar consequences for failure to perform said duty while preserving for ECU as much of the bargained for institutional benefit as reasonably possible.

- D. The parties mutually agree that major public announcements (e.g. suspension of players from the team, schedule modifications) made through any medium concerning the football program at ECU will be discussed with each other, including specifically the Director of Athletics (or his designee) and COACH, prior to said announcements being made public. Both parties agree to give full and faithful allegiance to the other as concerns the athletic program.

III. ANNUAL SALARY

The Annual Salary for the position of COACH is Five Hundred Thousand Dollars (\$500,000) (“Annual Salary”), based on a twelve (12) month employment period. The salary will be paid in semi-monthly installments with the first installment paid no later than January 15, 2019 and continuing through the period of COACH’s employment relationship with the UNIVERSITY under this Agreement. For purposes of clarification, through the described installment payments, COACH will receive a pro-rata amount of the Annual Salary for each Agreement Year. Such installment payment may be in addition to any pro-rata monthly payment amount accrued of any supplemental compensation or bonus due and payable as described in, and in accordance with Appendix A. COACH will receive any and all other regular

employment benefits provided by the State of North Carolina to similarly situated employees, plus benefits provided to University EHRA Non-Faculty employees based upon the Annual Salary.

IV. BENEFITS AND OTHER NON-SALARY COMPENSATION

ECU shall provide COACH all benefits and other non-salary compensation included and as specified in Appendix A, attached hereto and incorporated by reference.

V. OUTSIDE COMPENSATION

A. COACH may earn other compensation from sources outside of ECU while employed by ECU with prior approval by the Chancellor. Any outside compensation is subject to compliance with ECU's "Regulation on Conflicts of Interest, Commitment, and External Professional Activities for Pay" and the "Policy on External Professional Activities for Pay" of the UNC Board of Governors, both of which are herein incorporated by reference, and is subject to all other relevant State and Federal policies and laws concerning conflict of interest. Such activities are independent of COACH's employment with ECU, ECU shall have no responsibility for any claims arising therefrom, and the COACH shall indemnify and hold harmless ECU from any and all claims and/or losses as a result of COACH's participation in such activities. Activities for outside compensation shall include, but not be limited to, engaging in any radio, television, motion picture, Internet, stage, writing or any similar activity, personal appearances, commercial endorsements, and sport camps. Subject to specific reporting requirements established by ECU, no outside activities will be allowed without having on file with ECU, a signed approval of the "Notice of Intent to Engage in External Professional Activities for Pay" prior to engaging in those activities, which approval shall not be unreasonably withheld. Request forms, disclosures and reports related to external activities for pay as described in the section are currently submitted electronically utilizing ECU's online Activities, Interests, and Relationships Management System ("AIR"), and in the future may be submitted using a different system or process as is designated by ECU. A sample of the current form is attached hereto as Exhibit B for illustrative purposes only. The AIR system may be accessed at <https://ecu.myresearchonline.org/air/>.

(i) SUMMER CAMPS: The COACH may conduct football clinics/camps in/at ECU facilities at the discretion of the Athletic Director provided that COACH and COACH'S operation of any such camp must comply with all applicable laws, NCAA and ECU regulations and policies, including ECU's "Youth Camps and Programs" Regulation. At a minimum, COACH will be allowed to operate two weeks of football summer camps on the campus of ECU each summer while he is employed as Head Football Coach, under the terms provided by University policy. The COACH may not solicit sponsorships for said camps without the approval of the Director of Athletics. Said camps and camp sponsorship solicitations must comply with all applicable laws and the policies of ECU, the NCAA, and AAC. Nothing herein shall prohibit COACH from conducting additional football camps and clinics so long as such activities are approved in advance by the Director of Athletics and comply with all applicable

University, Conference, and NCAA guidelines and policies, including without limitation the University's "Regulation on Conflicts of Interest, Commitment, and External Professional Activities for Pay"

(ii) COMMERCIAL ENDORSEMENTS:

- a. Only with prior written approval of the Director of Athletics and in compliance with applicable ECU policy, the COACH will be allowed to accept remuneration for commercial endorsements if they: (i) fall within the guidelines of the NCAA and the AAC; (ii) do not conflict with sponsorship agreements entered into by ECU; and (iii) do not reflect unfavorably upon ECU.
 - b. If the COACH makes commercial endorsements, he may identify himself as the football coach of East Carolina University but shall not otherwise associate ECU'S name, logos or marks with the endorsement. The COACH shall not use any ECU students in any endorsement of private products or services and shall not film any commercials or be photographed endorsing private products or services on ECU property.
 - c. The COACH'S commercial endorsements are independent of his ECU employment and ECU will have no responsibility or liability for any claims arising there from.
 - d. Notwithstanding subparts V.A.(ii).a-c, the COACH agrees that he shall not establish an Internet website or weblog, Twitter account, or Internet program or presence in any form, including any social networking site, that in any way relates to ECU football program or his position as COACH at ECU without the written consent of the Director of Athletics.
- B. In accordance with ECU policy and NCAA Bylaw 11.3.2, which are incorporated herein by reference, COACH shall report annually on July 1 to the Director of Athletics and the Chancellor all athletically-related income from sources outside ECU, including but not limited to, income from sports camps and clinics, television and radio programs, commercial endorsements, consulting agreements, and all other athletically-related income from whatever outside source. Such income shall be reported in a manner as prescribed by the Athletics Department, which may be subject to change. The current East Carolina University Athletically Related Income form, as of the date of this Agreement, is attached hereto as Exhibit C. COACH shall ensure that upon request ECU has reasonable and prompt access to all records of COACH to verify this report.
- C. COACH agrees that ECU may use, without payment of additional compensation to COACH, COACH'S name, picture, likeness and voice in connection with any such programs and endorsements that promote ECU. This provision shall survive expiration or termination of this Agreement.

- D. In conformance with applicable ECU, Conference, and NCAA guidelines and policies, including without limitation ECU's "Regulation on Conflicts of Interest, Commitment, and External Professional Activities for Pay," and any other applicable ECU policy, and if approved in writing by the Chancellor and the Director of Athletics prior to occurring, the COACH may enter into outside agreements for media appearances and any other personal appearances, lectures and speaking engagements other than ECU activities and receive any benefits for which he contracts; provided, that such contracts or agreements are at no expense to ECU or its Department of Athletics, nor obligate in any way ECU or its Department of Athletics. COACH shall notify ECU, through the Director of Athletics, in writing at least ten (10) days prior to the time he is required to perform under such contracts, including all information that is required to be reported under ECU's "Regulation on Conflicts of Interest, Commitment, and External Professional Activities for Pay." ECU reserves the right to prohibit the COACH'S performance of any contract which it deems to conflict with the COACH'S responsibilities to ECU or which it deems to involve an unreasonable time commitment or that may reflect unfavorably upon ECU. COACH'S public appearances as described in this paragraph are independent of his ECU employment, and ECU shall have no responsibility or liability for any claims arising there from.
- E. For the duration of this Agreement, the COACH shall not enter into or be a party to any shoe, apparel, or equipment agreement, including any agreement that obligates the COACH to wear, promote, endorse, or consult with a manufacturer or seller concerning the design and/or marketing of shoes, apparel, or equipment. This notwithstanding, ECU may require the COACH to comply and COACH shall cooperate with the terms of any shoe, apparel, and equipment agreements entered into by ECU, including but not limited to, requiring the COACH to wear or use a particular brand of shoe, apparel or equipment while performing his duties as the Head Football Coach. ECU is entitled to all revenue and/or proceeds derived from any shoe, apparel, or equipment contract entered into by ECU.

VI. BUYOUT PAYMENT

To the extent permitted by applicable law and University of North Carolina and ECU policy, ECU agrees to be responsible for COACH's obligation under his previous employment agreement with James Madison University ("JMU") to pay a "Buyout" payment to JMU in an amount not to exceed \$500,000 and, in no event, exceeding the actual amount of the buyout amount to be paid by Coach to JMU (the "Buyout Amount"). ECU will make a first payment to JMU in the amount of one-half of the Buyout Amount within sixty (60) days following December 6, 2018 (the "First Payment"). ECU will make a second payment to JMU in the amount of one-half of the Buyout Amount within one-hundred and fifty (150) days following December 6, 2018 (the "Second Payment"). ECU shall pay the COACH an amount of money equal to the amount of personal income tax liability incurred by Coach due to ECU's payment of the Buyout Amount to JMU. The COACH shall use these funds in compliance with NCAA, Conference, and UNIVERISTY regulations, rules and policies.

VII. TAXES

COACH acknowledges that, in addition to the salary provided for in this Agreement, certain benefits and other non-salary compensation he receives incident to his employment relationship with ECU 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 ECU shall withhold taxes on amounts paid or due to COACH and the value of benefits and other non-salary compensation provided to COACH, to the extent required by applicable law and regulation.

VIII. UNIVERSITY RECORDS

All materials or articles of information including, without limitation, personnel records, recruiting records, team information, films, statistics or any other material or data furnished to COACH by ECU or developed by COACH on behalf of ECU or at ECU's direction or for ECU's use or otherwise in connection with COACH's employment hereunder are and shall remain the sole property of ECU. COACH shall ensure all said materials or articles of information are in the possession of the ECU as of the date of expiration or termination of this Agreement. If ECU requests access/or the return of such materials at any time during or at or after the termination of COACH's employment, COACH shall immediately deliver same to ECU.

IX. COACH SUBJECT TO REASSIGNMENT

Throughout the Term of this Agreement, COACH shall use his best full-time energies and abilities for the exclusive benefit of ECU. It is understood by the parties, however, that during the Term of this Agreement, ECU retains the right to reassign the COACH to other positions, for a period not to exceed sixty (60) days and as agreed upon in good faith by COACH, the Director of Athletics, and the Chancellor, with different duties that ECU deems to be reasonably consistent with COACH's education and experience, with no diminution in Annual Salary. In the event COACH, the Director of Athletics, and the Chancellor cannot come to a mutual agreement regarding reassignment, the Chancellor, in consultation with the Director of Athletics shall have the final authority. Such sixty (60) day period may be extended in the Chancellor's sole discretion to the extent the Chancellor determines, in good faith, that such extension is necessary. ECU's obligation to provide non-salary or deferred compensation under Appendix A, sections F-L and section O (if applicable) will terminate upon reassignment at the ECU's sole discretion, except that ECU shall pay, subject to the conditions in Appendix A, sections M-N, the COACH any bonuses earned under Appendix A, sections I, J, K, L, and O prior to reassignment and any supplemental compensation earned under Appendix A, sections F, G, and H on a pro-rata basis up to the date of the reassignment. Upon cessation of Head Football Coach duties and responsibilities, COACH shall voluntarily relinquish all appointments on NCAA or athletic conference committees, subcommittees and/or councils of any nature. If ECU makes such a decision to reassign COACH and COACH refuses to accept such reassignment, then ECU may terminate this Agreement for cause pursuant to section XI of this Agreement.

X. AUTOMATIC TERMINATION UPON DEATH OR DISABILITY OF COACH

- A. This Agreement shall terminate automatically upon the death of COACH. If this Agreement is terminated pursuant to this section because of death, the COACH's Annual Salary and all other benefits shall terminate as of the end of the calendar month in which death occurs, except that COACH's personal representative or other designated beneficiary shall be paid any bonuses earned under Appendix A, sections I, J, K, L, and O prior to death, any supplemental compensation earned under Appendix A, sections F, G, and H on a pro-rata basis prior to death, and all such death benefits, if any, as may be contained in any benefit plan and due to COACH as an EHRA non-faculty employee.
- B. This Agreement shall terminate automatically upon the permanent disability of COACH. For purposes of this provision, COACH shall be deemed permanently disabled if, due to a mental or physical impairment, COACH is unable to perform the essential functions of the job with or without reasonable accommodation for a period of ninety (90) days. If this Agreement is terminated pursuant to this section because of permanent disability, ECU's sole obligation shall be to pay that portion of the Annual Salary as set forth in section III due to COACH as of the date of termination, disability benefits to which COACH may be entitled to under any disability program in which COACH is enrolled through ECU, any bonuses earned under Appendix A, sections I, J, K, L, and O prior to permanent disability, and any supplemental compensation earned under Appendix A, sections F, G, and H on a pro-rata basis up to the date of permanent disability.

XI. COACH REPRESENTATION AND WARRANTIES; TERMINATION BY ECU FOR CAUSE

- A. COACH represents and warrants that he has disclosed to ECU: (a) any known previous material breach or alleged material breach by COACH of his duties or his employment agreement or other agreement at any other NCAA member institution; (b) any known material violation or alleged violation of any law or rule applicable to intercollegiate athletics by COACH or any person under his direct or indirect supervision; (c) any known material violation or alleged violation by any athletic program under the direction of COACH, including, but not limited to, a member of the coaching staff, a player, or any other person affiliated with the intercollegiate athletics program who reported directly or indirectly to COACH, of rules or regulations of the NCAA or any other association, conference or like organization associated with another NCAA member institution, state or federal laws, rules or regulations, or any rules or policies of another NCAA member institution; (d) other known material misconduct or alleged misconduct, including without limitation fraud, dishonesty, acts of violence, or other conduct that is contrary to the mission of another NCAA member institution or an educational institution; and (e) all convictions and guilty pleas of COACH, including an Alford Plea, to (i) a felony or (ii) a criminal offense which constitutes fraud, dishonesty or moral turpitude, the underlying offense or activity, but not the conviction or guilty plea, having occurred prior to the date of COACH's signature below. COACH understands and agrees that this representation and warranty is a material inducement for ECU to enter into this

Agreement, and that ECU has relied upon this representation and warranty in entering into this Agreement with COACH. For the purpose of clarity, the term "alleged" as used in this Section XI(A) means a claim or assertion of which COACH is aware.

- B. This Agreement may be terminated by ECU for cause. "Cause" shall include, but not be limited to, the following:
- (1) Failure to satisfactorily carry out the duties of COACH as defined in section II of this Agreement [DUTIES] and, where applicable, failure to cure same within thirty (30) calendar days of receiving written notice of such failure from ECU, or within such additional timeframe as reasonably necessary and as approved by the Director of Athletics;
 - (2) A major or willful violation or multiple minor or secondary violations by COACH, or knowing participation by COACH in a violation by an assistant/associate COACH or coach or other staff member of which COACH had reason to know, or should have known through the exercise of reasonable diligence or which COACH condoned of an NCAA regulation or bylaw or a Conference regulation or bylaw, whether while employed by ECU or during prior employment at another NCAA member institution;
 - (3) Any act or omission that constitutes a violation by COACH of any policy or regulation of ECU or of the Board of Governors of the University of North Carolina, of the constitution, or any bylaw, rule or regulation of the NCAA, AAC, or any other association, conference or like organization with which ECU is or may become affiliated, to the extent such violation is deemed in the sole discretion of ECU to be grounds for termination of the Agreement for cause. ECU will deem a violation to be grounds for termination under this Section XI.B., if it is serious or intentional or negligently committed, including with regard to NCAA provisions any major or serious violation (e.g., repeated violations or any violation that the University determines could reasonably be expected to result in sanctions such as probation, forfeiture of athletic contests, loss of one or more scholarships, prohibitions against conference or championship or telecast appearances, restrictions on a coach's right to recruit, etc.);
 - (4) Failure of COACH to appropriately monitor and report any compliance or NCAA eligibility issues of which COACH is aware, or with the appropriate and reasonable monitoring of ECU's Football Program, COACH should have been aware;
 - (5) Failure of the COACH to appropriately monitor, manage, and report to the Director of Athletics, the Chancellor and other appropriate ECU personnel, any issues or conditions within the COACH's purview that adversely affect the safety and welfare of student athletes, including, but not limited to, failing to ensure that coaching staff of the Football Program are directed to comply with, and are complying with, best practices with regard to the management of suspected concussions, heat stroke, and other serious medical conditions known to affect student athletes;

- (6) Conviction of, or a guilty plea, including an Alford Plea, to (i) a felony or (ii) a criminal offense which constitutes fraud, dishonesty, or moral turpitude;
 - (7) Misconduct of the COACH, or misconduct of any assistant or associate COACH or of a coach or of his staff of which the COACH knew, had reason to know, or should have known through the exercise of reasonable diligence, or which COACH condoned, of such a nature, as reasonably determined in the discretion of ECU, that would tend to bring disrespect, contempt or ridicule upon ECU, or which brings discredit to ECU, or which harms ECU's reputation, or which reasonably brings into question the integrity of the COACH or that, as determined in the sole discretion of the Chancellor, would render COACH unfit to serve in the position of Head Football Coach;
 - (8) Prolonged absence from duty without the consent of the Chancellor;
 - (9) Failure by COACH to use best efforts to ensure that academically qualified student athletes are recruited and that student athletes are making adequate progress in a defined degree program;
 - (10) Refusal of COACH to carry out reasonable directives from the Director of Athletics and/or the Chancellor;
 - (11) Seeking, interviewing for or negotiating terms for, whether directly or through any agent or representative (acting with or without COACH's knowledge), employment with another sports-related business or program without the express written approval of the Director of Athletics or the Chancellor, which approval shall not be unreasonably withheld;
 - (12) A breach of any representation and/or warranty made by COACH in Section XI(A) or any other act, whether occurring prior to or during the Term, which brings serious discredit to the Football Program or would be likely to cause prospective student-athletes to elect not to attend ECU; or
 - (13) Any of those causes specified in the Employment Policies for EHRA employees of the University of North Carolina or ECU, as adopted and revised from time to time.
- C. In the event of a termination under this section, ECU's sole obligation to COACH shall be to pay COACH that portion of the Annual Salary as set forth in section III earned, accrued and owing to COACH as of the date of such termination, but not beyond that date, and any supplemental compensation earned under Appendix A , sections F-G on a pro-rata basis up to the date of termination. In the event ECU exercises its right to terminate the Agreement with cause, ECU shall not be obligated to pay COACH any other compensation or benefits described in the Agreement, including but not limited to any loss of business opportunities or loss of other compensation,

income, benefits, or perquisites from any sources, that might occur as a result of such termination.

- D. Any process to terminate COACH for cause shall be conducted in compliance with the Policy and all other applicable policies and regulations.

XII. TERMINATION BY ECU WITHOUT CAUSE

This Agreement may be terminated by ECU at any time without cause.

- A. In the event ECU exercises its right to terminate COACH's employment or this Agreement without cause, ECU's sole financial obligation shall be limited to paying COACH the remaining and unpaid amount of Annual Salary that would have been due and payable to him under Section III of this Agreement had COACH remained employed by ECU for the remaining Term of the Agreement and, if applicable, any bonuses earned as of the effective date of termination. In the event ECU exercises its right to terminate COACH's employment or the Agreement without cause, ECU shall not be obligated to pay COACH any other compensation described in the Agreement or be responsible for consequential damages, including but not limited to any loss of business opportunities or loss of other income, benefits, or perquisites from any sources, that might occur as a result of such termination. Payment of the total amount determined shall occur over the remaining Term of the Agreement as follows: 1) Within thirty (30) days of the effective date of termination without cause, payment shall be made of amounts due with respect to the remainder of that contract year, and 2) payments due hereunder with respect to each subsequent year shall be made on the last day of such subsequent contract year, until all amounts due under this section XII have been paid in full. As a precondition for COACH's receipt of the amounts payable under this Section XII(A), ECU may, in its sole discretion, require COACH to execute a release in favor of ECU, and any affiliated entities, releasing them and their agents, trustees, directors, officers, representatives and employees from any and all federal or state law claims that COACH may have against them at the time of the release, including, but not limited to, claims resulting from the breach or termination of this Agreement or the severance of COACH's relationship with ECU.
- B. COACH acknowledges his obligation to minimize the payments due to him under section XII(A) and agrees to make every reasonable effort to obtain other employment as long as ECU has the obligation to make payments under section XII(A). If the COACH obtains new employment, ECU's financial obligations under section XII(A) shall be reduced by the total compensation that is expected to be received by COACH in his new position, including employee benefits, whether in cash, deferred payments, or in kind if COACH were to fully perform under COACH's new employment relationship. COACH shall immediately, upon acceptance of other employment, notify the Chancellor in writing of such employment and the total compensation to be paid to COACH for the employment. In addition, COACH agrees to provide ECU with a copy of his W-2 form for each calendar year as long as ECU has the obligation to make payments under section XII. Any diminution of compensation in COACH's

new position or COACH ceasing to be employed in his new position shall have no effect on the reduced financial obligations of ECU.

- C. If COACH's total expected compensation in the new position exceeds that which COACH would have been paid at ECU as set forth in section III, then ECU's financial obligations under section XII(A) shall terminate and ECU shall have no additional or future financial obligations to COACH.
- D. In the event that ECU provides written notice to COACH of documented evidence that, during COACH's period of employment would have been grounds for termination by ECU with cause pursuant to the Policy or Section XI of this Agreement, ECU's financial obligations under XII(A) shall terminate upon thirty (30) days of such written notice.
- E. COACH acknowledges and agrees that ECU's sole financial obligation in the event that COACH is terminated without cause is governed by section XII(A) of this Agreement, and any prior agreements or promises in regard to ECU's payments to COACH due to termination without cause, if any, are null and void.

XIII. TERMINATION BY COACH PRIOR TO EXPIRATION

- A. COACH agrees that the promise to work for ECU for the entire Term of the Agreement is essential to ECU. The parties agree that the COACH has special, exceptional, and unique knowledge, skill and ability as a COACH, which, in addition to the continuing acquisition of experience at ECU, as well as ECU's special need for continuity in its intercollegiate sports program, render the COACH's services unique. COACH therefore agrees, and hereby specifically promises, not to actively seek, negotiate for or accept athletics related employment, under any circumstances, without first informing or obtaining written permission from the Chancellor, such employment including but not limited to a sports commentator, or an athletics director or administrator of or over an intercollegiate sports 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, requiring performance of duties prior to the expiration date of the Term of this Agreement or any extension thereof.
- B. In the event COACH terminates his employment or this Agreement without cause or commits any breach of this Agreement, including but not limited to accepting other employment without first obtaining the permission of the Chancellor, COACH shall pay ECU liquidated damages in lieu of any and all other legal remedies or equitable relief that ECU would be entitled to solely as a direct result of the early termination of this Agreement, equal to the following amounts in each year of this Agreement, respectively:

<u>AGREEMENT YEAR</u>	<u>LIQUIDATED DAMAGES OWED</u>
i. December 3, 2018 – December 2, 2019	\$2,500,000
ii. December 3, 2019 – December 2, 2020	\$2,000,000

iii. December 3, 2020 – December 2, 2021	\$1,500,000
iv. December 3, 2021 – December 2, 2022	\$1,000,000
v. December 3, 2022 – December 2, 2023	\$500,000

- C. COACH acknowledges and agrees that the Buyout Amount to be paid by ECU to JMU is in reliance of COACH's promise of performance under this Agreement for the full Term of this Agreement and that any premature termination of this Agreement or COACH's employment by ECU with cause or by COACH without cause would be detrimental to the Football Program. In the event of such premature termination by COACH without cause or by ECU with cause within the first twenty-five (25) months of this Agreement, COACH shall reimburse ECU for the portion of the Buyout Amount as follows:

<u>AGREEMENT MONTHS</u>	<u>PORTION OF BUYOUT AMOUNT OWED</u>
i. December 3, 2018 – June 30, 2019	\$500,000
ii. July 1, 2019 – January 31, 2020	\$250,000
iii. February 1, 2020 – August 31, 2020	\$125,000
iv. September 1, 2020 – January 1, 2021	\$75,000

- D. COACH, or COACH's designee, shall pay the total of any amounts owed to ECU by COACH under section XIII.B. and XIII.C. within ninety (90) days following termination of COACH's employment or this Agreement. In the event COACH designates a third party to pay ECU on COACH's behalf, COACH shall remain ultimately responsible to ensure that such third party designee fully satisfy any and all financial obligations as specified herein.
- E. 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 ECU to lose its valuable investment in COACH's continued employment at ECU and could cause ECU additional damages beyond its lost investment, including but not limited to a possible adverse effect on the intercollegiate sports program. 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 paragraph are not to be construed as a penalty, but as an attempt by COACH and ECU to establish adequate and reasonable compensation to the University in the event COACH terminates this Agreement. Notwithstanding the foregoing, nothing in this Section XIII shall be construed to, in any way, limit or preclude any claim or legal remedy which ECU may have against COACH that is the result of any other action, inaction or malfeasance of COACH, including any breach of this Agreement not related to COACH's early termination.

XIV. INTENTIONALLY OMITTED

XV. TERMINATION OR AMENDMENT BY BOTH PARTIES

This Agreement may be terminated or amended at any time upon mutual written agreement of all parties.

XVI. COMPENSATION CONDITIONAL

The payment of all forms of compensation set forth in this Agreement is subject to and contingent upon the approval of the annual operating budget by the ECU and The University of North Carolina Board of Governors, and the sufficiency of appropriations or the availability of sufficient funds within the Athletic Department's budget to pay such compensation.

XVII. MERGER

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

XVIII. INTERPRETATION AND APPLICABLE LAW

This Agreement is made under and shall be interpreted according to the laws of the State of North Carolina. Any rule to the effect that an agreement shall be construed against the party drafting shall have no application to this Agreement.

XIX. NOTICES

Any notice or other communication required under this Agreement shall be in writing and shall be deemed effective when personally delivered or sent by confirmed facsimile or five (5) days after being deposited in the United States mail, postage prepaid, registered or certified, addressed to the other party at its/his respective address or facsimile number set forth below, or such other address or facsimile number as may be given by such party in writing to the other, or with respect to COACH, to the address or facsimile of his attorney of record if COACH has provided such in writing to the Chancellor.

ECU:
Chancellor
105 Spilman Building
East Carolina University
Greenville, NC 27858

COACH:
Mike Houston
268 Ward Sports Medicine Building
East Carolina University
Greenville, NC 27858

XX. BENEFIT

This Agreement, in accordance with its terms and conditions, shall inure to the benefit of and be binding upon ECU, its successors and assigns, and COACH, his heirs, executors, administrators and legal representatives.

XXI. SEVERABILITY

The invalidity or unenforceability of any provision hereof shall in no way affect the validity or enforceability of any other provision hereof.

XXII. SOLE AND ENTIRE AGREEMENT

This instrument contains the entire Agreement of the parties and fully supersedes any and all prior offers, discussions, agreements or understandings between the parties hereto. Any and all prior contracts and agreements, oral or written, between the parties, including without limitation the MOU dated December 2, 2018, are hereby terminated and voided. The Agreement may not be changed or amended orally, but only by an Agreement in writing signed by the party against whom enforcement of any waiver, amendment, change, modification, extension or discharge is sought.

XXIII. APPROVAL BY BOARD OF TRUSTEES/BOARD OF GOVERNORS

It is expressly understood and agreed by the parties that this Agreement, and any subsequent amendments is/are not effective until approved by ECU's Board of Trustees and COACH has satisfied ECU's background check requirements.

XXIV. PUBLIC RECORDS

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 this Agreement shall be considered a public record within the meaning of the North Carolina Public Records Act, N.C. Gen. Stat. § 132-1 et seq.

XXV. FULL AND CAREFUL CONSIDERATION

COACH acknowledges that he has been given the opportunity to fully and carefully consider this Agreement and all of its provisions and to review this Agreement with legal counsel of his own choosing before signing it.

XXVI. ASSIGNMENT

COACH's rights and interest under this Agreement may not be assigned, pledged, or encumbered by COACH. The parties understand and agree that there are no third party beneficiaries to this Agreement.

XXVII. NO WAIVER OF DEFAULT

No waiver by the parties hereto of any default or breach of any covenant, term, or condition of this Agreement shall be deemed to be a waiver of any other default or breach of the same or any other covenant, term, or condition contained herein.

XXVIII. IMMUNITY NOT WAIVED

It is expressly agreed and understood between the parties that ECU is an agency of the State of North Carolina and that nothing contained herein shall be construed to constitute a waiver or relinquishment by ECU of its right to claim such exemptions, privileges, and immunities as may be provided by law.

XXIX. SAVINGS CLAUSE

In the event one or more clauses of this Agreement are declared illegal, void or unenforceable, that shall not affect the validity of the remaining portions of said Agreement.

XXX. COUNTERPARTS

The Parties agree that this Agreement may be executed in multiple, identical original counterparts, each of which is an original, and all said counterparts form only one single Agreement; and may be executed via electronic means (including DocuSign, facsimile, and e-mail).

XXXI. SURVIVAL

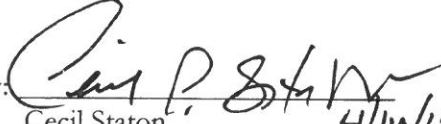
The terms and conditions of this Agreement which by their nature are intended to survive termination or expiration of this Agreement shall so survive.

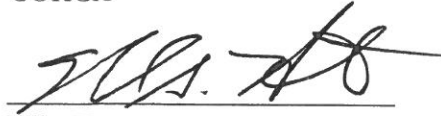
SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first written above.

EAST CAROLINA UNIVERSITY

COACH

By: 
Cecil Staton
Chancellor
4/10/19


Mike Houston
Head Coach
4/10/19

As required under UNC Policy Manual Section 1100.3, all terms and conditions of the foregoing agreement have been approved as of the 12th day of April, 2019, by the Board of Trustees of East Carolina University.

By: _____
Kieran Shanahan, Chairman, Board of Trustees

Date signed

Attested to:

By: _____
Megan Ayers, Assistant Secretary to
the Board of Trustees

Date signed

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first written above.

EAST CAROLINA UNIVERSITY

COACH

By: _____
Cecil Staton
Chancellor

Mike Houston
Head Coach

As required under UNC Policy Manual Section 1100.3, all terms and conditions of the foregoing agreement have been approved as of the _____ day of _____, 2019, by the Board of Trustees of East Carolina University.

By: Kieran J. Shanahan
Kieran Shanahan, Chairman, Board of Trustees

4/12/19
Date signed

Attested to:

By: Megan Ayers
Megan Ayers, Assistant Secretary to
the Board of Trustees

4-12-19
Date signed

APPENDIX A

BENEFITS AND OTHER NON-SALARY COMPENSATION

- A. STATE BENEFITS As an EHRA Non-Faculty Employee, COACH shall be entitled to receive any and all employee-related benefits that are normally available to other twelve-month EHRA Non-Faculty Employees, unless and except as may be expressly stated herein. As an EHRA Non-Faculty Employee, COACH is currently entitled to twenty-four (24) annual leave days per year. COACH acknowledges and agrees that benefits or classifications provided by ECU are subject to change from time to time by the North Carolina General Assembly, the University of North Carolina, or ECU.
- B. MOVING EXPENSES UNIVERSITY shall reimburse COACH for documented personal moving expenses of up to \$15,000 reasonably incurred by COACH within twelve months of the effective date of this Agreement, in accordance with standard procedures and applicable policies of the UNIVERSITY.
- C. HOUSING AND HOUSING ALLOWANCE UNIVERSITY shall make temporary housing available for COACH for a period of up to 60 days from the effective date of this Agreement. At UNIVERSITY's election, and with reasonable notice to COACH, UNIVERSITY may, in its sole discretion, choose to pay COACH a housing allowance not to exceed \$2,000 per month instead of making housing directly available to him.
- D. AUTOMOBILE ECU shall make arrangements for and provide one (1) courtesy or leased vehicle for the COACH to use, contingent upon and while performing his duties under this Agreement. ECU shall be responsible for maintaining collision and comprehensive liability insurance on the vehicle. Alternatively, ECU may provide an annual automobile allowance in the amount of \$12,413, which amount may be adjusted annually consistent with UNIVERSITY policy. COACH shall be responsible for providing maintenance on any vehicle.
- E. CELL PHONE AND COUNTRY CLUB MEMBERSHIP UNIVERSITY shall pay COACH a cell phone allowance in an amount of \$130/month for a total of \$1560 per twelve (12) months. ECU shall pay for COACH to have a membership in a country club located in or around Greenville, North Carolina, said country club as agreed upon between ECU and COACH. Alternately, ECU may pay COACH an allowance for the purpose of paying membership fees at the selected country club.
- F. BROADCAST PROGRAM PAYMENT ECU and COACH will produce and market weekly the head football coach television, radio and Internet programs, including weekly thirty-minute head football coach television programs and weekly one-hour head football coach radio programs, and head football coach Internet programs (collectively, "Broadcast Programs") during the entire competitive intercollegiate football season, including "regular season" games, any conference championship game and any "post-season" bowl game(s) ("Entire Competitive Football Season" or "ECFS"). For the work of COACH in connection with the Broadcast Programs and

all other public appearances and events during the Term, UNIVERSITY will pay COACH as follows:

<u>AGREEMENT YEAR</u>	<u>BROADCAST PROGRAM PAYMENT</u>
December 3, 2018 to December 2, 2019	\$350,000.00;
December 3, 2019 to December 2, 2020	\$385,000.00;
December 3, 2020 to December 2, 2021	\$423,500.00;
December 3, 2021 to December 2, 2022	\$465,850.00; and
December 3, 2022 to December 2, 2023	\$512,435.00.

UNIVERSITY's obligation under this Part F (Broadcast Program Payment) shall be paid in semi-monthly payments to COACH beginning on December 3, 2018; provided however, in the event COACH's employment is terminated pursuant to the Policy or Section X, XI, or XII of this Agreement, then COACH will be deemed to have earned only the pro-rata Broadcast Program Payment due through the date of termination of COACH's employment. Any such earned and unpaid pro-rata Broadcast Program Payment shall be paid to COACH within 30 days of the termination of his employment.

The COACH shall have no ownership interest in the Broadcast Programs or any part thereof, including but not limited to copyright. ECU will be responsible for payment of expenses incurred in marketing and producing the Broadcast Programs and COACH and ECU will mutually define the role of the COACH in the Broadcast Programs. All rights, title and interests in the Broadcast Programs, whether in whole or any part thereof, and all copies thereof, and all copyrights shall be and remain the sole property of ECU, which may use, assign, convey and otherwise use and dispose of the Broadcast Programs, and any parts thereof, as ECU determines appropriate in its sole discretion and without further consent or participation of the COACH, including, but not limited to, revising, editing, reproducing, broadcasting and transmitting as often and whenever ECU desires. COACH shall be entitled to no consideration for his participation in or contribution to any aspect of production, broadcast, rebroadcast, or reproduction of the Broadcast Programs, in whole or part, other than the amount of consideration provided under this Part F. Notwithstanding the foregoing provisions of this Part F, ECU may, in its sole discretion, reduce the frequency of or eliminate entirely production and/or marketing of any or all of the Broadcast Programs at any time and, in such event, ECU's sole obligation to the COACH shall be to pay COACH, while he remains employed as Head Football Coach, the compensation that COACH would have earned under this Part F had production and marketing continued and had the COACH participated cooperatively with ECU in said production and marketing. ECU's obligation to pay COACH any compensation under this Part F shall terminate immediately in the event that COACH is no longer employed by ECU as and with the duties of Head Football Coach.

- G. SEASON TICKET SALES PAYMENT In consideration for his efforts as Head Football Coach each year promoting sales of season tickets, ECU will pay COACH as follows:

<u>AGREEMENT YEAR</u>	<u>SEASON TICKET SALES PAYMENT</u>
December 3, 2018 to December 2, 2019,	\$225,000.00;
December 3, 2019 to December 2, 2020	\$247,500.00;
December 3, 2020 to December 2, 2021	\$272,250.00;
December 3, 2021 to December 2, 2022	\$299,475.00; and
December 3, 2022 to December 2, 2023	\$329,422.00

UNIVERSITY's obligation under this Part G ("Season Ticket Sales Payment") shall be paid in semi-monthly payments to COACH beginning on December 3, 2018; provided however, in the event COACH's employment is terminated pursuant to the Policy or Section X, XI, or XII of this Agreement, then COACH will be deemed to have earned only the pro-rata Season Ticket Sales Payment due through the date of termination of COACH's employment. Any such earned and unpaid pro-rata Season Ticket Sales Payment shall be paid to COACH within 30 days of the termination of his employment.

- H. ANNUAL FUND PAYMENT In consideration of efforts promoting the work of the East Carolina University Educational Foundation, Inc. (hereinafter, the "Pirate Club") in general, and in raising funds to support the collection of Annual Fund Dollars, UNIVERSITY will pay COACH as follows:

<u>AGREEMENT YEAR</u>	<u>ANNUAL FUND PAYMENT</u>
December 3, 2018 to December 2, 2019	\$225,000.00;
December 3, 2019 to December 2, 2020	\$247,500.00;
December 3, 2020 to December 2, 2021	\$272,250.00;
December 3, 2021 to December 2, 2022	\$299,475.00; and
December 3, 2022 to December 2, 2023	\$329,422.00.

Throughout this Agreement "Annual Fund Dollars" refers only to those dollars received each calendar year as membership fees paid to the Pirate Club to join or maintain membership in the Pirate Club.

UNIVERSITY's obligation under this Part H ("Annual Fund Payment") shall be paid in semi-monthly payments to COACH beginning on December 3, 2018; provided however, in the event COACH's employment is terminated pursuant to the Policy or Section X, XI, or XII of this Agreement, then COACH will be deemed to have earned only the pro-rata Annual Fund Payment due through the date of termination of COACH's employment. Any such earned and unpaid pro-rata Annual Fund Payment shall be paid to COACH within 30 days of the termination of his employment.

- I. INCENTIVE BONUSES For so long as COACH is employed as Head Football Coach, COACH shall be eligible for additional incentive bonuses, in the amounts and under the conditions as follows, subject to such other contingencies as may be stated in this Agreement:

- i. COLLEGE FOOTBALL PLAYOFF For Team achievement in the College Football Playoff (CFP) championship series, a CFP bowl game outside the championship series, or a bowl game outside the CFP, payments under one of the following scenarios each year:
1. CFP championship series:
 - a. Participating in a semi-final game of the CFP national championship series, \$250,000.00;
 - b. Participating in the CFP national championship game, \$250,000.00; and
 - c. Winning the CFP national championship game, \$500,000.00;
 2. CFP bowl games outside of the championship series:
 - a. Participating in a CFP bowl game other than a game in the CFP national championship series, \$75,000.00; and
 - b. Winning a CFP bowl game other than a game in the CFP national championship series, \$100,000.00; or
 3. Bowl game outside the CFP:
 - a. Participating in a bowl game other than any CFP bowl, \$25,000.00; and
 - b. Winning a bowl game other than any CFP bowl, \$50,000.

Eligibility for bonuses within each bowl scenario is cumulative (e.g., COACH may earn a total of up to \$500,000.00 if the Football Team wins the CFP national championship game). Eligibility of COACH for bonuses in connection with each of the games listed in this Part (l)(i) is contingent upon COACH's actual participation, as Head Football Coach, coaching ECU's Team for and during its participation in the particular game identified (i.e., COACH is ineligible while reassigned, suspended or on leave). ECU has sole discretion to determine whether to seek and whether to accept an invitation for the Team to participate in any bowl relevant to this Part I and failure to seek or to accept an invitation shall not be a breach of this Agreement.

- ii. TOP 25 If the Team is ranked by the CFP immediately following the CFP national championship as one of the top 25 teams in the nation, \$50,000.00.
- iii. NATIONAL OR AFCA COACH OF THE YEAR If COACH is named "national coach of the year" in NCAA Division I football by one or more of the nationally recognized organizations designated in writing by UNIVERSITY, such as Sporting News and Associated Press, or the American Football Coaches Association (the "AFCA"), one payment of \$25,000.00, regardless of the number of national awards.

- iv. AAC COACH OR AFCA REGIONAL COACH OF THE YEAR If COACH is named as "football coach of the year" in the American Athletic Conference ("AAC") as tallied by the AAC, or as the AFCA's Regional Football Coach of the Year, one payment of \$25,000.00.
- v. ACADEMIC PERFORMANCE For annual Team academic performance, calculated according to NCAA requirements, as reported in the Spring 2019 semester and each year thereafter while COACH is employed as Head Football Coach, as follows:
 - (A) With regard to single-year Academic Progress Rate ("APR") for the Team, an APR equal to 975 or greater, \$50,000.00; or, for an APR of 950 or more up to 974, \$25,000.00; and
 - (B) For a Team single-year Graduation Success Rate ("GSR") equal to or greater than 80%, \$50,000.00.
 - (C) Any amount earned will be paid within sixty (60) days of when the APR and GSR is reported publicly. In order to receive payment under this Part I(v), the COACH must be employed by and performing substantial services for ECU on the date the APR or GSR is reported publicly.
- vi. COACH agrees that in addition to the salary provided under this Agreement, some benefits and non-salary compensation he receives incident to his employment relationship with ECU 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 acknowledges that ECU shall withhold tax, including FICA withholding, on amounts paid or due to COACH and the value of benefits of other non-salary compensation provided to COACH, to the extent ECU determines it is required by applicable law and regulation.
- vii. In the event any future or amended state or federal law, rule, or regulation, or NCAA or AAC rule or regulation should prohibit payment of any bonus listed herein, render any bonus illegal or ineffectual, or subject ECU to a penalty or assessment or violation of law if such bonus were to be paid, ECU will make a good faith effort to revise such bonus or substitute an alternative incentive payment that would allow for a similar economic benefit to be provided to COACH while preserving for ECU as much of the bargained for institutional benefit as reasonably possible.

- J. RETENTION BONUS If COACH has been employed by ECU in the position of Head Football Coach and with all duties of that position continuously until December 2 of the following Agreement years he will receive the following payments, respectively:

	<u>DATE</u>	<u>BONUS</u>
(i)	December 2, 2019	\$125,000
(ii)	December 2, 2020	\$125,000
(iii)	December 2, 2021	\$125,000
(iv)	December 2, 2023	\$275,000

Any amount earned will be paid within sixty (60) days of the date specified above. For purposes of clarity, COACH may earn each bonus only one time {i.e., if COACH was continuously employed at ECU in the position of Head Football Coach with said duties thereof until December 2, 2023, he would receive a payment of \$275,000 and not \$650,000 {\$275,000 + \$125,000 + \$125,000 + \$125,000}.

- K. POWER FIVE OPPONENTS During each regular season during the Term of this Agreement COACH will be paid a bonus of \$20,000 for each win Football Team has over a Power Five Opponent. This bonus is cumulative for each football season, meaning that if COACH beats two Power Five football opponents in a single season he will receive \$40,000. Any bonus earned will be paid within sixty (60) days of said bonus being earned.
- L. EIGHT OR MORE WINS. In any regular football season in which the Football Team has eight (8) or more wins, COACH is eligible to be paid a bonus as follows:

	<u>REGULAR SEASON WINS</u>	<u>BONUS</u>
(i)	8 Wins	\$30,000
(ii)	9 Wins	\$35,000
(iii)	10 Wins	\$40,000
(iv)	11 Wins	\$45,000
(v)	12 Wins	\$50,000

Any bonus earned will be paid within sixty (60) days after the end of the regular football season for that Agreement year.

- M. The parties understand and agree that the right to any bonus, supplemental pay, or non-salary compensation (for purposes of this Part M, the "Bonus") described in this Appendix A vests when any such Bonus is earned, not when any such Bonus is paid.

In no event shall the payment of any Bonus be considered part of Annual Salary. In the event that any future or amended state or federal law, rule or regulation, or NCAA or Conference rule or regulation should a) prohibit the payment of any Bonus; b) render any Bonus illegal or ineffectual; or c) subject ECU to a penalty or assessment or violation of law if such Bonus were to be paid, ECU will, to the extent possible, revise such bonus or substitute an alternative incentive payment that would allow for a similar economic benefit to be provided to the COACH while preserving for ECU as much of the bargained for institutional benefit as reasonably possible.

- N. The payment of the bonuses and other compensation described in this Appendix A (for the purpose of this Section N only, individually, the "Bonus" and, collectively, the "Bonuses") is subject to the availability of non-State appropriated funds in the Department's budget and contingent upon a satisfactory performance review of the COACH by the Athletic Director. A Bonus is deemed "earned":
- (i) on the date that the milestone tied to the applicable Bonus has been fully completed and/or achieved; or
 - (ii) where the milestone for a Bonus is based on performance over an entire season, on the date of the last day of the regular season for the Football Program; and
 - (iii) provided further, on the date specified in (i) or (ii), where:
 - (a) all varsity sports are in compliance with all NCAA, Conference, and UNC and ECU policies, regulations, bylaws, and constitutional provisions;
 - (b) the COACH is actively employed as Head Football Coach at ECU; and
 - (c) there are no pending or active NCAA or Conference or ECU investigations of violations relating to the Football Program.

No bonus will be deemed earned where a condition specified in this Section N is not satisfied.

- O. SIGNING BONUS COACH shall be entitled to a one-time bonus upon execution of the Head Football Coach Employment Agreement in accordance with the following milestones:
- (i) \$5000 if the Head Football Coach Employment Agreement is fully executed by the Parties on or before February 8, 2019; or
 - (ii) \$2500 if the Head Football Coach Employment Agreement is fully executed by the Parties on or before March 1, 2019.

The bonuses in this Part O are not cumulative and will be paid within sixty (60) days of achievement of the applicable milestone.